



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 12-08440
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

12/11/2013

Decision

Tuider, Robert J., Administrative Judge:

Applicant's statement of reasons (SOR) alleges 15 delinquent debts, totaling \$162,057. Due to circumstances beyond his control, he had insufficient financial resources to pay his debts. Utilizing his retirement savings, he settled and paid six SOR debts, totaling \$89,426, one debt is in a payment plan, and he is diligently working to resolve the last eight SOR debts totaling \$35,631. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On March 16, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application. On April 8, 2013, the Department of Defense (DOD) issued an 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.

On May 9, 2013, Applicant responded to the SOR and requested a hearing. On October 21, 2013, Department Counsel indicated he was ready to proceed on Applicant's case. On October 24, 2013, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On October 31, 2013, DOHA issued a hearing notice, setting the hearing for December 4, 2013. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered 5 exhibits, and Applicant offered 25 exhibits, which were attached to his SOR answer. (Tr. 10, 17-19; GE 1-5; AE A-Y) One additional exhibit was provided in May 2013 after the other exhibits. (AE Z) There were no objections, and I admitted GE 1-5 and AE A-Z. (Tr. 18-19) On December 11, 2013, DOHA received the transcript of the hearing. The record was held open after the hearing until January 2, 2014 for additional evidence. (Tr. 68-69, 71) On January 2, 2014, Department Counsel provided nine documents from Applicant, which were admitted into evidence without objection. (AE AA-II) On February 3, 2014, Department Counsel provided one additional document from Applicant, which was admitted into evidence without objection. (AE JJ)

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the SOR allegations. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 51-year-old systems engineer and project manager, who has worked for his current employer, a defense contractor, since March 2012. (Tr. 19-20; GE 1) He was awarded an associate's degree in electronics technology in 1991. (Tr. 20; GE 1) He served in the Navy from 1979 to 1988. (Tr. 22; GE 1) He was a personnel man second class (E-5) and on the promotion list for petty officer first class (E-6) when he left active duty. (Tr. 22) He held a security clearance when he was in the Navy. (Tr. 21) He has a service-connected disability rating with the Department of Veterans Affairs (VA) of 80%. (Tr. 23, 30)

Applicant married in 1994 and divorced in 1997. (Tr. 24) He remarried in 1997, and has an 18-year-old son from his second marriage. (Tr. 24) His spouse has three children. (Tr. 38) There is no adverse evidence against Applicant of arrests, convictions, security violations, or discipline by his employer.

Applicant was electrocuted in June 2004. He was knocked unconscious, fell from a ladder, and woke up 30 minutes later. (Tr. 25) He received nine months of rehabilitation for a closed traumatic brain injury. (Tr. 25) His employer placed him on light duty and reduced his hours. (Tr. 25-26, 29) He suffers from migraines, which are controlled with medication. (Tr. 30) His annual salary was reduced from \$76,000 to about \$30,000. (Tr. 25-26) In August 2005, Appellant was injured at work in a vehicle

accident. (Tr. 25-26) He suffered a herniated disc in his neck from the accident, and his annual salary was reduced from \$30,000 to \$20,000. (Tr. 25-26) In 2008, he received about \$25,000 in a tort settlement from the vehicle accident. (Tr. 34-36) Applicant's annual salary now is \$82,400. (Tr. 26-27, 37)

From 2006 to 2011, Applicant was living on \$2,000 a month that he received from his employer for disability in addition to his VA disability payments. (Tr. 32) He also had part-time employment. His total annual compensation for those five years averaged about \$45,000 each year. (Tr. 33)

In April 2013, Applicant borrowed \$26,000 from his retirement fund to pay his debts. (Tr. 36, 40) He used his retirement funds and resolved six debts in the April-May 2013 time period.

Financial Considerations

Applicant's delinquent debts are consistently described in his SF 86, Office of Personnel Management (OPM) personal subject interview, responses to DOHA interrogatories, SOR response, and hearing statement.

Applicant's credit card debt in SOR ¶ 1.a (\$20,000) was settled and paid in April 2013 for \$3,010. (Tr. 40; AE V) His credit card debt in SOR ¶ 1.b (\$5,972) resulted from a debt of about \$1,100 in 2011. (Tr. 41) Applicant is working with the creditor on this debt to arrive at an appropriate settlement. (Tr. 41; AE HH)

Applicant made two or three \$50 payments to address the collection debt in SOR ¶ 1.c (\$1,120). (Tr. 41) He is working with the creditor on this debt to arrive at an appropriate settlement. (Tr. 41; AE HH)

Applicant's collection debt in SOR ¶ 1.d (\$4,642) was settled and paid in April 2013 for \$1,100. (Tr. 43; AE C) His department store credit card debt in SOR ¶ 1.e (\$10,000) was settled and paid in April 2013 for \$4,300. (Tr. 44; AE D)

Applicant's debts in SOR ¶¶ 1.f and 1.g were generated in 2006; they were secured by real estate; and each debt was for \$37,000. (Tr. 44-45) Applicant resolved the debt in SOR ¶ 1.f by paying a total of \$7,500 by July 2013. (Tr. 45-46; AE B) He made 8 of 13 scheduled payments, and the debt in SOR ¶ 1.g will be resolved by April 2014. (Tr. 46-48; AE HH)

Applicant's collection debt in SOR ¶ 1.h (\$7,305) resulted from a debt of about \$3,500. (Tr. 48) His collection debt in SOR ¶ 1.i (\$4,861) resulted from the purchase of furniture. (Tr. 50) He is working with the creditors on these two debts to arrive at an appropriate settlement. (Tr. 48, 50; AE HH)

Applicant's department store collection debts in SOR ¶¶ 1.j (\$1,860) and 1.k (\$2,100) are unresolved because the creditors are checking on the amounts of the debts. (Tr. 50-52) He is working with the creditors to arrive at an appropriate settlement.

(Tr. 50-52; AE HH) His department store credit card debt in SOR ¶ 1.l (\$1,670) was settled and paid in April 2013 for \$751. (Tr. 52; AE F)

Applicant's bank collection debt in SOR ¶ 1.m (\$9,240) is unresolved. (Tr. 52-54) He is working with the creditor on this debt to arrive at an appropriate settlement. (Tr. 52-54; AE HH)

Applicant's debt in SOR ¶ 1.n (\$3,173) resulted from the purchase of a time-share in a vacation property in the mid-1990s. (Tr. 54) The amount listed in his credit report is from fees and assessments; Applicant has attempted to terminate the time-share agreement; and he has not used the time share in more than 10 years. (Tr. 54; AE HH) The bank debt in SOR ¶ 1.o (\$16,114) was settled and paid in April 2013 for \$3,500. (Tr. 55-56; AE W)

In 2011 or 2012, Applicant had financial counseling through his church, and he consulted an attorney about his options. (Tr. 62-63) He owns a home valued at about \$160,000 and his mortgage is about \$250,000. (Tr. 64-65) He makes \$1,000 monthly payments, and the remainder of the interest is added onto the loan. (Tr. 65) Applicant does not use credit cards except for one card from his company and one from a tire company. (Tr. 53) He pays \$300 monthly through an automatic payment to address his spouse's student loans. (Tr. 58) Applicant's personal financial statement (PFS) shows the following monthly amounts: gross salary \$6,338; net income \$5,554; expenses \$3,190; debts \$1,911; and net remainder \$453. (Tr. 61; GE 2 at 34) The five debts listed on his PFS are non-SOR debts that are all in current status. (GE 2 at 34)

In sum, Applicant settled and paid the six debts in SOR ¶¶ 1.a (\$20,000), 1.d (\$4,642), 1.e (\$10,000), 1.f (\$37,000), 1.l (\$1,670), and 1.o (\$16,114), totaling \$89,426 in April and May 2013. The debt in SOR ¶ 1.g (\$37,000) is in an established payment plan. The remaining eight debts total \$35,631. In December 2014, Applicant made settlement offers on several of his remaining unresolved SOR debts. (AE GG, II)

Character Evidence

A coworker and friend, who observed Applicant on a daily basis, described Applicant as diligent, trustworthy, energetic, and committed to providing a high-quality work product to his employer. (Tr. 73-74)

Applicant provided 19 letters from friends, supervisors, and colleagues. (AE A) Those letters lauded his honesty, reliability, generosity, dedication, professionalism, tireless efforts on behalf of his employer, and contributions to the accomplishments of his company.

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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his credit reports, OPM interview, SOR response, and statement at his hearing.

Applicant’s debts became delinquent when he became disabled in 2004 and 2005. Applicant’s SOR alleges and he admitted responsibility for 15 delinquent debts, totaling \$162,057. The Government established 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.

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) to 20(d). AG ¶ 20(e) is not applicable. Although Applicant disputed or questioned the claimed amounts of some of his delinquent debts, Applicant did not dispute his responsibility for any of his delinquent SOR debts. In 2004, Applicant was electrocuted and fell off of a ladder, and in 2005, Applicant injured his neck in a car accident. His income was significantly reduced, which caused Applicant to have debts he could not afford to pay. His financial problems were affected by circumstances largely beyond his control. He borrowed from his retirement fund, and in April to May 2013, he settled and paid six SOR debts, totaling \$89,426. He placed one debt into a payment plan, and he is diligently working to resolve the last eight SOR debts totaling \$35,631.¹

The Appeal Board explained that circumstances beyond one's control can cause unresolved debt, and are not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts,

¹ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

establishing some good faith.² He established and maintained contact with his creditors.³ He used his limited resources to settle and pay six large delinquent SOR debts. His financial problem is being resolved or is under control. Applicant has learned from his financial mistakes, and they are unlikely to recur. They do not cast doubt on his current reliability, trustworthiness, or good judgment. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

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 the 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.

²The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

³"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 51-year-old systems engineer and project manager, who has worked for his current employer, a defense contractor, since March 2012. He was awarded an associate's degree in electronics technology in 1991. He served in the Navy from 1979 to 1988. He was on the promotion list for petty officer first class (E-6) when he left active duty. He has a service-connected VA disability rating of 80%. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for supporting the U.S. Government as an employee of a contractor and as a Navy enlisted man. There is every indication that he is loyal to the United States and his employer. Injuries in 2004 and 2005 and underemployment contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for his delinquent debts in his SF 86, responses to DOHA interrogatories, OPM PSI, SOR response, and at his hearing. He received 20 favorable endorsements from friends, supervisors, and colleagues.

Even though Applicant lacked financial resources because of his injuries and underemployment, he borrowed from his retirement account and settled and paid six SOR debts, totaling \$89,426. One \$37,000 debt is in a payment plan, and he is diligently working to resolve the last eight SOR debts totaling \$35,631. He promised to continue to attempt to resolve all of his delinquent debts. Because of his current employment, he now has additional financial resources to resolve his remaining SOR debts and not accrue additional delinquent debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 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. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination). 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 payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant is an intelligent person, and he understands what he needs to do to establish and maintain his financial responsibility. There is simply no reason not to trust him. Moreover, he established a “meaningful track record” of debt re-payment. I am confident he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Formal Findings

Formal findings For or Against Applicant 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 to 1.o: For Applicant

Conclusion

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

Robert J. Tuider
Administrative Judge