



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-01003
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*
03/22/2023

Decision

HESS, Stephanie C., Administrative Judge:

Applicant has mitigated the Guideline F (Financial Considerations) raised by his past financial issues. He has paid or otherwise resolved the majority of the SOR debts and has taken steps to more effectively manage his finances. Access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 5, 2019. On August 26, 2021, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. 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 on September 16, 2021, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on July 25, 2022. On that same day, a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 11, was sent to Applicant. He received the FORM and signed the receipt on August 3, 2022. The Defense Office of

Hearings and Appeals (DOHA) transmittal letter, dated July 25, 2022, informed Applicant that he had 30 days after receiving it to file objections and to submit material to refute, extenuate, or mitigate the Government's evidence. He submitted a response with attachments, Applicant's Exhibit (AX) A, on August 8, 2022. I admitted GX 1 through 11 and AX A without objection. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on October 5, 2022.

On February 28, 2023, I reopened the record to permit the parties time to submit any additional, relevant evidence. Applicant submitted a personal statement, which I admitted into the record as AX B. He also submitted AX C through E. Department Counsel renewed the Government's argument and submitted GX 12, a credit bureau report (CBR) dated March 1, 2023. I admitted AX B through E, and GX 12 without objection. I closed the record on March 15, 2023.

Findings of Fact

Under Guideline F, the SOR alleges that Applicant is indebted for nine delinquent accounts totaling \$32,848. In his answer to the SOR, Applicant admits each of these debts and states their current status. Applicant's admissions are incorporated in my findings of fact.

Applicant, 60, is a service technician analyst currently working for a defense contractor since January 2011. He served honorably on active duty in the Air Force from 1987 until 2011. He was deployed to Iraq in 2006 to and 2007. He married in 1990 and divorced in 1993. He married again in 2000 and divorced in 2013. He has three adult children and a 17-year-old child. He earned his bachelor's degree in 2017. He has continuously held a security clearance since 2002, and was granted his first clearance while on active duty. (GX 3; GX 5.)

Applicant has a history of struggling financially and told the investigator during his personal subject interview (PSI) in November 2019 that he was not good at managing his finances. However, Applicant and his second wife incurred joint debt during their marriage, some of which became delinquent while he was deployed in 2006-2007. They separated in 2012 and she moved with their two minor children to another state. The delinquent joint accounts became Applicant's sole responsibility through the divorce. Beginning during their separation, Applicant had \$400 to \$500 per month of his military retirement payments automatically deducted and sent to his wife. From 2012 until June 2020, \$2,000 per month in child support was automatically deducted from his pay. Beginning in July 2020, his child support obligation decreased to \$1,500 per month. He will continue to pay this obligation until September 2023.. (GX 5; GX 4; GX 3.)

Beginning in July 2019, Applicant was unable to meet his mortgage-loan payment requirements. In August 2019, his wages were garnished for a delinquent account in the amount of \$2,053. In late 2019 or early 2020, the mortgage lender began foreclosure proceedings on Applicant's mortgage. Ultimately, the house was sold in a short sale and

Applicant's financial obligations to the mortgage lenders were satisfied. In January 2020, Applicant's wages were garnished for a delinquent account in the amount of \$2,666. (GX 5; GX 11.)

The status of the SOR debts is as follows:

- ¶ 1.a - \$5,783 credit-card account – paid a negotiated amount (AX A; GX 12);
- ¶ 1.d and 1.g - \$2,051 and \$3,222 credit-card account – duplicate – paid (AX A; GX 11);
- ¶ 1.f - \$5,706 mortgage-loan account – paid a negotiated amount (GX 12);
- ¶ 1.h – \$2,180 credit-card account – paid (GX 10);
- ¶ 1.i - \$2,576 credit-card account – paid (GX 10.)

These paid accounts total \$16,086.

- ¶ 1.b - \$2,842 credit-card account – charged off, no longer on CBR (GX 12);
- ¶ 1.c - \$2,475 credit-card account – charged off, no longer on CBR (GX 12);
- ¶ 1.e - \$6,013 personal loan – charged off \$0 balance (GX 12).

These accounts totaled \$11,330.

Applicant has taken steps to improve his financial circumstances. In September 2022, he hired a credit-repair company that also provides credit education to contact the creditors of his delinquent accounts and establish settlement agreements or repayment plans. The credit-repair company will advise Applicant on how to resolve the debts. He also has enlisted his sister to help him with his budget and debt resolution. He entered a repayment plan for the credit-card debt alleged in SOR ¶¶ 1.d and 1.g in April 2021 prior to receiving the SOR, and the account was paid in full in July 2022. The SOR debts alleged in ¶¶ 1.f, 1.h, and 1.i were resolved with the short sale of the house prior to the issuance of the SOR. Applicant received an offer to settle the debt alleged in SOR ¶ 1.a on July 27, 2022, and paid the settlement offer on August 22, 2022. (AX A; AX B; AX E; Response.)

Applicant's June 7, 2022, CBR shows that he had several accounts that became delinquent in 2020 and 2021 that were not alleged in the SOR. He paid two of the collection accounts for \$2,867 and \$4,139 in August 2022. The CBR shows that he had total delinquent revolving-account debt of \$2,873. This total is comprised of two charged-off credit-card debts, one for \$2,065 and the other for \$808. He entered repayment agreements for these two accounts in March 2023. Under the agreements, he is paying

\$172 a month for 12 months on the account with the \$2,606 balance and is making four \$200 payments on the account with the \$808 balance. (GX 11; AX D.)

The June 2022 CBR also shows that Applicant opened an automobile-loan account in the amount of \$36,743 in October 2020, which was charged off in April 2022 in the amount of \$36,100. However, his March 1, 2023, CBR shows that the account balance was \$33,310. He is actively negotiating with the creditor to reach a settlement agreement or to enter a repayment plan. Of the 13 installment-account debts that Applicant currently has open, with a total balance of \$39,450, this is the only delinquent account. (GX 11; AX A; GX 12; Response.)

Applicant's March 2023 CBR also shows that he has a high revolving-account credit limit but low credit usage. He currently has 45 open revolving accounts with a total credit limit of \$105,409. However, between June 7, 2022, and March 1, 2023, Applicant reduced his total revolving-account debt from \$15,149 to \$7,028 and his total delinquent revolving-account debt from \$9,780 to \$2,873. Applicant submitted a budget spreadsheet that includes a list of the balances of his current debts and the monthly payments on each account. As of March 15, 2023, Applicant's total revolving-account debt was \$5,972, his total delinquent revolving-debt was \$2,673, and his total installment-account debt was \$37,424. He will make a payment on each of the two delinquent revolving-debt accounts on March 17, 2023, bringing the total delinquent amount down to \$2,301. He will continue to make monthly payments on his current accounts. (AX C; GX 11; GX 12; Response.)

Applicant makes payments on each of his ongoing financial obligations through automated payments, including his recent repayment plans. He has also been making double payments on several of his open accounts. He has reduced his nonessential spending, and is using accounting software tools that help him track his overall spending. He is working on establishing savings. Applicant lives within his means, has not incurred any delinquent debt in over two years, and is paying or working to resolve all of his ongoing financial obligations. He accepts responsibility for not having managed his finances as diligently as he could have in the past and has committed making better financial decisions in the future. (AX B; AX C; Response.)

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 or inability 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. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds.

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 under this guideline:

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(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 issues initially arose around 2006-2007 while he was on active duty. He and his wife incurred joint debt which, in part, remained unresolved at the time of their divorce in 2013, and for which Applicant remained responsible after their divorce.

While separated, Applicant made monthly payments to his wife from his retirement payments. Beginning in 2012 during the separation, he made monthly child support payments of \$2,000 until June 2020, when the payments were reduced to \$1,500. He continues to make these child-support payments. Starting in July 2019, he was no longer able to make his monthly mortgage-loan payments. Beginning in August 2019 and again in January 2020, his wages were garnished to satisfy two delinquent accounts.

Applicant has paid or settled six of the SOR accounts which total \$16,086 and make up 65% of the SOR debt. The three remaining accounts have been charged off. The \$6,013 debt alleged in SOR ¶ 1.e is listed on the March 2023 CBR with a \$0 balance and the other two debts are not listed. The credit-repair company will advise Applicant on what action, if any, to take regarding these accounts. Since June 2023, he has reduced his total revolving-account debt by \$1,056 and his total installment-account debt by \$2,026.

Applicant incurred five debts that became delinquent in 2020 and 2021. He paid two of the accounts in August 2022. He has contacted the creditors of each of the three remaining delinquent accounts and has entered repayment agreements with two of them. The third account is for a charged-off vehicle loan. He has made payments on the account and is working with the credit-repair company as well as the with creditor to establish either a settlement agreement or a repayment plan. He is aware of each of his accounts and is systematically worked on reducing his existing debts.

Applicant has acted in good faith in his efforts to resolve his financial delinquencies. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999). A security clearance 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's financial difficulties were exacerbated by circumstances largely beyond his control; however he acted responsibly under the circumstances. There is nothing in the record that suggests Applicant's financial habits are reckless or irresponsible or that he is likely to disregard his financial obligations in the future. He accepts responsibility for not having been more diligent about handling his finances in the past and resolving his delinquent accounts in a timelier manner. He has taken positive actions to better understand his finances and how to effectively manage them. He established a plan to resolve his debts and has implemented that plan. He lives within his means, maintains a budget, and has not incurred any recent delinquent debt. He hired a credit-repair company and has enlisted the assistance of his sister to help him manage his finances.

Applicant's past financial issues do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(b), 20(c), and 20(d) 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the Air Force for 24 years, including deploying to Iraq. He has held a security clearance for over 20 years. He demonstrated his dedication to continuing to serve as a civilian through earning his bachelor's degree in 2017. He is financially stable and fiscally responsible. While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection.

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.i: 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