



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 13-01013
)	
Applicant for Security Clearance)	

Appearances

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

04/24/2014

Decision

Tuider, Robert J., Administrative Judge:

Applicant failed to mitigate financial considerations security concerns. Clearance is denied.

Statement of the Case

On April 25, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 4) On October 22, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within DOD for SORs issued after September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) 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. (Item 1)

On November 18, 2013, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 3) A complete copy of the file of relevant material (FORM), dated January 21, 2014, was provided to him on January 23, 2014.¹ Applicant did not respond to the FORM. The case was assigned to me on April 9, 2014.

Findings of Fact²

In Applicant's SOR response, he admitted all of the SOR allegations relating to the six debts alleged under financial considerations. (Item 3) He also provided some mitigating information. (Item 3) His admissions are accepted as findings of fact.

Applicant is 44 years old, and he has worked as a real property analyst for a defense contractor since April 2013.³ He is a first-time applicant for a security clearance.

Applicant graduated from high school in 1988. He was awarded a bachelor's degree in 1995. He has no military history or police record. Applicant has been married twice – from 1998 to 2000 and from 2004 to 2013. Both marriages ended by divorce. He has two children born during his second marriage – a ten-year-old daughter and a five-year-old son. Applicant was awarded custody of his two children.

Financial Considerations

Applicant's SOR alleges six separate debts (SOR ¶¶ 1.a through 1.f) – (1.a) a collection account for \$4,441, (1.b) a collection account for \$1,049, (1.c) a collection account for \$3,041, (1.d) a past-due amount of \$6,000 on a \$222,000 mortgage, (1.e) a collection account for \$5,840, and (1.f) a collection account for \$14,895.

Applicant provided documentation that he entered into re-payment plans with three of his creditors for debts (1.a), (1.b), and (1.f), and that he has paid off debt (1.b). Applicant claimed that he entered into a trial period to have his mortgage modified (debt (1.d)) and that as of December 2013, this account was no longer delinquent. The FORM does not contain documentation to support Applicant's claim that he is making payments on debts (1.a), (1.d), and (1.f). The FORM does not contain any documentation regarding debts (1.c) and (1.e).

¹The DOHA transmittal letter is dated January 23, 2014, and Applicant's receipt is dated February 4, 2014. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Unless stated otherwise, Applicant's October 1, 2012 e-QIP and SOR response are the primary sources for the facts in the Statement of Facts. (Items 3 and 4)

³The facts in this paragraph are from Applicant's April 25, 2013 e-QIP. (Item 4)

Applicant experienced five lay-offs from contractor jobs he held since 2008, the most recent being in March 2013. Additionally, Applicant's wife in anticipation of their divorce stopped paying accounts held in Applicant's name. She also started accruing balances on dormant credit cards in Applicant's name. He only became aware of his estranged wife's actions during their divorce proceedings.

Applicant provided documentation that he retained the services of a consumer credit counseling service by letter dated November 8, 2013. The credit counseling service developed a comprehensive budget for Applicant. He did not provide documentation showing that he was making payments in accordance with the budget.

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.

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money. It encompasses concerns about an applicant’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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, e-QIP, and SOR response.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the mitigating conditions are established. Applicant's delinquent debts are numerous, recent, and not the result of circumstances making them unlikely to recur. His marital breakup, periods of unemployment, and his ex-wife's apparent failure to responsibly manage the household finances were circumstances beyond his control, but there is insufficient evidence that he has acted reasonably. As noted above, he indicated that he was paying off two debts and that his mortgage was current. However, Applicant did not provide documentation of same nor did he provide documentation of the status of the two debts. He did provide documentation that one debt was paid.

Despite having been put on notice of the Government's concerns by the October 2013 SOR and also when he was provided with a copy of Department Counsel's FORM, he failed to provide evidence to address these concerns. Accordingly, I am

limited to the evidence contained in the FORM and cannot speculate on what Applicant has or has not done.⁴

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 those guidelines, but some warrant additional comment.

Applicant is a mature, intelligent, educated, and law-abiding adult. He is talented and dedicated to serving the DOD as a contractor. He has faced significant life challenges after experiencing five lay-offs and two divorces. He is devoted to his children as a single father.

A security clearance is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has good intentions and appears to be on the right track. He fell short on documenting his efforts

⁴“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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

and addressing the Government's concerns as outlined in Department Counsel's FORM.

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 concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert J. Tuidier
Administrative Judge