



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 18-02662
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: Brian A. Pristera, Esq.

09/09/2019

Decision

HESS, Stephanie C., Administrative Judge:

Due to circumstances largely beyond his control, Applicant incurred delinquent debts. However, Applicant acted responsibly under the circumstances and has mitigated the potential financial security concern. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on June 27, 2017. On November 20, 2018, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline 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) effective June 8, 2017.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 25, 2019, and the case was assigned to me on April 8, 2019. On June 7, 2019, the Defense Office of Hearings

and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 26, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and Applicant's Exhibits (AX) A and B were admitted without objection. I left the record open until July 10, 2019, to enable Applicant to submit documentary evidence. He timely submitted AX C through AX F, which were admitted without objection. DOHA received the transcript (Tr.) on July 8, 2019.

Findings of Fact

Applicant is a 63-year-old software engineer currently employed by a federal contractor since October 2012. He earned his bachelor's degree in 1988, his master's degree in 1991, and attended law school from 2000 until 2002. He worked as a government contractor from 1988 until 2010, when he was laid off. This is Applicant's first application for a security clearance. He and his wife married in 1980 and have three adult children. (GX 1.)

The SOR alleges a 2014 mortgage-loan foreclosure and six debts totaling \$29,205. The debts are comprised of: two delinquent student loans totaling \$26,313; a \$616 medical debt; a \$396 medical debt; a \$500 cellular phone service debt; and a \$1,380 equipment-lease debt. Applicant admits the foreclosure, the two delinquent student loans, and the medical debt. (SOR ¶¶ 1.a, 1.b, 1.c, and 1.e.) He denies the other three debts. (SOR ¶¶ 1.d, 1.f, and 1.g.) The delinquent debts are reflected in Applicant's February 2019, August 2018, in July 2017 credit bureau reports (CBR) (GX 6; GX 5; GX 4), and discussed in his personal subject interview (PSI) summary (GX 2). Applicant's admissions are incorporated in my findings of fact.

In 2007, Applicant cosigned a mortgage loan for his son. He loaned his son \$20,000 for the down payment, and spent time and money on renovations. Unbeknownst to Applicant, his son defaulted on the mortgage loan and the loan was foreclosed in October 2011. Applicant's son did not disclose the foreclosure, and Applicant did not receive independent notice of it. He learned of the foreclosure when another family member told him that his son was moving. Applicant then questioned his son about the status of the foreclosure, who told Applicant the process was complete. (Tr. 72-75.) The debt does not appear on Applicant's February and June 2019 CBRs. (GX 6; AX E.)

Applicant incurred student loans to attend law school. He did not graduate, and at some point the loans became due. Applicant was contacted by two different creditors, was uncertain of how to repay the loans, and suspicious about why he was being contacted by companies with different names. He attempted to contact the creditors in an effort to consolidate the loans but was unsuccessful. (GX 2; Tr. 51.) Applicant remained aware of the outstanding student loans, and intended to pay them, but he did not take further action, and the creditors stopped contacting him. During his testimony, Applicant stated that he recognizes that these debts are his responsibility and that he did not intend to shirk this obligation, but, while by no means an excuse, he did not focus on making the

repayment of these accounts a priority once the creditors stopped contacting him. (Tr. 57-59.)

After being laid off from his federal contracting job in 2010, he opened a cellular telephone store. He entered a lease agreement for a specific period of years with a company for a credit-card processing machine. Applicant's business venture was unsuccessful, and in 2012 he contacted the company he leased the credit-card processing machine from and informed the company that he was going out of business. The company representative told Applicant to send the machine back with a letter of explanation, and that despite not fulfilling the terms of the lease agreement, the company would terminate the lease and Applicant would have no further financial obligations. Approximately 18 months later, a representative from the company called Applicant and stated that he owed the company \$1,380 for the machine. (SOR ¶ 1.g.) Applicant explained his previous agreement with the company and disputed owing anything. He was not contacted again by the company. The creditor of this debt filed for and secured a judgment against Applicant which was entered in January 2019. However, Applicant did not receive notice of this process. (Tr. 25-26; GX 3; Tr. 63.) Applicant's June 2019 CBR shows that he has disputed this debt. (AX E.) Despite denying liability for this debt, Applicant is willing to pay it to reach resolution of the account. (Tr. 70.)

At the time of his PSI in 2017, Applicant was aware only of his delinquent student-loan accounts. After being shown his CBR by the investigator and discussing the delinquent accounts listed on it, Applicant became concerned about the \$1,380 listed debt for the credit-card machine and other debts that he did not recognize. Applicant was specifically concerned that some of the debts might have been incurred by his son because they share the same name. (Tr. 25-29.)

Additionally, Applicant contacted the three major credit reporting agencies and attempted to contact the various creditors listed on his CBR in an effort to either validate or dispute the listed debts. His efforts did not produce sufficient information to resolve his accounts. Specifically, Applicant could only find a post-office box contact for his student loans creditor. In March 2019, Applicant entered an agreement with the credit-repair company for the company to perform an audit of Applicant's CBR and to verify or dispute on his behalf the creditors' entries. (AX A; AX B.)

Through the credit-repair company, Applicant has successfully disputed the \$616 medical debt (SOR ¶ 1.d) and the \$500 cellular telephone service debt (SOR ¶ 1.f), both of which he denied owing. Applicant admitted the \$396 medical debt alleged in SOR ¶ 1.e as his account, but stated that he had paid it. This debt has been removed from Applicant's CBR. The foreclosure has also been removed from Applicant's CBR. (AX E.) Applicant is committed to repaying his student-loan debts and is awaiting the outcome of the credit-repair company's audit for his next step. (Tr. 53-55.)

Applicant's CBRs show a credit history that dates back to 2002, that includes paid-off lines of credit and credit cards. Applicant's mortgage loan for his home is paid in full. He has a home equity loan of approximately \$50,000 and makes timely payments. (GX

4; GX 2.) Applicant invests in a 401(k) with a current balance of approximately \$200,000. His wife is retired and receives a monthly pension payment. He lives within his means and is fiscally stable and responsible. (Tr. 50-51.) Applicant is a valued employee, and he received a 3% raise in June 2019. (AX C.) Applicant was straightforward, sincere, and credible in his testimony.

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 the following disqualifying conditions under this guideline: AG ¶ 19(a): an inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

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;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The conditions that caused Applicant's past financial issues arose under circumstances which were largely beyond his control. Specifically, Applicant was unaware of the house foreclosure (SOR ¶ 1.a) and did not receive notice of it until after the foreclosure was complete. Additionally, he was unaware of the medical debt (SOR ¶ 1.d) and cellular phone account debt (SOR ¶ 1.f). After learning of the delinquent accounts, Applicant acted responsibly by first contacting the major credit reporting agencies to validate or dispute the accounts. Dissatisfied with this effort, he then engaged the services of a credit-repair company, which successfully disputed the medical debt, the cellular service debt, and the foreclosure. Applicant had previously paid the medical debt alleged in SOR ¶ 1.e, and it has been removed from his CBR. He denies liability for the credit-card machine debt (SOR ¶ 1.g) and disputed it. However, he is willing to pay this debt to resolve it. The credit-repair company will advise Applicant on how to repay his student loans (SOR ¶¶ 1.b and 1.c), and Applicant has the means to do so.

"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). A trustworthiness adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has an overall long-standing sound financial record, which includes repayment of his mortgage loan and credit cards. He lives within his means and does not have any recent delinquent accounts. Applicant's previously incurred delinquent accounts do not cast doubt on his current judgment, reliability, and trustworthiness. Although Applicant's financial record is not perfect, he has made a good-faith effort to repay his debts and has established a plan to resolve his remaining financial issues within his means. AG ¶¶ 20 (b) through 20(e) apply.

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. I have incorporated my comments under Guideline F in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the potential security concerns raised by his financial issues. Accordingly, I conclude he has 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):	FOR APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge