



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00675

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

10/31/2013

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 14 delinquent or charged-off accounts totaling \$30,744. He settled and paid 11 SOR debts; he successfully disputed two debts; and one debt for \$7,734 is in a payment plan. He made sufficient progress resolving his financial problems. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On October 20, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) (Government Exhibit (GE) 1). On June 20, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, under 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). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD could not make the preliminary affirmative finding 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 Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On July 9, 2013, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On August 16, 2013, Department Counsel was ready to proceed on Applicant's case. On August 26, 2013, DOHA assigned Applicant's case to me. On September 23, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for September 26, 2013. (HE 1) Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered four exhibits, and Applicant offered 10 exhibits. (Tr. 19-23; GE 1-4; Applicant's Exhibit (AE) A-J) There were no objections, and I admitted GE 1-4 and AE A-J. (Tr. 19, 23) On October 4, 2013, DOHA received the transcript of the hearing. I held the record open, at Applicant's request, until October 28, 2013. After his hearing, Applicant provided 13 exhibits, which were admitted without objection. (AE K-W)

Findings of Fact¹

In Applicant's response to the SOR, he admitted the allegations in SOR ¶¶ 1.b, 1.c, and 1.d, and he explained why he denied responsibility for 11 delinquent or collection accounts. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 48-year-old force protection and operational security manager, who has worked for the same defense contractor for the last two years.² (Tr. 7-8) In 1983, he graduated from high school. (Tr. 7) He completed three years of college. (Tr. 8) He married in 1988, and he was divorced in 2001. (Tr. 25) He married in 2010, and he does not have any children. (Tr. 25) He served on active duty in the Marine Corps from 1985 to 1993 and from 2001 to 2007, at total of 14 years active service. (Tr. 9, 26) He received an honorable discharge. (Tr. 31) There is no evidence of illegal drug use. He disclosed some financial delinquencies on his October 20, 2011 SF 86.

Financial considerations

Applicant was unemployed for about three years after leaving active duty Marine Corps service in 2007. (Tr. 32) From 2010 to 2011, he worked for a state government, and then he was unemployed for another nine months. (Tr. 34) His unemployment caused him to fall behind on his payments to creditors. From 2012 to April 2013, he paid an agent about \$300 each month to settle his debts; however, he discovered the agent was accepting payments from Applicant without resolving his debts. (Tr. 48-49, 67) In

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

²Applicant's October 20, 2011 SF 86 is an basis for most of the facts in this paragraph. (GE 1)

April 2013, he paid a credit-repair company \$90 a month to write his creditors and collection agents to ask them to verify the validity of his debts and the legitimacy of the creditor seeking payment. (Tr. 41-42, 50-54, 72-73) He cited the medical debt on his credit report as an example of a debt that is not legitimately his debt. (Tr. 41-42) On some debts, he questioned the amount the creditor was seeking. (Tr. 41-45) Before October 2013, he unsuccessfully attempted to negotiate settlements and payment plans with his creditors. (Tr. 46)

Applicant's history of delinquent debt is documented in his credit reports, Office of Personnel Management (OPM) personal subject interview (PSI), and SOR response. Applicant's SOR lists 14 delinquent debts totaling \$30,744 as follows: (1) vehicle debt in ¶ 1.a (\$12,340); (2) credit union debt in ¶ 1.b (\$7,734); (3) bank debt in ¶ 1.c (\$3,459); (4) motorcycle debt in ¶ 1.d (\$2,535); (5) medical debt in ¶ 1.e (\$846); (6) county debt in ¶ 1.f (\$703); (7) collection debt in ¶ 1.g (\$670); (8) and (9) veterans affairs debts in ¶ 1.h (\$435) and ¶ 1.i (\$416); (10) to (13) telecommunications debts in ¶ 1.j (\$413), ¶ 1.k (\$365), ¶ 1.l (\$303), and ¶ 1.m (\$289); and (14) utilities debt in ¶ 1.n (\$236).

On October 16, 2013, Applicant received a \$25,718 disability payment from the Department of Veteran's Affairs (VA). (AE P) He utilized the funds from the VA to pay 11 SOR debts.

On October 24, 2013, Applicant settled and paid the vehicle debt in SOR ¶ 1.a (\$12,340) for \$5,800. (AE Q, W) On October 16, 2013, Applicant established a payment plan for the credit union debt in SOR ¶ 1.b (\$7,734), and he agreed to pay the creditor \$200 a month. (AE T) Applicant is working on settling the debt by making a lump-sum payment. (AE K) On October 18, 2013, Applicant settled and paid the bank debt in SOR ¶ 1.c (\$3,459) for \$1,730. (AE R)

On October 9, 2013, Applicant established a payment plan for the motorcycle debt in SOR ¶ 1.d (\$2,535). (AE U) He agreed to pay the creditor \$100 on October 31, 2013, \$685 on November 29, 2013, and \$685 on December 31, 2013. (AE U) On October 18, 2013, he paid the creditor \$1,521 resolving the debt. (AE K)

The medical debt in SOR ¶ 1.e (\$846) was transferred and removed from his credit report. (AE K) On October 18, 2013, the county debt in SOR ¶ 1.f (\$703), the collection debt in SOR ¶ 1.g (\$670), and the telecommunications debts in SOR ¶ 1.j (\$413) and SOR ¶ 1.m (\$289), and the utilities debt in SOR ¶ 1.n (\$236) were paid. (AE K, M) On October 21, 2013, the telecommunications debt in SOR ¶ 1.k (\$365) was paid. (AE K, M)

On October 18 and 31, 2013, the two debts, owed to the VA in SOR ¶¶ 1.h (\$435) and 1.i (\$416), were paid. (AE K) The telecommunication debt in SOR ¶ 1.l (\$303) was settled and removed from Applicant's credit report. (AE K)

Applicant generated a budget or personal financial statement. He has a positive remainder each month of about \$2,000, and he has saved \$12,000, not including his \$25,718 VA payment received on October 16, 2013.

Character Evidence

Applicant provided ten statements supporting reinstatement of his security clearance. (AE A-J) His character witnesses include Marine Corps officers and enlisted personnel, friends, civilian coworkers, and a former state governor. They laud his good character for diligence, integrity, honesty, professionalism, loyalty, reliability, and trustworthiness.

Applicant's DD Form 214 lists the following awards: Navy and Marine Corps Achievement Medal with 2 stars; Marine Corps Good Conduct Medal with two stars; Combat Action Ribbon; Marine Corps Recruiting Ribbon; Global War on Terrorism Service Medal; Navy and Marine Corps Overseas Ribbon with one star; Marine Corps Drill Instructor Ribbon; Kuwait Liberation Medal (Saudi Arabia), Humanitarian Service Medal, Southwest Asia Service Medal; National Defense Service Medal with one star; Expeditionary Medal-Marine Corps; Sea Service Deployment Ribbon with one star; Navy Unit Commendation Medal with two stars; Navy "E" Ribbon/Navy Battle "E" Ribbon; 5 letters of Appreciation; 4 Meritorious Masts, 4 Certificates of Commendation (Unit Award); 8 Certificates of Commendation (Individual Award); and various badges. (AE V)

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 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 PSI, and SOR response. Applicant's SOR lists 14 delinquent debts totaling \$30,744. 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

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, punctuation, 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)).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained the 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 *Dormont 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 debts warrants full application of AG ¶¶ 20(a) and 20(b). His lengthy unemployment caused him to fall behind on his debts. His financial problems were affected by circumstances largely beyond his control. He attempted to use an agent to contact his creditors; however, the agent abused his trust and took his money without resolving any of Applicant's debts. Then Applicant used a company that challenges the accuracy of information on credit reports. On October 16, 2013, he received a \$25,718 payment from the VA. In October 2013, he utilized the proceeds from the VA to settle and pay 11 SOR debts. He disputed two debts, and they were removed from his credit report. One debt is in a payment plan.⁴

Partial application of AG ¶ 20(c) is warranted. Applicant received some financial knowledge in the process of resolving his debts, and he generated a budget. Although there is limited evidence of record that he established and maintained contact with his creditors,⁵ his financial problem is being resolved or is under control.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable actions to resolve his SOR debts, establishing some good faith. AG ¶ 20(e)

⁴ 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)).

⁵ "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.

is applicable to the two SOR debts he disputed that were removed from his credit report.

In sum, Applicant fell behind on his debts because of unemployment. He paid 11 SOR debts; he successfully disputed two SOR debts; and one SOR debt is in a payment plan. He has established his financial responsibility. It is unlikely that financial problems will recur. 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.

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 Guideline F, but some warrant additional comment.

Applicant is a 48-year-old force protection and operational security manager, who has worked for the same defense contractor for the last two years. He completed three years of college. He served on active duty in the Marine Corps for 14 years. He received an honorable discharge and numerous medals, awards, and certificates, lauding his contributions to the United States in peace and war. There is no evidence of illegal drug use. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor and as a Marine. There is every indication that he is loyal to the United States and his employer. Two lengthy periods of unemployment contributed to his financial woes.

Applicant's SOR described 14 delinquent or charged off accounts totaling \$30,744. He acted responsibly to repair his finances. He settled and paid 11 SOR debts, successfully disputed two debts, and placed one debt in a payment plan. 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. There is simply no reason not to trust him. He has established a "meaningful track record" of debt repayment. I am confident he will keep his promise to pay his remaining delinquent SOR debt and avoid future delinquent debt.⁶

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, and eligibility for access to classified information is granted.

⁶Of course, the government can re-validate Applicant's financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have authority to grant a conditional clearance. ISCR Case No. 99-0901, 2000 WL 288429 at *3 (App. Bd. Mar. 1, 2000). See *also* ISCR Case No. 04-03907 at 2 (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems." and citing ISCR Case No. 03-07418 at 3 (App. Bd. Oct. 13, 2004)). This footnote does not imply that this Applicant's clearance is conditional.

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.n: 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.

Mark Harvey
Administrative Judge