



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



In the matter of:)
)
) ISCR Case No. 12-05313
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On April 29, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue Applicant's security clearance. On May 21, 2014, Applicant

answered the SOR and requested a hearing if his Answer did not resolve the security concerns. This case was assigned to me on July 15, 2014. On July 23, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for August 12, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, while Applicant testified, called his wife as a witness, and offered Applicant Exhibits (AE) A through F. The record of the proceeding was left open until August 26, 2014, to provide Applicant an opportunity to present additional matters. He submitted documents that were marked as AE G through AA.¹ All proffered exhibits were admitted into evidence without objection. The prehearing guidance letter sent to Applicant was marked as Hearing Exhibit (HE 1) and Department Counsel's list of exhibits was marked as HE 2. The transcript (Tr.) of the hearing was received on August 21, 2014.

Findings of Fact

Applicant is a 51-year-old aircraft mechanic who works for a defense contractor. He has been working for his current employer since March 2010. He graduated from high school in 1981. He served in the Marine Corps from November 1981 to November 1987, in the Army Reserve from August 1991 to June 1997, and in the Air Force Reserve from June 1997 to present. He is currently serving in the grade of master sergeant (E-7). He has been married three times. His first marriage was from 1982 to 1991. His next marriage was from 2002 to 2004. He married his current wife in November 2006. He has five children, ranging in age from 20 to 31. Applicant held a security clearance without incident for the past 14 years and for four years while serving in the Marine Corps. He indicated that he requires a security clearance for his military and civilian positions.²

The SOR alleged that Applicant had six delinquent debts totaling \$118,589 (SOR ¶¶ 1.a–1.f). The largest debt was a judgment in the amount of \$100,659 entered against him in July 2005 for a mortgage loan. In his Answer to the SOR, Applicant denied the debt in SOR ¶ 1.a and neither admitted nor denied the remaining allegations. His comments concerning the other allegations are considered denials. Credit reports in the record and Applicant's security clearance application provide substantial evidence of the alleged debts.³

Applicant attributed his financial problems to his second divorce and identity theft. About eleven years ago, his second wife had an affair with his then 18-year-old son. From about 2005 to 2008, his son and ex-wife stole his identity. Without

¹ Tr. 29-30. The record of the proceeding was initially left open until August 19, 2014 and, in response to a request from Applicant, extended to August 26, 2014. See AE G.

² Tr. 7-9, 33-34, 39-48; GE 1, 2.

³ Applicant's Answer to the SOR.

authorization, his son used Applicant's credit card and opened accounts in Applicant's name in cities and states in which Applicant did not live. His son has the same first and last name as him. Sometime between 2007 and 2009, Applicant learned of the identity theft when he attempted to buy an item on credit. He reported the identity theft to the police, signed up for a credit monitoring service, and placed a security freeze on his social security number. He also acknowledged that he made some mistakes and could have resolved these matters earlier.⁴

SOR ¶ 1.a – judgment entered against Applicant in July 2005 for \$100,695. This was a mortgage loan on a house that Applicant purchased in 2003 when he was married to his second wife. The house had two mortgage loans, one for \$95,000 and another for \$36,000. When he and his ex-wife separated, she remained in the house and he moved to another state. In 2005, the creditor obtained a judgment against Applicant for the amount noted above and the house was foreclosed. In his Answer to the SOR, Applicant denied this debt. He stated that he called the creditor and was told it had no record of this account. He indicated that he disputed it online and was awaiting the results. At the hearing, he testified that he had no problem with satisfying debts that he owed, but he could not find anyone with whom to settle this debt. In his post-hearing submission, Applicant provided a letter from a mortgage lending company that indicated it acquired this account in February 2013 and its records reflected that the foreclosure proceeding began in May 2005, the foreclosure sale occurred in January 2006, and the "tradelines" indicated the account was closed with a zero balance.⁵

SOR ¶¶ 1.b, 1.c, and 1.d – collection accounts for \$949, \$5,486, and \$1,955, respectively. These were credit union accounts from the same creditor. Applicant indicated the debt in SOR ¶ 1.b was his account, but the debts in SOR ¶¶ 1.c and 1.d were accounts that resulted from his son stealing his identity. In his Answer to the SOR, Applicant provided documents showing that he paid each of these debts in full in February 2014. These debts are resolved.⁶

SOR ¶ 1.e – collection account for \$1,044. This was a telecommunications account. This account was opened by Applicant's son without his authorization. In his Answer to the SOR, Applicant provided documentation showing that he settled this account in May 2014. Even though the debts in SOR ¶¶ 1.c, 1.d, and 1.e were not Applicant's, he indicated that he paid them "to show good faith because I need my security clearance."⁷

⁴ Tr. 33-38, 45-50, 62-66; GE 1, 2; AE F.

⁵ Tr. 51-57; GE 2, 3; AE A, D, Z, AA; Applicant's Answer to the SOR, Attachment A.

⁶ Tr. 57-60, 62-65; GE 2, 4; Applicant's Answer to the SOR, Attachments B, C, D.

⁷ Tr. 61, 65-68; GE 2; Applicant's Answer to the SOR, Attachment E.

SOR ¶ 1.f – collection account for \$8,392. This was a truck loan that he cosigned with his ex-wife during his second marriage. As part of their divorce, Applicant and his ex-wife verbally agreed that she would retain the truck and also be responsible for the monthly loan payments. At some point, she stopped making the monthly payments and apparently turned in the truck to the creditor. In his Answer to the SOR, Applicant provided documentation showing that he entered into a repayment arrangement with the creditor. Under that arrangement, he agreed to make a onetime payment of \$2,794 and to pay \$233 per month for three years. He noted the payments are made by automatic withdrawals from his checking account and provided documentation showing he made the monthly payments for March through August 2014. This debt is being resolved.⁸

Applicant has received financial counseling. His annual salary is \$66,000. On February 23, 2014, he submitted a Personal Financial Statement (PFS) that reflected his total net monthly income was \$6,982, his total monthly expenses were \$1,020, and his total monthly debt payments were \$3,671, which left him a net monthly remainder of \$2,291. He indicated that he had about \$8,100 in a bank account and over \$80,000 in 401(k) and Thrift Savings Plan accounts.⁹

Applicant's wife testified that she has been a teacher in public schools for 19 years. She has two master's degrees and is working on her doctorate. She places great importance on honesty and ethical decision-making. She indicated that she and her husband live within their means while providing for their children. She stated that her husband works very hard, is dedicated to the military, does what is right, and doing what is right is his nature. She also indicated that her husband participated in rescue missions during Hurricane Katrina and has mentored younger airmen.¹⁰

Applicant has received a Meritorious Service Medal, Army Commendation Medal, two Army Achievement Medals, and other personal and unit awards. His enlisted performance evaluation dated February 10, 2013, indicated that he was "truly among the best." A senior master sergeant indicated that Applicant is a strong senior non-commissioned officer who is selfless and goal oriented. He received a certificate of appreciation for his civilian position and high praise from a team manager.¹¹

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is

⁸ Tr. 58, 60-61, 77-83; GE 2; AE I-L; Applicant's Answer to the SOR, Attachment F.

⁹ Tr. 68-75; GE 2; AE B-F.

¹⁰ Tr. 86-95.

¹¹ AE H, M-U, W.

sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of

disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 security concern for financial considerations is set out in AG ¶ 18 as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

In this case, Applicant accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. This evidence established the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's debts arose from unusual circumstances that are unlikely to recur. In 2004, he went through a divorce. His son, who had an affair with his ex-wife, used Applicant's identity to open accounts without his authorization. While his divorce and the theft of his identity were conditions beyond his control that contributed to his financial problems, Applicant acknowledged that he made mistakes in handling his financial problems and could have resolved them earlier. AG ¶¶ 20(a) and 20(b) partially apply.

Applicant provided a letter from the company holding the mortgage loan in SOR ¶ 1.a. This company indicated it acquired this account in February 2013 and its records reflected that the foreclosure sale occurred in January 2006, and the "tradelines" indicated the account was closed with a zero balance. Applicant provided sufficient evidence to dispute this debt. AG ¶ 20(e) applies to this debt.

In February 2014, Applicant paid the debts in SOR ¶¶ 1.b, 1.c, and 1.d. In May 2014, Applicant settled the debt in SOR ¶ 1.e. Even though the debts in SOR ¶¶ 1.c, 1.d, and 1.e were the result of identity theft, he paid those to show good-faith in handling his financial problems. In February 2014, he entered into a repayment agreement on the debt in SOR ¶ 1.f and, so far, has paid \$4,192 toward this debt. Applicant financial problems are being resolved and are under control. AG ¶¶ 20(c) and 20(d) apply.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has served in the military for about 30 years and has attained the grade of master sergeant. He has held a security clearance for about 18 years without incident. A recent enlisted performance evaluation indicated that he is “truly among the best.” He is a valued civilian employee. He has acted responsibly in resolving his debts.

Overall, the record evidence leaves me with no questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge