



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



In the matter of:)
)
) ISCR Case No. 14-00063
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On March 11, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On April 3, 2014, Applicant

answered the SOR and requested a hearing. On May 19, 2014, the case was assigned to me. On June 4, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for June 23, 2012. The hearing was held as scheduled. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 3, while Applicant testified and offered Applicant's Exhibits (AE) A through C. The record of the proceeding was left open until June 30, 2014, to provide Applicant an opportunity to present additional matters. He timely submitted documents that were marked as AE D through N. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on July 1, 2014.

Findings of Fact

Applicant is a 47-year-old engineer who works for a defense contractor. He has been working for his current employer since February 2002. He was born overseas, entered the United States at age eight, and became a U.S. citizen in 2000. He attended undergraduate and graduate schools in the United States and earned a bachelor's degree in 1992, a master's degree in 2002, and another master's degree in about 2009. He is married and has two children, ages six and nine. He has held a security clearance without incident since about 2003.¹

The SOR alleged that Applicant had eight debts totaling \$94,102 (SOR ¶¶ 1.a–1.h). The allegations consist of six delinquent student loans totaling \$93,562 (SOR ¶¶ 1.a–1.f) and two credit card accounts that are past due for a total of about \$540 (SOR 1.g–1.h). In his Answer to the SOR, Applicant admitted each debt. His admissions are incorporated as findings as fact.²

Applicant attributed his financial problems to providing monetary support to his parents' business. His parents operated two dry cleaning stores. When those stores struggled financially, Applicant paid various store expenses such as the rent, utilities, supplies, and employee wages. He never kept track of the amount that he contributed to their business, but estimated that it totaled about \$50,000. One store was eventually sold and the other closed. The closure of the store, which occurred about five years ago, left outstanding debts that Applicant paid so that his parents could retire peacefully. Because of his contributions to his parents' business, Applicant contends that he unable to meet his own financial obligations.³

The delinquent student loans arose from Applicant's latest period of graduate education (2007-2009). Five of those loans (SOR ¶¶ 1.b–1.f) have been consolidated into one collection account, while the other student loan (SOR ¶ 1.a) remains a

¹ Tr. 6, 38-39; GE 1, 2.

² Applicant's Answer to the SOR.

³ Tr. 24-28, 34, 52-54; GE 2, 3; AE A.

separate account. After finishing his latest master's degree, the student loans were deferred for one year. Applicant defaulted on the student loans in about 2011.⁴

The amount of the charged-off student loan in SOR ¶ 1.a is \$25,822. In 2013, Applicant contacted the collection agency handling this loan and authorized that agency to make withdrawals from his checking account. The collection agency made three \$100 withdrawals between August and October 2013, but for reasons unknown to Applicant the withdrawals stopped. He testified that he had not contacted the collection agency in the past six months.⁵

In about August 2013, Applicant received a letter from his employer indicating that 25% of his net wages were being garnished. This garnishment was for the five consolidated student loans. At that point, the collection agency contacted him about participating in a rehabilitation program to which he agreed. Under that program, he was to pay \$402 per month for nine months to remove those loans from a default status. The rehabilitation payments were to be made in addition to the garnishment action. From August 2013 to April 2014, he consistently made the monthly rehabilitation payments. During that period, he paid a total of \$13,750 toward those debts, reducing the total amount owed from \$85,027 to \$74,468. Applicant testified that the loans were removed from a default status in about May 2014 and transferred to another company for further processing. At the time of the hearing, Applicant was waiting to hear from the new company concerning how much he would have to pay on them in the future. He testified that he intended to continue making the required payments on those loans.⁶

SOR ¶¶ 1.g and 1.h are past-due credit card accounts. According to a credit report dated September 19, 2013, the account in SOR ¶ 1.g was opened in April 2004, had a date of last activity of September 2013, had an outstanding balance of \$13,900, and was past due \$440. The account in SOR ¶ 1.h was opened in March 2007, had a date of last activity of September 2013, had an outstanding balance of \$2,600, and was past due \$100. At the hearing, he testified that those debts remained outstanding. Because of the garnishment, he was not able to continue making payments on these credit card accounts. His last payments on them were in 2013.⁷

Applicant's wife does not work outside the home. In his post-hearing submission, Applicant submitted a Personal Financial Statement (PFS) that indicated his net monthly income was \$5,278, that his total monthly expenses were \$3,130, and that his total debt payments were \$2,320, which left him a negative net monthly remainder of \$172. The debt payments listed in the PFS included a payment of \$1,340 toward the

⁴ Tr. 39-41, 46-47; GE 1-3.

⁵ Tr. 35-38, 65-67; GE 1-3; AE D, K-M.

⁶ Tr. 35-47, 54-55, 65; GE 2, 3; AE C.

⁷ Tr. 49-51, 67-69; GE 2, 3. Only one credit report, GE 3, was admitted in evidence.

consolidated student loans. This was the amount Applicant was paying on them during the garnishment/rehabilitation program; but it unclear what amount he will be required to pay on those loans in the future. The PFS listed that he owed a total of \$1,550 per month on the debts in SOR ¶ 1.a, 1.g, 1.h, and two other (non-alleged) credit card accounts and indicated that he was not making any payments towards those debts. The PFS indicated that Applicant is carrying about \$39,000 in credit card debt as well as an \$18,000 car loan. He testified that he was using credit cards to supplement his income. He also indicated that he borrowed \$10,000 from a sister. He intends to pay her back, but indicated there was no time limit for that repayment. He further stated that, in the past year, he and his family have changed their lifestyle, cutting back expenditures and learning to live with less.⁸

Since 2005, Applicant has traveled outside the United States nine times. One of those trips was for business and the remaining were for tourism. He indicated that the airline tickets for the personal travel were either acquired through an airline frequent flyer program or were purchased by his in-laws.⁹

One of Applicant's sisters, a licensed mental health counselor, testified that he is honest, hardworking, and dedicated. She also stated that pressure was placed on him as the only son in the family to support his parents' business. A former coworker testified that he knew Applicant for 12 years. The coworker stated that Applicant was honorable, honest, loyal, unselfish, and always followed all regulations in handling classified information.¹⁰

About five years ago, Applicant was promoted to the fourth highest of six engineering levels at his company. Over the years, he has also survived a number of layoffs. In May 2013, he was presented with a certificate of appreciation for his outstanding performance on a work project. His work performance evaluations for 2011, 2012, and 2013 showed that he consistently met or exceeded his employer's expectations.¹¹

⁸ Tr. 49-52, 55-57; GE 2, 3; AE H-J, N. Non-alleged debts were not considered in applying the disqualifying conditions. Conduct not alleged in the SOR, however, may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of the whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006).

⁹ Tr. 47-49; GE 1.

¹⁰ Tr. 22-33.

¹¹ 31-33, 57-59; GE 2; AE B, D-G.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 unfavourable, to reach his decision.

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 of 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), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts totaling over \$94,000 that he was unable to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Four 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; and

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

Applicant is a devoted son who supported his parents financially with their struggling business. His sister indicated that pressure was placed on him to provide such support. While the dynamics of a family situation of that nature are often complicated, the decision to provide such support to the detriment of his own financial situation was a matter within Applicant's control. The parents' business closed about five years ago. Since about 2011, Applicant became delinquent on a number of student loans. In August 2013, his wages were garnished for five consolidated student loans. To his credit, Applicant participated in a rehabilitation program for nine months and was able to remove the consolidated student loans from a default status. He also contacted the creditor of the remaining student loan and authorized withdrawals from his bank account for payment of that loan. However, when the withdrawals stopped on that remaining student loan, he took no action to inquire into the reason for the stoppage and has had no contact with that creditor for six months. For at least the past six months, he also has not made any payments on the two past-due credit card accounts.

In his post-hearing submission, Applicant submitted a PFS that reported a negative net monthly remainder of \$172. The PFS reported that he was making payments of \$1,340 on the consolidated student loans; but it is unclear from the evidence whether he will be required to pay that amount or possibly a lesser amount on those loans in the future. In the PFS, he also listed that he was not making payments on the other student loan or on four credit card accounts.

Applicant's financial situation is not stable. Based on the evidence presented, I cannot find that his financial problems are being resolved or are unlikely to recur. His delinquent debts are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. He receives credit under AG ¶ 20(d) for successfully participating in the rehabilitation program for the consolidated student loans and for the three payments on the other student loan. AG ¶¶ 20(a), 20(b), and 20(c) do not apply.

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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 a devoted son, husband, and father. He is a valued employee. He has held a security clearance for over ten years without incident. Nevertheless, his financial situation is not stable. He was employed throughout the entire period in question. In his PFS of June 2014, he reported a negative net monthly remainder. While he has stated that he will pay his delinquent debts, he failed to provide a plausible plan for resolving them. His financial problems remain a security concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has failed to mitigate the financial considerations security concerns.

Formal Findings

Formal findings 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
Subparagraphs 1.b – 1.f:	For Applicant
Subparagraphs 1.g – 1.h:	Against Applicant

Decision

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

James F. Duffy
Administrative Judge