



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



In the matter of:)
)
-----) ISCR Case No. 14-02799
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

04/29/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On January 31, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On July 24, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

¹ Item 5 ((e-QIP), dated January 31, 2013).

September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on August 11, 2014. In a statement, notarized August 26, 2014, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.² A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on October 17, 2014, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. There is a memorandum in the case file that indicates that Applicant received the FORM on March 3, 2015, but there is no signed receipt in the case file to confirm that date. Applicant did speak with a representative of the Defense Office of Hearings and Appeals (DOHA) on March 3, 2015, during which the receipt was discussed. According to the memorandum, a response was due on April 2, 2015. On April 3, 2015, he submitted four character references, to which Department Counsel did not object, and I marked them as Applicant Exhibits (AE) A through AE D. The case was assigned to me on April 27, 2015. As of the date of this decision, no additional response has been received.

Findings of Fact

In his Answer to the SOR Applicant admitted all of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. through 1.u.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 32-year-old employee of a defense contractor. He has been serving as an information technology engineer with his current employer since February 2011.³ He was previously unemployed for several substantial periods: February 2005 – April 2005; September 2005 – January 2006; April 2007 – September 2007; February 2008 – December 2008; June 2009 – August 2009; and November 2010 – February 2011.⁴ He is a February 2001 high school graduate.⁵ One month after his high school graduation, Applicant enlisted in the state Army National Guard (ANG), and he remained with the ANG until August 2008, when he was issued an honorable

² Item 4 (Applicant's Answer to the SOR, dated August 26, 2014).

³ Item 5, *supra* note 1, at 13.

⁴ Item 5, *supra* note 1, at 13-15, 19-22.

⁵ Item 5, *supra* note 1, at 12.

discharge.⁶ He is currently in the process of attempting to reenlist in the ANG.⁷ While he was in the ANG, Applicant was deployed to Iraq from January 2004 until January 2005.⁸ He also was deployed as a federal contractor to Afghanistan from August 2009 until November 2010.⁹ He was granted a secret security clearance to coincide with his membership in the ANG.¹⁰ Applicant was married in February 2008.¹¹ He has one son, born in 2007.¹²

Financial Considerations

It is unclear when or why Applicant's finances became so unmanageable that he was unable to maintain his monthly payments, resulting in some of his accounts becoming delinquent and placed for collection as early as 2010. The SOR identified 21 purportedly continuing delinquent debts totaling approximately \$23,396 that had been placed for collection, as reflected by a January 2013 credit report,¹³ and a March 2014 credit report.¹⁴ Of the 21 accounts listed, 7 are delinquent medical accounts, and at least 4 are delinquent student loans.

In his Answer to the SOR, Applicant stated:¹⁵

Most of the things listed on my Statement of Reasons are things that were placed on my credit before I ever had a real understanding of credit and how it may affect my life. I have a lot of medical bills from when I was young and had no insurance, as well as student loans that were used while attempting to go to school. I had to drop out because, due to unknown reasons at that time, my wife began to lose her vision and I dropped out to take care of her. . . .

I have made mistakes in my life, procrastination being chief among them. Add to the naïve nature in which I treated credit, and you can see how things have gotten to the shape they are in. I am not a bad person who lives a lavish lifestyle without regard of cost. I am a family man who loves my family and my country, and want to continue to support both.

⁶ Item 5, *supra* note 1, at 25.

⁷ Item 4 (Applicant's Answer to the SOR, dated August 26, 2014), at 4.

⁸ Item 5, *supra* note 1, at 11.

⁹ Item 5, *supra* note 1, at 14-15.

¹⁰ Item 5, *supra* note 1, at 41-42.

¹¹ Item 5, *supra* note 1, at 27-28.

¹² Item 5, *supra* note 1, at 31.

¹³ Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 6, 2013).

¹⁴ Item 7 (Equifax Credit Report, dated March 5, 2014).

¹⁵ Item 4, *supra* note 7, at 4.

When he completed his e-QIP in January 2013, Applicant stated that he would contact various creditors listed in his credit report to make payment arrangements.¹⁶ He offered no evidence to confirm that he ever did so. In August 2014, Applicant indicated that he had been offered an unspecified settlement of the delinquent apartment lease account for \$334 (SOR ¶ 1.c.), and he would pay it within two weeks.¹⁷ Despite the passage of over seven months, Applicant failed to submit any documentation to indicate that the account had been resolved. He admitted that he had made no payments on any of the remaining accounts listed in the SOR. There is no evidence to indicate that Applicant ever received financial counseling.

It is not known what Applicant's financial resources may be because he did not submit a personal financial statement to indicate his net monthly income, his monthly household or debt expenses, or whether or not he has any funds remaining at the end of each month for discretionary use or savings. Applicant offered no evidence to indicate that his financial problems are now under control. He did, however, indicate that if he successfully reenlists in the ANG, he would receive an unspecified enlistment bonus which he contends would be applied to "a large part of the debt at once."¹⁸ He added that since he recently paid off his wife's car, the former payments and his ANG income would enable him to pay other bills.¹⁹ Once again, he failed to submit any documentation to address his reenlistment status, the quantity of his anticipated bonus, or the payoff statement for his wife's car.

Character References

Applicant's middle school teacher, who is now the high school assistant principal, is highly supportive of Applicant's application. He noted Applicant's high character and integrity, even in times of difficulty, and frequently refers to Applicant as a person who has moved above the situation in which he was raised and managed to succeed.²⁰ A major in the ANG has known Applicant since they were in high school. They served together in Iraq and again in Afghanistan when he was still in the ANG and Applicant was a defense contractor. He characterized Applicant as a man of character and integrity, and said he can be trusted.²¹ Another former ANG colleague served with Applicant in Iraq, and he believes that Applicant has an outstanding work ethic, and is trustworthy and goal oriented.²² A current work colleague cited Applicant's attention to detail, trustworthiness, loyalty, and determination.²³

¹⁶ Item 5, *supra* note 1, at 44-54.

¹⁷ Item 4, *supra* note 7, at 4.

¹⁸ Item 4, *supra* note 7, at 4.

¹⁹ Item 4, *supra* note 7, at 4.

²⁰ AE A (Character Reference, dated March 31, 2015).

²¹ AE B (Character Reference, dated April 1, 2015).

²² AE C (Character Reference, dated April 2, 2015).

²³ AE D (Character Reference, dated March 30, 2015).

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.”²⁴ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁵

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”²⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.²⁷

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

²⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²⁶ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

²⁷ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”²⁸

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.”²⁹ 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 as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has had a long-standing problem with his finances, which started as early as 2010. The SOR identified 21 purportedly continuing delinquent debts totaling approximately \$23,396 that had been placed for collection. He found himself with insufficient funds to continue making his routine monthly payments and various

²⁸ *Egan*, 484 U.S. at 531

²⁹ See Exec. Or. 10865 § 7.

accounts became delinquent, and were placed for collection. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”³⁰

AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), and 20(d) do not apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since about 2010 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant was previously unemployed for several substantial periods, but the most recent period came sometime after his initial financial problems, and Applicant attributed his major financial problems to health issues regarding his wife and his own unspecified health issues “when he was young” that arose when he had no health insurance. He offered no evidence of a good-faith effort to resolve any of his debts and essentially ignored them.

There is no evidence to indicate that Applicant ever received financial counseling. It is not known what Applicant’s financial resources may be, or if he has any funds remaining at the end of each month for discretionary use or savings. There is no evidence to reflect that Applicant’s financial problems are under control. Applicant has not acted responsibly by failing to address his delinquent accounts and by making little,

³⁰ The 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 [or statute of limitations]) 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)).

if any, efforts of working with his creditors.³¹ Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment.³²

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³³

There is some evidence in favor of mitigating Applicant's conduct. He had a good record with the ANG. He was deployed to Iraq as a member of the ANG and to Afghanistan as a defense contractor. Over the years, he had been unemployed for extensive periods. He is well thought of among his friends and colleagues, and appears to be a caring husband. He has declared his intention of cleaning up his credit and maintaining a good credit history.

The disqualifying evidence under the whole-person concept is more substantial. Applicant's long-standing failure to repay creditors between 2010 and the present, or to arrange payment plans, even for the smallest of his delinquent accounts, reflects traits which raise concerns about his fitness to hold a security clearance. It is not known what

³¹ "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.

³² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

³³ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Applicant's financial resources may be, or if he has any funds remaining at the end of each month for discretionary use or savings. Thus, there are no indications that Applicant's financial problems are under control. Applicant has simply made the assertions that his delinquent accounts would be resolved. Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment. Considering the relative absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³⁴

In evaluating Guideline F cases, the Board has previously noted that 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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has '. . . established a plan to resolve his [or her] 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 [or her] 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.

Applicant has demonstrated an essentially negative track record of debt reduction and elimination efforts, generally ignoring his debts. Overall, the evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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 – 1.u.:

Against Applicant

³⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge