



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
 [REDACTED]) ISCR Case No. 17-00795
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

02/08/2019

Decision

HESS, Stephanie C., Administrative Judge:

While Applicant’s financial difficulties arose from circumstances largely beyond his control, he failed to act reasonably under the circumstances and did not mitigate the security concerns raised by his finances. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 25, 2016. On April 13, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations). The DOD acted under Executive Order (Ex. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant submitted his Answer to the SOR on May 9, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on

June 22, 2017, and the case was originally scheduled for hearing with another administrative judge on March 6, 2018. The hearing was subsequently canceled and the case was assigned to me on March 20, 2018. On May 20, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant, through counsel, that the hearing was scheduled for June 5, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant testified, submitted Applicant's Exhibits (AX) A through WW, which were admitted without objection, and called five witnesses. DOHA received the transcript (Tr.) on June 13, 2018.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision is based on the amended AG effective June 8, 2017.

Findings of Fact

Applicant, 46, is a systems engineer currently employed by a defense contractor since January 2014. He served on active duty in the U.S. Army from March 1994 until he retired in March 2014. His service included three combat tours, and he received numerous metals and commendations, including a Bronze Star for meritorious service. He and his current wife married in 2001. They have four adult children and twins in high school. Applicant was first granted a security clearance in 1994. (GX 1; AX A; AX II through WW; Tr. 14.)

Under Guideline F, the SOR alleges four debts totaling \$36,884 and a Chapter 13 bankruptcy discharged in 2006. Applicant admits each of these allegations. The delinquent debts are reflected in Applicant's February 2017 and April 2016 credit bureau reports (CBR) and discussed during his September 2016 personal subject interview (PSI). (GX 5; GX 4; GX 2.) Applicant's admissions are incorporated in my findings of fact.

Prior to their marriage and 2001, both Applicant and his wife individually filed Chapter 13 bankruptcy. (Tr. 59.) The bankruptcies were discharged in 2006. (GX 3.) Applicant and his wife struggled financially early in their marriage, in part because they were both active duty and not earning significant salaries, and because of the size of their household. (Tr. 20.) However, Applicant was promoted and their finances had otherwise stabilized, so Applicant purchased a boat for \$28,694 in April 2008. (GX 4; GX 5; Tr. 35; Tr. 65.)

Both Applicant and his wife testified that Applicant's wife is responsible for managing the household finances. (Tr. 45; Tr. 60.) Applicant attributes his financial difficulties to the combined impact of several events in 2011. Applicant's wife was eligible to retire from the military in 2011. They reviewed their finances and determined that if Applicant deployed, he would receive greater pay and his wife could retire. She retired in May 2011. Applicant's wife was approved for 80% disability compensation upon retirement, but did not start receiving payments until approximately May 2012. Applicant's wife's reduced income and delayed disability compensation created greater financial strains on the household. (Tr. 59-60.)

Additionally, the vehicle Applicant's wife was driving during this time had major engine trouble that required repairs that cost \$7,000 to \$9,000. (Tr. 52; Tr. 27.) Despite the fact that Applicant had purchased an extended warranty for the vehicle, the dealership would not honor the warranty. The vehicle underwent several repair attempts, but never ran properly, and eventually became inoperable. At some point, Applicant stopped making payments, and the vehicle was ultimately repossessed. (Tr. 26-28.) The \$7,241 balance (SOR ¶ 1.b) was charged-off in March 2012. (GX 4.)

In September 2011, Applicant's son was in an accident that resulted in third-degree burns and had to be airlifted to a hospital in another city for medical treatment. Applicant was deployed and his wife had to travel several hours from their home to see their son in the hospital. This resulted in travel-related and childcare costs as well as medical bills. (Tr. 50; GX 2.)

Due to the increased financial stressors, Applicant fell behind on his monthly obligations, including his monthly boat payments of approximately \$500. Applicant attempted to negotiate with the creditor, but the creditor demanded a full lump-sum payment. Applicant's last payment on the boat was in September 2011, and the boat was later voluntarily repossessed. (Tr. 36-37; GX 4.) Applicant believes the boat was sold at auction. The creditor charged-off the \$28,694 original loan amount (SOR ¶ 1.c) in June 2014. (GX 4.) Applicant's wife testified that the creditor sent Applicant letters attempting to collect the debt, but because they did not have the money to pay the debt, she did not respond. (Tr. 70.) She further stated that between 2012 and 2016 she "did not make any effort to pay the debts . . . we did start making more money in 2014, but honestly it had been so long that I didn't make any effort to pay those." (Tr. 74.)

Applicant discussed his delinquent accounts with the investigator during his PSI in September 2016. At that time, Applicant stated that he did not know the status of the \$7,241 repossessed-vehicle debt (SOR ¶ 1.b) or the \$28,694 repossessed-boat debt (SOR ¶ 1.d) and had not had any contact with the creditors. The investigator confronted Applicant with several other delinquent accounts including the \$605 credit-card debt (SOR ¶ 1.c) and the \$344 cellular telephone debt (SOR ¶ 1.e). Applicant was unaware of these debts but stated that he would consult his wife, and if the debts were valid, he would attempt to resolve them within the next 30 days. (GX 2.) In his Answer, Applicant stated that, "now that we are financially able and I am aware of the repercussions, I intend to pay these debts."

Applicant testified that the first time he recalls being aware of his delinquent debts was in 2016 when reviewing his CBR with the mortgage broker. (Tr. 51-52.) He further testified that the mortgage broker advised Applicant not to contact the creditors or to make payments on the outstanding \$7,241 repossessed-vehicle debt or the \$28,694 repossessed-boat debt. Applicant explained that the mortgage broker stated that the debts were old, but any activity on the accounts could reactivate them, which could result in a negative impact on Applicant's credit and ability to qualify for a favorable interest rate. (Tr. 52-53.) Applicant also stated that the mortgage broker told him that paying the delinquent accounts would result in Applicant's not being "able to purchase the home

because our credit rating would drop.” (Tr. 30-31.) Applicant opted not to contact the creditors. (Tr. 37.)

Applicant received an IRS 1099 C Forgiveness of Debt Form in 2017, and paid the required tax. (Tr. 45.) Neither Applicant nor his wife specifically recognize the \$605 credit-card debt alleged in SOR ¶ 1.c. (Tr. 39; Tr. 69.) The debt was charged off in September 2010. The \$344 delinquent cellular telephone account (SOR ¶ 1.e) was last paid in September 2009 and transferred to collection in November 2011. (GX 5.) In December 2017 or January 2018, when the initial hearing was pending, Applicant was concerned about any remaining delinquent accounts. He contacted the creditors of these two accounts and paid them by telephone. (Tr. 39.) SOR ¶¶ 1.b, 1.c, and 1.e have been resolved.

Applicant’s four character witnesses, all of whom hold security clearances and know Applicant professionally and personally, have served with or worked with Applicant. The witnesses collectively testified to the strength of Applicant’s character, stating that Applicant had an outstanding reputation of integrity, honesty, trustworthiness, and dedication. (Tr. 75-93.) Applicant’s 1997 to 2013 military evaluation reports are positive, and his service school academic evaluations show that he met or exceeded course standards. (AX I through FF.) He received the following awards for his military service: Army Achievement medal 1996, 1999, 2000; Armed Forces Expeditionary medal 1996; Good Conduct medal 1997, 2003, 2005; Army Commendation medal 2003, 2004, 2008, 2010; Bronze Star medal 2008; and Meritorious Service medal 2013. Applicant’s 2014 to 2017 employee performance reviews show that Applicant met or exceeded performance expectations and that Applicant was a valuable team member and a key asset to the programs on which he has worked. (AX E through AX H.)

Applicant’s current monthly net income is \$4,400, and he and his wife both receive military retirement and disability compensation payments. Their net monthly household income is approximately \$11,100. (Tr. 41-43.) Applicant and his wife both testified that they are currently in a good financial position. (Tr. 41; Tr. 67.) Applicant purchased a house in July 2016 with a 30-year fixed-rate mortgage-loan of 3.75%.¹ (Tr. 31.) His monthly loan payment as of December 2016 was \$2,108. (GX 5.) Applicant did not submit a written budget, nor is there any reference to maintaining a budget in Applicant’s or his wife’s testimony. Applicant contributes \$2,000 a month to his 401(k) and pays \$6,000 annually for additional medical insurance. Applicant testified that he does not have any other delinquent accounts. (Tr. 48.) There is no other record evidence regarding Applicant’s financial obligations. Neither of the parties submitted a current credit bureau report. Applicant has not taken any action to dispute his debts with credit reporting agencies. (Tr. 45-46.) Applicant does not have a plan to resolve his remaining delinquent debt.

¹ The national average annual mortgage-loan interest rate for 2016 was 3.65% with .05 points, with the July 2016 average of 3.44% with .05 points. www.freddiemac.com, January 30, 2019.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes two disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties began in 2011 due to several events that were largely beyond his control. Specifically, Applicant's son was severely injured in an accident, Applicant's wife's income decreased, and Applicant's vehicle required costly repairs. The financial strain caused by these events resulted in Applicant's inability to maintain his financial obligations. However, Applicant has not acted reasonably in resolving his debts. Applicant has been aware of his delinquent accounts since 2016. On the advice of his mortgage broker, Applicant took no action to satisfy his delinquent accounts because he was concerned he would not qualify for a mortgage loan. Applicant secured a 30-year fixed-rate mortgage loan in 2016, but did not subsequently take any steps to resolve his delinquent accounts. Applicant paid SOR ¶¶ 1.c and 1.e, totaling \$949 in December 2017 or January 2018 because he was concerned about the impact of delinquent accounts on his security clearance. The \$7,241 debt alleged in SOR ¶ 1.b was resolved by the creditor's forgiveness of the debt, not by any affirmative action taken by Applicant. The \$28,694 charged-off debt alleged in SOR ¶ 1.d remains unresolved and Applicant does not have a plan to pay it.

The appeal board has regularly held that "applicants who only begin to address their security-significant conduct when their personal interests are at stake may be lacking in judgment and reliability. See, e.g., ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017.)

Although Applicant does not have any recent delinquent accounts, his failure to resolve his delinquent debt casts doubt on his current reliability, trustworthiness, and good judgment. Additionally, Applicant acted in his own personal interests in securing a mortgage ahead of his legal obligation to satisfy his debts. His eleventh-hour payment of two SOR debts and the creditor's forgiveness of a third does not constitute a good-faith effort to resolve his debts. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). There is no evidence that Applicant has participated in financial counseling, and he does not have a plan to resolve his remaining delinquent account. None of the mitigating conditions apply. Applicant's 2001 Chapter 13 bankruptcy does not create any current security concerns.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-

person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but I have also considered the following:

Applicant served honorably in the U.S. Army for more than 20 years, including three combat deployments, during which time he received multiple accolades for his service. He has held a security clearance for more than 30 years. He is considered to be trustworthy and is respected by his colleagues and friends. However, while he has not incurred any significant recent delinquent debt, the unresolved delinquent SOR debt remains a concern.

After weighing the applicable disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a: For Applicant

Subparagraph 1.b – 1.e: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge