



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



In the matter of:)
)
-----) ISCR Case No. 12-10564
)
Applicant for Security Clearance)

Appearances

For Government: Meg Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) includes allegations of four delinquent debts, a state tax lien, and unpaid student loans. He failed to make sufficient progress resolving his SOR debts. Financial considerations security concerns are not mitigated. Access to classified information is denied.

History of the Case

On April 4, 2012, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On June 10, 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 him, 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 July 15, 2015, Applicant responded to the SOR. On November 23, 2015, Department Counsel was ready to proceed. On January 4, 2016, the case was assigned to me. On February 5, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 25, 2015. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits, and Applicant offered two exhibits, which were admitted into evidence without objection. (Tr. 17-20; GE 1-6; Applicant Exhibit (AE) A-B) Department Counsel's letter to Applicant conveying GE 1-6 and providing information on his hearing was admitted into the record. (Tr. 12; HE 4) On March 1, 2016, DOHA received a copy of the transcript of the hearing.

Findings of Fact¹

In Applicant's SOR response, he did not admit or deny the allegations in SOR ¶¶ 1.a through 1.f. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 44-year-old supply technician, who has been employed by a defense contractor since September 2011. (Tr. 6, 16, 20-21; GE 1) From 2001 to August 2011, he worked for another corporation as a supply technician. (GE 1)

In 1990, Applicant graduated from high school. (Tr. 6) He has not attended college. (Tr. 7-8) He served in the Army National Guard from 1991 to 1992. (Tr. 7) He left the Army National Guard because he had medical problems, and he received an uncharacterized discharge. (Tr. 7-8, 15) In 2003, he married. In 2012, he separated from his spouse. (Tr. 31, 33) He has a 20-year-old son. (Tr. 8, 20) Applicant lives with his parents to save money. (Tr. 21, 27-28)

Financial Considerations

Applicant's history of delinquent debt is documented in his credit reports, SCA, Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and hearing record. In 2001, Applicant's nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. (Tr. 43) Separation from his spouse, disputes with her about taxes, and medical debts were circumstances beyond Applicant's control that adversely affected his finances.

Applicant had some medical issues, and treatments resulted in the two medical debts in SOR ¶ 1.a (\$354) and ¶ 1.c (\$50). (Tr. 23) He believed the \$50 medical debt was paid, and he was unable to locate the source of the debt for \$354. (Tr. 24) I have credited him with paying the \$50 medical debt. (Tr. 53)

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

Applicant contacted the telecommunications creditor in SOR ¶ 1.b (\$259). (Tr. 28) The creditor said the debt was written off; however, Applicant wished to pay the debt anyway. (Tr. 28) He intends to contact the creditor holding the debt, and then pay it. (Tr. 29)

The debt in SOR ¶ 1.d (\$39) is for a returned check. (Tr. 29) Applicant said he paid the debt. (Tr. 29-30) I have credited him with paying the \$39 debt. (Tr. 53)

Applicant said his student loans in SOR ¶ 1.e for about \$12,000 were for his attendance at barber school, which he completed in May 2008. (Tr. 35) His student loans went into collections in October 2010, and he made some payments in 2011. (Tr. 37; GE 4) On July 15, 2015, Applicant responded to the SOR and said “I have spoken to creditor on several occasions and set up automatic payment plan.” (HE 3) Applicant currently owes about \$12,000 on his student loans. (Tr. 46) He has not made any payments on his student loans in the previous 12 months. (Tr. 53)

The debt in SOR ¶ 1.f (\$1,778) is for a state tax lien for tax year 2013. (Tr. 30) On July 15, 2015, Applicant responded to the SOR, and he said “Payment arrangement is being made and set up to be resolved.” Applicant said he had a payment plan with the state where he agreed to pay \$100 monthly. (Tr. 31) He did not have a copy of a payment agreement with the state; however, he did include the payment in his new budget. (Tr. 31; AE A) He was unsure about whether his federal and state tax returns for 2013 and 2014 were filed, and he did not know whether he had made a payment of \$100 under his payment plan. (Tr. 33-34, 48-50) Someone at the IRS advised Appellant that he owed \$5,208 possibly for tax years 2013 and 2014. (Tr. 48-51; AE B) (HE 2) Applicant objected to amendment of the SOR to include his federal tax issues, and I decided not to amend the SOR because of lack of notice to Applicant. (Tr. 51-52)²

Applicant is employing a financial planner to help him resolve his debts. (Tr. 26-27) He contacted the financial planner about two weeks before his hearing. (Tr. 27) His financial planner helped Applicant generate a payment plan to address his debts. (Tr. 27; AE B)

Applicant’s monthly net pay is about \$1,900. (Tr. 39) He pays his parents \$200 monthly for rent, and his car payment is \$574 monthly. (Tr. 41) He has about \$250 left

²Applicant’s SOR does not allege that he failed to file federal or state tax returns or that he owed federal income taxes. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). The non-SOR evidence of tax problems will not be considered, except for the purposes outlined in the quoted provision.

over at the end of the month to address his delinquent debts. (Tr. 39) As for his budget, he planned to make the first payment to the creditors, which he listed on his budget for February, the week after his hearing. (AE A)

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 three 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, SCA, OPM PSI, SOR response, and hearing record. His records document evidence of a delinquent student loan, one delinquent medical debt, one delinquent telecommunications debt, and a state tax lien for \$1,778. 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;³ 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).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts; however, he presented some important mitigating information. Three circumstances beyond his control adversely affected his finances: (1) he became separated from his spouse; (2) he had some disputes with his spouse on tax issues; and (3) he had medical debts. He

³The 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)).

received some financial counseling from the person helping him with his budget. Applicant is credited with mitigating the two debts in SOR ¶¶ 1.c for \$50 and 1.d for \$39.

Applicant said he did not make any payments on his student loans in the previous 12 months. He was unsure about how much he owed on his federal taxes for 2013 and 2014. He was unsure whether his 2013 and 2014 tax returns were filed by the IRS or filed at all. He indicated he may owe the federal government \$5,208 possibly for tax years 2013 and 2014, which would indicate tax returns were filed for those two years, either by Applicant or by the IRS on his behalf. He did not establish that he made any payments to address his state tax lien for \$1,778, his medical debt for \$354, and his telecommunications debt for \$259.

Applicant did not establish mitigation under AG ¶ 20(e) because he did not provide copies of any letter to the SOR creditors and credit reporting companies disputing his responsibility for any debts.

Applicant's failure to make greater progress addressing his delinquent debts shows a lack of judgment and responsibility that weighs against approval of his security clearance. There is insufficient evidence about why he was unable to make greater documented progress resolving more of his SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial consideration security concerns are mitigated.

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.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 44-year-old supply technician, who has been employed by a defense contractor since September 2011. From 2001 to August 2011, he worked for another corporation as a supply technician. Applicant served in the Army National Guard from 1991 to 1992. He left the Army National Guard because he had medical problems, and he received an uncharacterized discharge. In 2003, he married, and in 2012, he separated from his spouse. Separation from his spouse, disputes with her about taxes, and medical debts were circumstances beyond his control that adversely affected his finances. He is credited with disclosure of some of his financial problems on his SCA, and he volunteered some negative financial information during his OPM PSI. There is no evidence of criminal offenses, abuse of alcohol, use of illegal drugs, or security violations.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. He has the following unresolved SOR debts: 1.a is a medical debt for \$354; 1.b is a telecommunications debt for \$259; 1.e is unresolved student loans for about \$12,000; and 1.f is a state tax lien for \$1,778. He also owes the federal government \$5,208 for taxes. His failure to make greater progress resolving his SOR debts shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented financial progress is necessary to mitigate financial considerations security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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. I conclude that financial consideration security concerns are not mitigated, and it is not clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility at this time.

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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge