



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



In the matter of:)
)
-----) ISCR Case No. 13-01086
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

09/23/2014

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 15 delinquent debts totaling \$201,908. Eleven SOR debts were for student loans and totaled \$199,108. The other four debts totaled \$2,800. He brought his student loans to current status and made some payments to address his medical debts. He made sufficient progress resolving his financial problems to mitigate financial considerations concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 24, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On November 5, 2013, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) 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 adjudicators were unable

to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On November 24, 2013, Applicant responded to the SOR, and indicated he waived his right to a hearing. On December 21, 2013, Applicant requested a hearing. (HE 3) On June 16, 2014, Department Counsel indicated she was ready to proceed on Applicant's case. On June 19, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to another administrative judge, and on July 7, 2014, the case was transferred to me for administrative reasons. On August 18, 2014, DOHA issued a hearing notice, setting the hearing for August 27, 2014. (HE 1) Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered three exhibits, and Applicant offered two exhibits. (Tr. 17, 23-26; GE 1-3; AE A-B) There were no objections, and I admitted GE 1-3 and AE A-B. (Tr. 18, 26) On September 8, 2014, DOHA received the transcript of the hearing. The record was held open until September 15, 2014. (Tr. 93) On September 15, 2014, Applicant provided an additional exhibit, which was admitted without objection. (AE C; HE 4)

Findings of Fact¹

In his Answer to the SOR, Applicant admitted all of the SOR allegations; however, he indicated the debts in SOR ¶¶ 1.m, 1.n, and 1.o should be paid off. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 36-year-old engineer, who requires a security clearance for his employment by a defense contractor. (Tr. 8; GE 1) He graduated from high school in 1997, and he was awarded a bachelor's of science degree in 2005, and a master's degree in business administration and project management in 2008. (Tr. 6-7; GE 1) He never served in the military. (Tr. 7; GE 1) He has never married, and he does not have any children. (Tr. 8)

Financial Considerations

Applicant's history of delinquent debt is documented in his May 24, 2013 SF 86, Office of Personnel Management (OPM) personal subject interview (PSI), June 7, 2013 credit report, SOR response, and hearing record.

Applicant is living in his grandmother's home, and he does not pay rent. (Tr. 27-30) He purchased a vehicle in 2003, and he paid off the car loan. (Tr. 31) He has

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

\$1,300 in the bank. (Tr. 34) He owes about \$3,700 on a credit card, and he makes the minimum payments. (Tr. 37) His monthly expenses are about \$550. (Tr. 40)

Applicant was employed from May 2008 to June 2012, and he earned about \$60,000 each year. (Tr. 43, 72) He earned about \$30,000 in 2012. (Tr. 91-92) He was unemployed from June 2012 to September 2013. (Tr. 43) Applicant has not been employed since October 2013. (Tr. 32) He was employed for about six weeks in September to October 2013. (Tr. 33) In the last 12 months, he has earned about \$6,500. (Tr. 34, 86) He does not have any earnings in 2014. (Tr. 91) He is not receiving unemployment compensation. (Tr. 91)

Some of Applicant's student loan debts in SOR ¶¶ 1.a to 1.j are duplications of each other. (Tr. 60, 74-76; AE A) He made sporadic payments on his student loans until he became unemployed. (Tr. 73, 85) He had his student loans consolidated, and now he owes about \$185,000 in student loans as of July 26, 2014. (Tr. 76-77; AE A; AE C at 16) He believed his father, a bus driver, who is cosigned on the loans, made some payments on his student loans; however, he did not provide proof that his father made any payments. (Tr. 77, 79) From December 2013 to July 30, 2014, he made the required nine \$10 payments and brought his student loans to current status. (Tr. 60; AE A, AE C at 17) He made the \$10 monthly payments using automatic withdrawals from his credit card account. (Tr. 61-62; AE C at 17-18) In August 2014, he agreed to an additional 10 months of \$10 monthly payments to keep his student loans current. (Tr. 87-88) When Applicant returns to employment, the Department of Education will reassess the amount of his required student loan monthly payment. (Tr. 63)

In May 2013, Applicant obtained his credit report, noticed the creditors on the report, and notified them that he was unemployed, and would begin making payments once he obtained employment. (Tr. 58-59) This notification included informing the apartment complex in SOR ¶ 1.i (\$1,684) of his employment status.

Applicant believed he or his grandmother paid the three medical debts in SOR ¶¶ 1.m (\$534), 1.n (482), and 1.o (\$100); however, he did not provide proof of those payments. (Tr. 45-56, 89; AE B; GE 2) He provided proof that he paid numerous medical debts; however, he was unable to connect the medical payments with the three medical debts cited in the SOR and his credit report. (Tr. 45-56; AE B) His credit report did not name the medical creditor; however, there was a toll free 800 telephone number which might have additional information about the medical debts. (Tr. 56-57; GE 2)

Applicant has not received formal financial counseling. (Tr. 78-79) He understands how to budget. (Tr. 79) He assured that he will bring his accounts to current status once he obtains employment. (Tr. 78-84)

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. 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.” Applicant’s history of delinquent debt is documented in his May 24, 2013 SF 86, OPM PSI, June 7, 2013 credit report, SOR response, and hearing record. His SOR alleges 11 SOR student loan debts, totaling \$199,108, and 4 other SOR debts, totaling \$2,800. 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

²The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

(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.

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a), 20(b), and 20(c). His financial problems were affected by circumstances largely beyond his control. Applicant has a lengthy history of unemployment. He had insufficient income to pay his debts; however, he brought his student loans to current status, paid numerous medical debts, and paid off his car loan debt. He promised to pay his remaining debts once he becomes employed.³

A recent Appeal Board decision illustrates the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support to her. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that applicant's debts were unresolved at the time the Administrative Judge's decision was issued. *Id.* at 3. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence⁴ of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

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)).

³ 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)).

⁴ Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant, who had been sporadically unemployed and lacked the ability to pay her creditors, noting that “it will be a long time at best before he has paid” all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

Applicant’s delinquent debts “occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” He became unemployed and lacked the income to pay his debts. This is an unusual circumstance that caused his delinquent debt. He acted responsibly under the circumstances by maintaining contact with his creditors,⁵ making payments and bringing his student loans to current status, and paying many of his medical debts. Although he did not receive financial counseling, there are clear indications that the problem is being resolved or is under control.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing some good faith. AG ¶ 20(e) is not applicable. Applicant did not dispute any of his delinquent SOR debts.

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.

In sum, Applicant fell behind on his debts primarily because of unemployment. He has done all that is reasonably possible for him to do to establish his financial responsibility in light of his limited resources. His efforts are sufficient to fully mitigate financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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 36-year-old engineer, who requires a security clearance for his employment by a defense contractor. He was awarded a bachelor's of science degree in 2005, and a master's degree in business administration and project management in 2008. He is sufficiently mature to understand and comply with his security responsibilities. He deserves some credit for volunteering to support the U.S. Government as an employee of a contractor. There is every indication that he is loyal to the United States and his employer. His lengthy period of unemployment caused his financial woes. I give Applicant substantial credit for maintaining contact with his creditors, consolidating his student loans, paying some of his creditors, and bringing his \$185,000 in student loan debt to current status, even though he has been unemployed for all of 2014. He is paying what he is able to pay to his creditors.

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. He efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident he will keep his promise to pay his delinquent debts once he is employed.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.

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.o:	For Applicant

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. "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 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 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 her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this Applicant's security clearance is conditional.

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