



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



In the matter of:)
)
) ISCR Case No. 12-10363
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 22 delinquent debts totaling \$24,075. In 2015, he paid \$6,300 to his creditors. The delinquent SOR debt total is now \$9,692. He has a documented plan to resolve the remaining delinquent debts. Over the previous five years he has paid numerous debts, and he has a track record of debt payment. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

On April 10, 2012, Applicant completed and signed his Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On August 1, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit

(HE) 2) Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

On August 19, 2015, Applicant responded to the SOR. On January 14, 2016, Department Counsel was ready to proceed. On February 11, 2016, the case was assigned to me. On March 9, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 30, 2016. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 5 exhibits, and Applicant offered 10 exhibits, which were admitted without objection. (Tr. 16-22; GE 1-5; AE A-J) On April 7, 2016, DOHA received a copy of the transcript of the hearing. On April 27, 2016, I received two documents from Applicant, which were admitted without objection. (AE K-L) The record closed on May 2, 2016. (Tr. 55)

Findings of Fact¹

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a through 1.v; however, he noted some debts were duplications of other debts. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 51-year-old field service representative, who has been employed by a defense contractor for 16 years with no periods of unemployment. (Tr. 7; GE 1) On behalf of his employer, he was deployed to Iraq for 18 months and to Afghanistan. (Tr. 28) He served on active duty in the Army from 1987 to 1991, the National Guard for 18 months, and on active duty in the Army until 1999. (Tr. 7) When he left active duty, his rank was sergeant (E-5); his military occupational specialty was central telephone operators switch repair (37L); and he received an honorable discharge. (Tr. 7-8, 26; GE 1) He served in Southwest Asia during Operation Desert Storm. (Tr. 8, 27) He was also deployed to South Korea for one year. (Tr. 27)

In 1983, Applicant graduated from high school. (Tr. 6) He has attended classes from an on-line university for several years; however, he has not received a degree. (Tr. 6-7; GE 1) In 1986, he married, and his four children are ages 9, 17, 27, and 33. (Tr. 9)

Financial Considerations

Applicant's history of delinquent debt is documented in his credit reports, June 11, 2012 Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and hearing record. His annual gross income is \$81,678. (AE G)

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant's June 26, 2002 Defense Security Service statement indicates that his financial problems at that time stemmed from his spouse's unemployment and from living a lifestyle that they could not afford. (Tr. 23-24; GE 5) She has been occasionally employed during the previous 10 years. (Tr. 24) She is currently primarily a nanny for her grandchildren. (Tr. 24) She received knee surgery in 2011, and she has not worked since 2011 outside her home. (Tr. 42)

According to Applicant's June 11, 2012 OPM PSI, Applicant's spouse pays the family bills, and he was not aware of the family's delinquent debts. (Tr. 15; GE 2) While he was deployed, he relied on his spouse to pay their bills. (Tr. 29) He said he would address his delinquent debts within one year. (Tr. 43)

SOR ¶ 1.a is a bank collection debt for \$9,783. In July 2011, Applicant voluntarily turned in a vehicle to the creditor because he had fallen behind on the payments. (Tr. 29) He had just returned from a deployment to Iraq; he believed they had more funds because of the deployment; and he was surprised to learn of the necessity to return the vehicle to the creditor because he could not afford the payments. (Tr. 30-31) In 2015, he settled the debt by paying \$1,957. On September 1, 2015, the creditor discharged or cancelled a debt for \$7,827 and documented this resolution with an Internal Revenue Service (IRS) Form 1099-C, Cancellation of Debt. (Tr. 32, 57; AE A at 11; AE C; AE J)

SOR ¶ 1.b is a debt for \$1,254 resulting from purchase of a vehicle. Applicant's spouse used a general power of attorney from Applicant while he was deployed to help her sister purchase a car. (Tr. 58) The vehicle was repossessed and sold at auction, resulting in the \$1,254 debt. (Tr. 58) He has a payment plan to address this debt. (AE K)

SOR ¶ 1.c is a charged-off debt for \$2,001. This debt is on Applicant's current credit report, and he called the creditor to attempt to settle the debt. (Tr. 51) The creditor wanted an unaffordable lump-sum payment. (Tr. 51) Applicant has a payment plan to address this debt. (AE K)

SOR ¶ 1.d is a debt owed to an Internet-based college for \$1,856. On September 5, 2015, the creditor wrote acknowledging Applicant paid \$835 and the debt was settled. (Tr. 59; AE E)

Applicant has the following seven SOR medical debts: ¶ 1.e for \$1,603; ¶ 1.g for \$1,015; ¶ 1.h for \$858; ¶ 1.i for \$420; ¶ 1.l for \$100; ¶ 1.m for \$100; and ¶ 1.r for \$338. In 2013, Applicant had surgery. (Tr. 35-36) There were complications, and Applicant was in the hospital for 11 days. (Tr. 36-37) Applicant believed more of the medical debts should have been paid through his insurance. (Tr. 37-38; SOR response) He has communicated with the creditors about settlement of the debts. (Tr. 51-53) They are willing to accept payment plans to resolve the debts. (Tr. 52) Some of the debts may be duplications. (SOR response) Applicant has a payment plan to address these medical debts. (AE L)

SOR ¶¶ 1.j, 1.n, and 1.u are three telecommunications collection debts originating from the same creditor for \$349, \$166, and \$1,372. (Tr. 38) The debt in SOR ¶ 1.f is a collection account for \$1,372, which is the same debt as in SOR ¶ 1.u. (Tr. 47) On September 4, 2015, the creditor wrote that the debt in SOR ¶ 1.u was settled in full for \$686. (AE D) On September 2, 2015, the creditor discharged or cancelled a debt for \$686 and documented this resolution with an IRS Form 1099-C, Cancellation of Debt. (AE H) Applicant has a payment plan to address the remaining telecommunications debt for \$349. (AE K)

SOR ¶ 1.k is a debt for \$103. Applicant was not aware of the origin of this debt. Applicant will investigate this debt, and if he can locate the creditor, he will pay it.

SOR ¶¶ 1.o and 1.p are two alleged charged-off bank debts for unspecified amounts. They do not appear on his current credit report. (Tr. 40; AE A) Applicant believed they were both for the same account; however, he did not have details about the amount of the debt. (Tr. 40)

SOR ¶ 1.q is a bank collection debt for \$489. It does not appear on his current credit report. (Tr. 41; AE A) Applicant will investigate this debt, and if he can locate the creditor, he will pay it.

SOR ¶ 1.s is a collection debt for \$718. It does not appear on his current credit report. (Tr. 41; AE A) Applicant will investigate this debt, and if he can locate the creditor, he will pay it.

SOR ¶ 1.t is a recreation-collection debt for \$178. It does not appear on his current credit report. (Tr. 41; AE A) Applicant will investigate this debt, and if he can locate the creditor, he will pay it.

SOR ¶ 1.v alleges a delinquent account with an unspecified amount. It does not appear on his current credit report. (Tr. 41, 48; AE A)

When Applicant received the SOR, he checked his current credit report, and if the debt did not appear on his current credit report, he did not take any action to address the debt. (Tr. 48) He has not received credit counseling. (Tr. 49) He accepts responsibility for all of the debts on the SOR, and he plans to take care of every debt on the SOR within 12 to 18 months. (Tr. 51)

A non-SOR debt for \$6,139 resulted from the repossession of another vehicle after it was totaled in an accident. (Tr. 57) This debt equaled the difference between the insurance company's valuation of the vehicle and the amount owed on the loan. (Tr. 58) In 2015, Applicant paid \$3,000 to settle the debt. (Tr. 57-58) On September 2, 2015, the creditor discharged or cancelled a debt for \$3,169 and documented this resolution with an IRS Form 1099-C, Cancellation of Debt. (Tr. 57-58; AE I)

Applicant's January 31, 2016 Experian, TransUnion, and Equifax combined credit report is the most current listing of his debts. It shows eight derogatory SOR entries as follows: ¶ 1.c (AE A at 20), ¶ 1.e (AE A at 10, 16, 27), ¶ 1.g (AE A at 17), ¶ 1.h (AE A at 12, 16, 28), ¶ 1.i (AE A at 13, 27), ¶ 1.j (AE A at 15, 24), ¶ 1.l (AE A at 17), and ¶ 1.m (AE A at 18) It also shows numerous other debts in current status or paid. (AE A at 10, 12, 13, 14, 15, 18, 19, 21, 22, 23, 25, 26, 29, and 30) Applicant has a formal debt resolution plan with a commercial company to pay or settle eight debts totaling \$7,453. (AE K) He has a separate plan to pay five medical accounts totaling \$700. (AE L)

Applicant established a payment plan, and it addresses all of the SOR debts, except in those instances where he was unable to locate the creditors. (AE K, AE L) In 2012, Applicant completed a security course. (AE F) His budget indicates monthly net income of \$3,900, after deduction of monthly expenses and debt payments of \$3,042, he had a monthly remainder of \$858. (AE F) His performance evaluations from 2010 through 2015 show that he consistently exceeds requirements, and his employer is well satisfied with his work performance. (AE F) There is no evidence of security violations, abuse of alcohol, or use of illegal drugs.

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 revised 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. Thus, nothing in this decision should be construed to suggest that it is based, 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 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.” Applicant’s history of delinquent debt is documented in his credit reports, OPM PSI, SOR response, and hearing record. His records document some evidence of 22 delinquent debts totaling \$24,075. 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

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)).

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), 20(c), and 20(d) apply. AG ¶ 20(b) partially applies. Applicant’s financial problems resulted from Applicant’s spouse’s excessive spending and her failure to ensure his debts were paid while he was deployed. Applicant did not describe any deployments after 2012, and he did not act responsibly under the circumstances for several years when he failed to aggressively ensure his debts were paid after he discovered that his spouse was not properly handling Applicant’s finances. Since 2015, he has acted responsibly and has significantly improved his finances.

Applicant’s SOR includes allegations of 22 delinquent debts totaling \$24,075. In 2015, he paid \$6,300 to his creditors. He resolved three SOR debts through settlements, and at least one SOR debt is a duplication of another SOR debt. The delinquent SOR debt total is now \$9,692. Applicant has detailed financial plans to address his remaining SOR debts. He is communicating with his creditors, and has assured he intends to pay his debts. He has established a track record of debt payment and resolution. I am confident that Applicant will conscientiously endeavor to resolve his remaining SOR debts.

Based on Applicant’s credible and sincere promise to timely pay his debts, future new delinquent debt “is unlikely to recur and does not cast doubt on [Applicant’s] current reliability, trustworthiness, or good judgment,” and “there are clear indications that the problem is being resolved or is under control.” His payments of some of his debts showed good faith with respect to the debts he paid. He has generated a budget. He has sufficient income to keep his debts in current status and to continue making progress paying his remaining delinquent debts. His efforts are sufficient to mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, he mitigated security concerns 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.

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 Guideline F, but some warrant additional comment.

Applicant is a 51-year-old field service representative, who has been employed by a defense contractor for 16 years with no periods of unemployment. On behalf of his employer, he was deployed to Iraq for 18 months and to Afghanistan. He served on active duty in the Army from 1987 to 1991, the National Guard for 18 months, and on active duty in the Army until 1999. When he left active duty, his rank was a sergeant, and he received an honorable discharge. He served in Southwest Asia during Operation Desert Storm. He was also deployed to South Korea for one year. In 1986, he married, and his four children are ages 9, 17, 27, and 33. His performance evaluations from 2010 through 2015 show that he consistently exceeds requirements, and his employer is well satisfied with his work performance. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs.

Applicant's financial problems originated while he was deployed, and his spouse was responsible for handling the family finances. She left her employment, and she financed purchases the family could not afford. His SOR alleged 22 delinquent debts totaling \$24,075. In 2015, he paid \$6,300 to his creditors. He resolved three SOR debts through settlements, and at least one SOR debt is a duplication of another SOR debt. Three SOR debts do not include amounts and do not appear on his current credit report. The delinquent SOR debt total is now \$9,692. He has a documented plan to resolve 13 delinquent debts. Over the previous five years he has paid numerous debts. He is communicating with his creditors, and he has assured he intends to pay his debts. He understands that he needs to pay his debts and the conduct required to retain his security clearance. 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 has established a “meaningful track record” of debt re-payment, and I am confident he will maintain his financial responsibility.³ I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person.

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 through 1.v:	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 or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge

³The Government has the option of following-up with more questions about Applicant’s finances. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts may also raise judgment concerns and may support future revocation of a security clearance. An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See *also* ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [the applicant] the opportunity to have a security clearance while [the applicant] works on [his or] her financial problems.”). This footnote does not imply that this decision to grant Applicant’s security clearance is conditional.