



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 12-07393
)	
Applicant for Security Clearance)	

Appearances

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

04/14/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On February 6, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 6, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended

that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

Applicant answered the SOR on November 28, 2014, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 20, 2015, was provided to him by letter the same day. Applicant received the FORM on February 2, 2015. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information within the allotted period of 30 days after receipt of a copy of the FORM. On March 17, 2015, Department Counsel indicated that he had no objection to Applicant's additional information. On March 20, 2015, the case was assigned to me.

Findings of Fact

In his answer to the SOR, Applicant admitted all of the allegations with explanations. His admissions are incorporated in my findings of fact.

Background Information

Applicant is a 51-year-old engineering technician, who has been employed by a defense contractor sponsor since June 2010. He seeks a security clearance in conjunction with his current employment. (Item 5) Applicant previously held a security clearance from 1990 to 2005 while working for a defense contractor. (FORM response)

Applicant graduated from high school in 1983. He served in the U.S. Army as an enlisted soldier from 1985 to 1987, and in the Army National Guard from 1987 to 1988. Applicant was awarded a diploma in electronics from a trade school in 1993. (Item 5)

Applicant was married from 1989, separated in 2006, and divorced in 2010. He had two adult children. Applicant remarried in 2014. (Item 5, FORM response)

Financial Considerations

Applicant's SOR contains eight separate allegations: (1) an automobile repossession collection account for \$9,306; (2) a past-due account from a credit union for \$928; (3) a collection account from a cable company for \$186; (4) a judgment for credit card debt filed in 2009 for \$8,159; (5) a judgment for credit card debt filed in 2008 for \$11,624; (6) a collection account from a cell phone company for \$1,093; (7) a collection account for a medical bill for \$85; and (8) a collection account for a medical bill for \$87. (SOR ¶¶ 1.a – 1.h; SOR answer; FORM response)

There is substantial evidence to support the SOR allegations and that Applicant has a history of financial problems that stem back to at least 2008. As noted, Applicant admitted all of the SOR debts with explanations. His debts are further substantiated by his e-QIP, March 2013 and July 2014 credit reports, and his July 2014 Office of Personnel Management Personal Subject Interview (OPM PSI). (Items 4, 5, 6, 7, 8)

Applicant attributes his financial problems to his divorce, coupled with the fact that his now former spouse was responsible for, and mishandled their finances without his knowledge. He also experienced two brief periods of unemployment from September to December 2008, and from March to June 2010. (Items 4, 5, 6)

In his SOR answer, Applicant provided documentation that he paid debts in SOR ¶¶ 1.c (\$186) and 1.h (\$87), totaling \$273. (Item 4) Most problematic is the fact that he has not provided documentation that he has paid or otherwise resolved the two judgments and largest debts in SOR ¶¶ 1.d (\$8,159) and 1.e (\$11,624), filed in 2009 and 2008, respectively. (Item 4) Applicant stated in his November 2014 SOR answer, "I'm hoping within the next six months these 2 judgments will be cleaned up." (Item 4) Nor has Applicant provided documentation that he included the amount indicated on the IRS Form 1099-C he received for the debt in SOR ¶ 1.a (\$9,306) in his federal and state tax returns. (Item 4) He did submit documentation in his FORM response that his account in SOR ¶ 1.b (\$928) is current. (FORM response)

Applicant stated in his FORM response that he has attempted to resolve the debt in SOR ¶ 1.f (\$1,093 cell phone collection account) and was advised by the creditor that this account was "closed" and could be "removed" from his credit report. Applicant provided no documentation that this account was paid or removed from his credit report nor did he provide documentation that he paid or otherwise resolved the debt in SOR ¶ 1.g (\$85). (Item 4, FORM response) There is no record evidence showing Applicant utilized credit counseling or assistance with budgeting.

Applicant stated that he is in the process of selling property belonging to him and his former spouse and he intends to use the proceeds of that sale to pay off his two judgments. (FORM response) Apart from these delinquent debts, he claims to be current on all of his other monthly debts. (Item 6, FORM response) At the time he responded to DOHA interrogatories in July 2014, Applicant reported a net monthly remainder of \$2,960. (Item 4)

Character Evidence

Applicant submitted a reference letter from a former co-worker and friend (CW). CW has known Applicant since 1995. CW described Applicant as a hard worker, an involved father, and an individual of good moral character. (Item 4)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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 meeting the criteria contained in the adjudicative guidelines. These guidelines 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 overarching 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.

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 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 “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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." The evidence establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

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.

Considering the record evidence as a whole,¹ I conclude ¶ 19(d) applies to the debts in SOR ¶¶ 1.b, 1.c, and 1.h and these debts are mitigated. However, none of the five financial considerations mitigating conditions above are applicable or partially applicable to explain, extenuate, or mitigate the security concern to the other remaining SOR debts. The available information shows that Applicant has taken little affirmative action to resolve his remaining delinquent debts despite having the apparent means to do so.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.² Rather the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is not requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.³

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on the limited written record, financial considerations security concerns remain.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security decisions shall be "in terms of the national interest and

¹ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

² ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

shall in no sense be a determination as to the loyalty of the applicant concerned.” Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be considered to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant’s loyalty or patriotism.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,⁴ I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guideline F security concern. Accordingly, Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b - 1.c:	For Applicant
Subparagraphs 1.d – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge

⁴ AG ¶ 2(a) (1)-(9).