



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



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| In the matter of: |) | |
| |) | |
| XXXXXXXXXXXX, XXXXX |) | ISCR Case No. 12-09934 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

03/24/2015

Decision

Tuider, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 30 debts totaling \$94,606. Problems beyond his control caused his financial problems, and he acted responsibly under the circumstances. He has made significant progress resolving his delinquent SOR debts. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On February 24, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On December 29, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) 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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with national security to grant or continue

a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

Applicant provided an undated response to the SOR. On January 26, 2015, Department Counsel was prepared to proceed. On January 29, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On January 29, 2015, DOHA issued a notice of the hearing, setting the hearing for February 11, 2015. The hearing was held as scheduled. Applicant waived his right to 15 days of notice of the date, time, and place of the hearing. (Tr. 11-12) Department Counsel offered five exhibits into evidence, and Applicant offered three exhibits into evidence. (Tr. 30-33; GE 1-4; AE A-C) There were no objections and I admitted all proffered exhibits into evidence. (Tr. 32-33; GE 1-4; AE A-C) On February 23, 2015, I received the transcript of the hearing. After the hearing, Applicant provided 27 exhibits, which were admitted without objection. (AE D-DDD) On March 13, 2015, the record was closed.

Procedural Issue

Department Counsel moved to withdraw the allegations in SOR ¶¶ 1.n to 1.r. (Tr. 15-16) There was no objection, and I granted Department Counsel's motion. (Tr. 16-17)

Findings of Fact¹

In Applicant's SOR response, he admitted responsibility for the debts in SOR ¶¶ 1.a, 1.b, 1.f, 1.h, 1.i, 1.n, 1.u, 1.v, and 1.dd. He denied the other SOR allegations. Applicant also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 43 years old, and he is working for a defense contractor providing supply and vehicle utilization services. (Tr. 29, 34) Although he currently does not have a security clearance, he has held a security clearance intermittently from 1989 to 2013. (Tr. 34-35) There are no allegations of security violations. Applicant is currently employed in Afghanistan. He returned to Afghanistan two days after his hearing. (Tr. 91) If his security clearance is approved, his employer has advised him that he will be promoted, and his annual pay will more than double from \$72,000 to \$150,000. (Tr. 29-30, 35-36)

Applicant graduated from high school in May 1989. (Tr. 37-38) In 2005, he received a bachelor's of art degree in organizational management. (Tr. 37) In 1988, Applicant married, and in 1992, he divorced. (GE 1) In 1997, he married his current spouse. (Tr. 40; GE 1) His children are 15, 16, and 26 years old. (Tr. 39-40) His spouse is not employed outside their home. (Tr. 40)

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant served on active duty in the Air Force from 1989 to 1996. (Tr. 24, 37-38) He achieved the rank of senior airman (E-4), and he received an honorable discharge. (Tr. 38) His Air Force specialty was air transportation specialist. (Tr. 39)

Financial Considerations

From 1998 to 2009, Applicant worked for government contractors. (Tr. 24-26) In 2001, his annual salary was about \$45,000, and in 2008, it had increased to about \$65,000. (Tr. 49-50) In 2009, Applicant moved overseas with his family to Europe at his own expense. (Tr. 25, 51) The move cost \$30,000 and exhausted his savings. (Tr. 52-53) After about eight months, his company lost their overseas contract; he lost his employment; and he and his family moved back to the United States. (Tr. 26) He was unemployed for one month, and he was deployed to Southwest Asia, where he worked for a year for a government contractor with an annual salary of about \$80,000. (Tr. 27, 57) He was unemployed for three months because he was not deployable due to dental problems. (Tr. 27) After receiving dental treatments, he was deployed to Afghanistan for nine months, and then to Kuwait for six months, returning to the United States in May 2014. (Tr. 28; AE A) Applicant was unemployed until October 2014. (Tr. 28-29; AE A)

In 2002, Applicant purchased a home for \$120,000, and in 2005, he refinanced his home for \$215,000. (Tr. 42) He used \$50,000 of the proceeds from refinancing his home to pay off two vehicles that were purchased new. (Tr. 43-46) The remainder of the funds from the 2005 refinancing were used to upgrade his residence. (Tr. 48) When Applicant went overseas, he rented his home; however, the tenant did not pay some of the rent that was owed. (Tr. 54-56)

Applicant's credit reports and SOR allege 30 debts totaling \$94,606 as follows: (1) mortgage account for \$19,746 (SOR ¶ 1.a); (2) collection account for \$7,401 (SOR ¶ 1.b); (3) collection account for \$1,690 (SOR ¶ 1.c); (4) collection account originating from a credit card for \$1,642 (SOR ¶ 1.d); (5)-(25) 21 medical accounts for \$1,412; \$1,068; \$409; \$123; \$99; \$74; \$5,053; \$340; \$207; \$207; \$207; \$271; \$1,006; \$111; \$111; \$884; \$1,006; \$960, \$884 \$202, and \$55 (SOR ¶¶ 1.e, 1.f, 1.i, 1.j, 1.k, 1.l, 1.s, 1.u-1.aa, 1.cc-1.ii); (26) collection account for \$641 (SOR ¶ 1.g); (27) collection account for \$426 (SOR ¶ 1.h); (28) bank judgment for \$927 (SOR ¶ 1.m); (29) student loan debt for \$47,356 (SOR ¶ 1.t); and (30) book club debt for \$88 (SOR ¶ 1.bb).

Applicant's spouse handles the family finances. (Tr. 47) From 2010 to 2011, when Applicant was deployed to Southwest Asia, his spouse failed to pay their mortgage for about 12 months. (Tr. 58-59) She suffered from depression. (Tr. 59) In June 2012, he was \$50,000 behind on his mortgage. (Tr. 60) In May 2013, the mortgage was renegotiated, increased to \$313,000, and brought to current status under the "Request for Mortgage Assistance" (RMA) program. (Tr. 61, 63) Applicant made one mortgage payment, and he became unemployed in June 2013. (Tr. 61-62) In January 2015, his mortgage was \$19,000 in arrears. (Tr. 64-65; SOR ¶ 1.a) On February 25, 2015, his mortgage modification was approved. (AE E)

Applicant has an agreement with the creditor in SOR ¶ 1.b (\$7,401) to make an initial payment of \$150 followed by \$100 monthly payments. (Tr. 66; AE A) He made the initial payment in December 2014 and the January 2015 payment. (Tr. 66-67; AE A, F)

Applicant's spouse's checkbooks were stolen in 2010 and 2012 while Applicant was deployed to Southwest Asia. (Tr. 68, 88) She reported the thefts to her bank in 2010 and 2012, and all pending checks were stopped. (Tr. 66) The debts in SOR ¶¶ 1.c (\$1,690) and 1.ff (\$960) were payday loans generated with stolen checks or documents. (Tr. 67-68, 87; AE A, G, J, JJ, DDD) She did not file a police report. (Tr. 70) His spouse successfully disputed numerous debts on their credit report. (Tr. 93) He said the medical debts in SOR ¶¶ 1.e and 1.g were not his debts, and he is seeking corroborative documentation from the creditors. (AE A, I)

Applicant said he paid the debts in SOR ¶¶ 1.d to 1.h. (Tr. 70-71, 82; AE A) A letter from the SOR ¶ 1.d creditor stated the creditor was paid \$834 and had a zero balance. (AE H) A letter from the SOR ¶ 1.g creditor indicated Applicant paid \$630 on December 12, 2014, resolving the payday loan. (AE A, K) A December 16, 2014 letter from the SOR ¶ 1.h creditor stated the \$426 debt had a balance of zero. (AE A, L)

Applicant was unsure of the status of the judgment relating to a bank debt in SOR ¶ 1.m (\$927). (Tr. 82-83) Applicant is making payments to address the medical debt in SOR ¶ 1.s (\$5,053). (AE A)

Applicant paid about \$10,000 from 2008 to 2010 to address his student loans in SOR ¶ 1.t (\$47,356). (Tr. 84) His student loans were deferred until February 1, 2015. (Tr. 85) The first payment of \$241 was due on March 13, 2015. (Tr. 86; AE X)

Applicant disputed his responsibility for most of the SOR medical debts and the \$88 SOR ¶ 1.bb book club debt, and he said they were removed from his credit report. (Tr. 71-74; AE A, M-Q, W, Y, Z, AA-II, KK-PP) On December 29, 2014, he wrote the three primary credit reporting companies and asked for investigation and removal of 18 derogatory entries involving collection accounts and judgments. (AE B) He said all medical co-pays were paid on time, and there were no delinquent medical debts. (Tr. 74-82) Applicant pays his taxes on time in full. (Tr. 89-90) He provided a letter from a debt collection law firm stating a non-SOR debt was paid in full. (AE A) His January 23, 2015 combined credit report reflected a \$0 balance owed, or paid status for all entries, except for his mortgage account. (AE C)

Character Evidence

Applicant's DD Form 214 reflects numerous awards for his Air Force service, including awards for seven months of service deployed to Southwest Asia for Operation Desert Shield/Storm. (Tr. 38; AE YY) He received 16 coins in appreciation of his Air Force service. (AE ZZ-AAA) In 2003, he received two letters of commendation for the excellent quality of his air support services. (AE BBB-CCC)

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 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

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, SOR response, and hearing record. Applicant’s SOR alleges 30 debts totaling \$94,606. 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;² 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(a) to 20(e) applies. Applicant's financial problems were caused when he was deployed and his spouse failed to pay their mortgage and some other debts. She suffered from depression. His finances were also damaged by unemployment.

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)).

Applicant has acted responsibly under the circumstances. His mortgage account, which was delinquent in the amount of \$19,746 (SOR ¶ 1.a) was accepted for a loan modification in February 2015. He is making payments to address the collection account for \$7,401 (SOR ¶ 1.b), and he said he paid the five debts for \$1,642 (SOR ¶ 1.d), \$1,412 (SOR ¶ 1.e), \$1,068 (SOR ¶ 1.f), \$641 (SOR ¶ 1.g); and \$426 (SOR ¶ 1.h).

Applicant paid about \$10,000 from 2008 to 2010 to address his student loans in SOR ¶ 1.t (\$47,356). His student loans were deferred until February 1, 2015. The first payment of \$241 was due on March 13, 2015.

Applicant was unsure of the status of the judgment relating to a bank debt in SOR ¶ 1.m (\$927). Applicant is making payments to address the medical debt in SOR ¶ 1.s (\$5,053).

AG ¶ 20(e) applies to the 20 medical debts in SOR ¶¶ 1.e, 1.f, 1.i, 1.j, 1.k, 1.l, 1.u-1.aa, 1.cc-1.ii, as well as two non-medical debts in SOR ¶¶ 1.c and 1.bb. He and his spouse were the victims of identity theft. They submitted documentation to their bank about the theft. Some of the medical debts may have been insurance copays. He disputed his responsibility for these debts, and they were removed from his credit report.

Applicant admitted responsibility for and took reasonable actions to resolve as much of his SOR debt as was possible based on his circumstances. There are clear indications the problem is being resolved and is under control. His efforts are sufficient to fully mitigate financial considerations security concerns.

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.

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. 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 is 43 years old, and he is working for a defense contractor providing supply and vehicle utilization services. He has held a security clearance intermittently from 1989 to 2013. There are no allegations of security violations. Applicant is currently employed in Afghanistan. In 2005, he received a bachelor's of art degree in organizational management. He served on active duty in the Air Force from 1989 to 1996; he achieved the rank of senior airman (E-4); and he received an honorable discharge. He received numerous awards for his Air Force service, including awards for seven months of service deployed to Southwest Asia for Operation Desert Shield/Storm. He received 16 coins and two letters of commendation for the excellent quality of his duty performance. There is every indication that he is loyal to the United States and his employer.

Applicant's financial problems were caused by unemployment and his spouse's failure to pay their debts while he was deployed overseas. He diligently endeavored to establish his financial responsibility. He is credited with paying, successfully disputing, or bringing all of his delinquent debts, except for one debt he is researching, to current status. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident he will continue to pay his debts, continue efforts to resolve his debts in payment plans in good faith, and 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. Financial considerations security concerns are mitigated.

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:

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|----------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a to 1.m: | For Applicant |
| Subparagraphs 1.n to 1.r: | Withdrawn |
| Subparagraphs 1.s to 1.ii: | For Applicant |

Conclusion

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

Robert J. Tuidor
Administrative Judge