



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-00042
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on July 17, 2013. On February 27, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on March 5, 2013; answered it on April 6, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 29, 2014, and the case was assigned to me on May 5, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5, 2014, scheduling the hearing for May 22, 2014. I convened the hearing as scheduled.

Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until June 9, 2014, to enable him to submit additional documentary evidence. He timely submitted AX C through G, which were admitted without objection. Department Counsel's comments regarding AX C through G are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on June 4, 2014.

Findings of Fact

In his answer to the SOR, Applicant did not expressly admit or deny any of the allegations. Instead, he provided comments and evidence pertaining to the status of each debt alleged in the SOR. I have treated his response as a denial of all the allegations.

Applicant is a 59-year-old senior technical analyst employed by a contractor for another government agency since May 2011. (Tr. 29.) He has two years of college but no degree. (Tr. 28.) He has never held a security clearance, but he received a trustworthiness determination from a previous federal employer. (Tr. 8-9.) He is seeking a DOD clearance to work for a federal contractor.

Applicant worked for a federal contractor from November 2001 to March 2006, when he was laid off. He worked part time as a contractor for a federal agency from October 2001 to December 2006 and left when the project ended. He worked as a loan officer for a private business from October 2006 to May 2007, when he quit his job because the real estate market declined, his commissions declined, and he wanted to return to information technology work. He was unemployed from May to August 2007. He worked for a defense contractor from August 2007 to October 2008. He worked for a non-government employer from October 2008 to June 2009, when he left by mutual agreement after being accused of making too many personal telephone calls during the business day. He was unemployed from June to September 2009. He worked for non-government employers from September 2009 to November 2010 and from November 2010 to February 2011, when he was laid off. He was unemployed from February 2011 until he was hired by his current employer in May 2011.

Applicant's current supervisor submitted a letter describing Applicant as a highly skilled information technology specialist. Applicant and his supervisor have known each other since the late 1970s, have been coworkers several times, and are good friends. (Tr. 26.) Applicant's supervisor regards Applicant as highly motivated, dedicated, adaptable, a quick learner, and a team player. (AX A.)

Applicant married in October 1980. He and his wife had two children, a son who is now 33 years old and a daughter who died in July 2004 at age 17. (Tr. 28.)

The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a and 1.b, judgment entered for \$9,652 on delinquent credit card account and SOR ¶ 1.b, delinquent credit card account charged off for \$9,572. In his answer to the SOR, Applicant stated that these two allegations pertain to the same debt and that he is working toward a settlement. He made a \$500 payment to the creditor in SOR ¶ 1.b in March 2009. His October 2008 credit bureau report (CBR) reflected that the debt in SOR ¶ 1.b was charged off in September 2009. (GX 4 at 5.) The creditor obtained a judgment against him in February 2012, which is alleged in SOR ¶ 1.a. (GX 2.) The collection attorney for the creditor in SOR ¶ 1.a invited him to make a settlement offer in February 2014. The collection attorney's February 2014 letter refers to a charge-off account number (7712) for the judgment in SOR ¶ 1.a which is the same as the account number reflected on the August 2013 credit bureau report (CBR) for the debt in SOR ¶ 1.b. (Answer to SOR at 2, 3, 5; GX 3 at 7.) I find that SOR ¶¶ 1.a and 1.b are based on the same debt. The debt had not been resolved as of the date the record closed.

SOR ¶ 1.c, credit card account, placed for collection for \$5,451. Applicant's October 2008 CBR reflected that this account was 180 days past due and the account was closed by the credit grantor. (GX 4 at 6.) His August 1013 CBR reflected that the account was placed for collection in November 2008. (GX 3 at 8.) He had a payment plan in effect for about a year until the debt was settled on February 14, 2014, for \$1,900. (Answer to SOR at 7; Tr. 45.)

SOR ¶ 1.d, credit card debt placed for collection for \$3,500. This account was charged off and placed for collection in June 2008. (GX 3 at 8; GX 4 at 6.) It was included in a debt-resolution plan until it was settled on November 30, 2012, for \$1,100. (Answer to SOR at 10; AX E; Tr. 44.)

SOR ¶ 1.e, charge account placed for collection for \$1,549. This account was charged off in January 2011. (GX 3 at 8.) It was included in a debt-resolution plan until November 19, 2012, when the creditor forgave the remaining balance on the debt. Applicant incurred a tax liability for the amount of the debt that was forgiven. (Answer to SOR at 12; Tr. 51.)

SOR ¶ 1.f, medical debt (lab fees) placed for collection for \$560. This account was placed for collection in March 2011 and was settled for \$305 on January 6, 2013. (Answer to SOR at 15; Tr. 50.)

SOR ¶¶ 1.g, 1.i, 1.j, 1.k, 1.l, and 1.m, medical debts totaling \$675 placed for collection. These debts were placed for collection in May 2011, and settled for a total of \$395 in March 2014. (Answer to SOR at 16-17; AX D.)

SOR ¶ 1.h, medical account placed for collection for \$229. This debt was placed for collection in August 2011 and paid in full on March 20, 2014. (Answer to SOR at 19.)

SOR ¶ 1.n, medical account placed for collection for \$66. This debt was placed for collection in July 2011 and paid in full on March 13, 2014. (Answer to SOR at 21-22.)

SOR ¶ 1.o, hospital bill for \$1,600 placed for collection. Applicant is paying this debt through an automatic monthly debit of \$100 from his checking account. He testified that he was unaware of this debt until he saw his credit report. After learning about the debt, he contacted the creditor and began making payments in January 2014. (Answer to SOR at 24-27; AX F; AX G; Tr. 53.)

Applicant attributed his delinquent debts to periods of unemployment, uninsured medical expenses incurred during his daughter's hospitalization and treatment, and uninsured medical expenses incurred for himself. He estimated that he had out-of-pocket expenses for his daughter's care that totaled about \$3,000. (Tr. 31-32.) He has a history of deep venous thrombosis, a skin rash that is probably eczema, diabetes, ulcerative colitis, and hypertension. (AX B.) At the hearing, he estimated that he has incurred about \$9,000 in out-of-pocket expenses for his treatment and medications that were not covered by insurance. (Tr. (40-41.)

Applicant's monthly take-home pay is about \$7,200, and his wife's is about \$1,500. Their monthly living expenses are about \$1,115 to \$1,315 and their debt payments (car payments and home mortgage) are about \$4,100, leaving a net monthly remainder of about \$3,645 to \$3,485. (Tr. 55-57.) His August 2013 CBR reflects that his house payments and car payments are current. (GX 3 at 7-9.) He is making quarterly payments on the taxes due on the forgiven \$1,549 debt in SOR ¶ 1.e, but he did not testify about the amount of the tax payments. (Tr. 59.)

Applicant owns an investment home that he purchased in 1985, on which the rental income covers the mortgage payments. (Tr. 58-59.) He is current on his mortgage payments, car payments, and taxes for both his primary home and his investment property. If he is able to begin working for a federal contractor, his annual pay will increase from about \$86,000 to about \$105,000 (Tr. 43-44.)

In 2011, Applicant began working with a debt-resolution firm, making monthly \$407 payments to the firm. The firm accumulated his funds and negotiated settlements for the debts alleged in SOR ¶¶ 1.d and 1.e. He terminated his relationship with the firm about eight months ago. (Tr. 46-47.)

Applicant has all his debts under control except the single debt that is the basis for SOR ¶¶ 1.a and 1.b, and he is saving money to make a credible settlement offer on this debt. At the hearing, he estimated that he has accumulated about \$3,000 for this purpose. (Tr. 48.)

In 2004, Applicant invested about \$56,000 in an entertainment venture. He sued his partners for mismanaging the investment, and in October 2011, he was awarded a judgment for the full amount, plus \$20,199 in interest. As of the date of the hearing, he had been unable to collect it. (AX C; Tr. 38-39.)

Policies

“[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). "[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

Guideline F, Financial Considerations

The SOR alleges 15 delinquent debts totaling \$32,854. The concern under this guideline is set out in AG ¶ 18:

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 individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual'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).

The debts alleged in SOR ¶¶ 1.a and 1.b are the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.b in Applicant's favor.

Notwithstanding the duplication of the debts, Applicant's CBRs and testimony at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts were numerous. Applicant has not yet resolved the debt alleged in SOR ¶¶ 1.a and 1.b. He resolved the debts alleged in SOR ¶¶ 1.c and 1.g through 1.m only recently. He is still making payments on the delinquent debt in SOR ¶ 1.o. The illness and death of his daughter were unusual circumstances that contributed to the debts, but the other circumstances, such as his own illness and periods of unemployment may well occur again.

AG ¶¶ 20(b) is established. Applicant's unemployment from May to August 2007 was not a circumstance beyond his control, because he voluntarily quit his job. His unemployment from June to September 2009 was not a circumstance beyond his control, because he quit his job after being accused of misconduct. However, he had only part-time employment from March 2006 to October 2006, his income was reduced by the downturn in the real estate market from October 2006 to May 2007, and he was unemployed from February to May 2011. He lost about \$56,000 in a business venture due to mismanagement by his partners. His periods of underemployment and unemployment, the business failure, his medical problems, and the illness and death of his daughter were circumstances beyond his control. He acted responsibly by hiring a debt-resolution firm, keeping in contact with his creditors, and resolving most of his delinquent debts. He has a plan for resolving his remaining debts and is making regular payments on one of them.

AG ¶ 20(c) is established. Applicant hired a debt-resolution firm to assist him. He terminated his agreement with the firm, but he apparently learned the art of negotiating settlements from his experience with the firm, and his financial situation is under control. He has not yet resolved the debt alleged in SOR ¶¶ 1.a and 1.b, but he is in active negotiations with the creditor's attorney, is accumulating funds so that he can make a

credible offer, and has sufficient discretionary income to pay whatever is necessary to resolve the debt.

AG ¶ 20(d) is established. The debt alleged in SOR ¶¶ 1.a and 1.b is not resolved and the debt in SOR ¶ 1.o is not fully satisfied. However, a security clearance adjudication is not a debt-collection procedure. Its purpose is to evaluate an individual's judgment, reliability, and trustworthiness. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has maintained contact with his creditors and has been methodically resolving his delinquent debts. He has a reasonable and credible plan to resolve his two remaining debts. He has been making payments on the debt in SOR ¶ 1.o since January 2014. He has been invited by the attorney for the debt alleged in SOR ¶¶ 1.a and 1.b to make a settlement offer, and he has been accumulating funds to support a reasonable offer.

Whole-Person Concept.

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

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.

Applicant is highly regarded by his current supervisor. He has previously served in a position of trust with another federal employer. He was candid, sincere, and credible at the hearing.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.o:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge