



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 12-06943
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations.) Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 15, 2012. On April 18, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 received the SOR and answered it on May 27, 2015, requesting a decision on the record without a hearing. Department Counsel submitted the Government's written case on January 5, 2016. On January 8, 2016, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 7, was sent to Applicant, who was given an opportunity to file objections and

submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 28, 2016, and his Response was received by the Defense Office of Hearings and Appeals (DOHA) on February 2, 2016. Department Counsel made no objections to Applicant's Response and the attached document, which I have admitted as Applicant's Exhibit 1 (AX A.) The case was assigned to me on March 17, 2016.

Findings of Fact

The SOR alleges three delinquent debts totaling approximately \$23,112. In his Answer, Applicant neither admitted nor denied the allegations. However, Applicant's statements concerning each of the debts establish that he admits the debts were incurred by him, but it is unclear whether he admits or denies current liability for the debts in SOR ¶¶ 1.a and 1.b. Therefore, they are deemed denied. He denies SOR ¶ 1.c. Applicant's admissions in his Answer are incorporated in my findings of fact.

Applicant is a 55-year-old help desk technician employed by a defense contractor since February 2009. He attended a technical college from June 1988 until June 1990, when he graduated with an associate's degree. He is divorced and has two adult daughters. Applicant was unemployed from February 2008 until February 2009. (GX 3.) In about September 2009, he lost his home to foreclosure. (GX 4.)

Applicant became delinquent on the two credit cards alleged in SOR ¶¶ 1.a and 1.b, in approximately May 2008. (GX 3.) The debt alleged in SOR 1.b was sold to a collection agency in about July 2010. (GX 7.) While unemployed, he used the credit cards for daily living expenses. Ultimately, he was unable to make the required monthly payments and defaulted on the accounts. (GX 3.) Throughout his unemployment, Applicant actively sought a job. (GX 4.)

In August 2009, Applicant entered a contract with an organization purporting to be a debt settlement company (the Company,) wherein he agreed to make monthly payments of \$336 for 36 months, and the Company agreed to use the payments "to negotiate and settle" his debts. The two debts that Applicant enrolled in the program are the debts alleged in SOR ¶¶ 1.a and 1.b, which totaled \$22,372. (GX 4.) The payments were scheduled to include an enrollment fee of \$311 for Months 1 – 3, totaling \$933, and a \$25 monthly maintenance fee for all 36 months, totaling \$900. The contract stipulated that the Company would apply \$143 during Months 4 – 13.4, and \$311 during Months 13.4 – 36, towards Applicant's debts. The contract further required Applicant to establish a "special purpose savings account" with a specific third-party bank, for a one-time set up fee of \$9.00, and a monthly service fee of \$9.85. He was required to authorize access by the third-party bank to his existing checking and savings accounts, in order to fund the special purpose account with his monthly payments. Applicant made monthly payments, pursuant to the contract, until at least March 2012. (GX 3.)

Applicant regularly received telephone calls from the Company updating him on the status of its debt settlement efforts. (GX 2.) In August 2009, the Company directed the creditors not to directly contact Applicant for debt collection. (GX 4.) There is no

evidence that Applicant has been contacted by the creditors of SOR debts 1.a or 1.b since that time.

Applicant stated on his e-QIP and in his March 2012 Personal Subject Interview (PSI) that the Company was actively negotiating the settlement of the debt alleged in SOR ¶ 1.a, and had settled the debt alleged in SOR ¶ 1.b in August 2011. During the PSI, the investigator confronted Applicant about his failure to disclose the judgment entered in January 2011 for the debt alleged in ¶ 1.a: He was unaware that a judgment had been entered against him. (GX 4.)

Applicant continued to receive telephone calls from the Company informing him of the Company's ongoing efforts to negotiate settlements on his accounts until at least early 2012. (GX 2.) He has since made numerous, unsuccessful attempts to contact the Company. He contacted the Better Business Bureau, which informed him that they had no record of the Company as a legitimate business. (GX 2.) Applicant provided a document with his interrogatory responses that lists five complaints against the Company, with the consensus that it is a "rip off." (GX 4.)

Applicant has disputed the debts alleged in SOR ¶¶ 1.a and 1.b with the credit reporting agencies. (GX 5.) The debt alleged in SOR 1.a has been closed, charged off, and written off to profit and loss. (GX 5; AX A.) The collection agency debt alleged in SOR ¶ 1.b does not appear on the 2016 credit bureau reports (CBR). (GX 5; AX A.) The debt to the original creditor is listed as closed and charged off, with a \$0 balance. (AX A.) There are no judgments against Applicant on the 2016 CBRs. (GX 5; AX A.)

Applicant denies the collection agency debt alleged in SOR 1.c. The original creditor was a telecommunications company. He denied knowledge of this account in his 2012 PSI, stating that he would contact the original creditor. In his Answer, he stated that the debt should have been "deleted" with the credit reporting agencies in December 2012, and provided documentation in support of this statement. (GX 2.) The debt does not appear on the 2014 or the 2016 CBRs.

Applicant has not incurred any delinquent debts since 2009 and is current on all his ongoing financial obligations. (GX 2; GX 5.) He paid off a student loan of approximately \$16,500 and is current on his other student loan. The total balance of his credit cards is approximately \$2,600. (GX 5.) He has money in savings. (GX 2.)

The debts alleged in SOR ¶¶ 1.a and 1.b are reflected in Applicant's CBRs and on his e-QIP. (GX 5; GX 6; GX 7; GX 3.) The debt alleged in SOR ¶ 1.c is reflected in his 2012 CBR. (GX 7.) He discussed his financial status in his PSI (GX 4.)

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

Applicant’s admissions, corroborated by his CBRs, e-QIP, and PSI, potentially establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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; and

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

AG ¶ 20(a) is established. Applicant has not incurred any delinquent debts since 2009. His debts were not the result of irresponsible behavior or poor decision making. His misplaced reliance on a fraudulent debt settlement company “is unlikely to recur and does not cast doubt on [his] current reliability, trustworthiness, or good judgment.”

AG ¶ 20(b) is established. Applicant experienced circumstances largely beyond his control. He was unemployed from February 2008 until February 2009. While seeking a new job, he used two credit cards for his daily living expenses, and ultimately defaulted on them. Within months of starting his new job, he contracted with a debt settlement company to resolve the two delinquent credit cards, and made timely payments for over two years. He was regularly contacted by the Company, and led to believe that the debts were being settled. During his PSI, Applicant learned that a judgment had been entered against him for one of the debts. He later learned that the other debt, which the Company claimed was settled, was not. He made multiple attempts to contact the Company, without success. He has since disputed the debts to the credit reporting agencies. He also disputed the debt alleged in SOR ¶ 1.c, and it has been removed from his credit reports. Applicant took reasonable actions to resolve his delinquent debts.

AG ¶ 20(c) is established. Applicant has not incurred any delinquent debts since 2009 and all his accounts are current. There is a “clear indication” that his financial problems are under control.

AG ¶ 20(d) is established. “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 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 acted in good faith by making monthly payments of \$336 for over two years, believing that those payments were being applied to his two delinquent credit card accounts. He has not been personally contacted by the creditors since 2009. The recent CBRs show that the two debts have been charged off to profit and loss and that Applicant has disputed the debts. He successfully disputed the debt alleged in SOR ¶ 1.c. He paid off a student loan. He established a plan to resolve his delinquent debts and pay his ongoing financial obligations and has followed that plan.

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(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.

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 I have also considered the following:

Applicant has worked for his current employer for over seven years. He experienced a period of unemployment that resulted in two delinquent credit cards in 2009 and has not had any delinquent accounts since that time. He was proactive in trying to resolve those accounts and has rectified his financial troubles. Applicant lives within his means.

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 security concerns raised by his delinquent debts. 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 – 1.c:

For Applicant.

Conclusion

I conclude that 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.

Stephanie C. Hess
Administrative Judge