



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 14-02923
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

10/13/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns under Guidelines F (financial considerations and E (personal conduct). Clearance is granted.

Statement of the Case

On December 16, 2013, Applicant submitted a Questionnaire for National Security Positions (SF 86). On September 8, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F and E. The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and referred his case to an administrative judge for a determination whether his clearance should be granted or denied.

Applicant answered the SOR on October 14, 2014, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated April 30, 2015, was provided to him by letter dated May 29, 2015. Applicant received the FORM on June 9, 2015. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information after receipt of the FORM, which was received without objection from Department Counsel.¹ On August 14, 2015, DOHA assigned the case to me.

Findings of Fact

In his answer to the SOR, Applicant did not specifically admit or deny any of the SOR allegations, but rather provided a narrative response to each allegation. Accordingly, I view Applicant's answers in the format provided as constructive denials. His SOR answers are incorporated in my findings of fact.

Background Information

Applicant is a 33-year-old security officer employed by a defense contractor since May 2012. He seeks a security clearance as a condition of continued employment. (Item 2) Applicant was previously granted a security clearance in 2004 while employed as a security officer with a different employer. (Item 2)

The FORM does not contain any information regarding Applicant's educational background. (Item 2) Applicant has never married, and has a two-year-old son. (Item 2) He is paying monthly child support by payroll deduction. (Item 1)

Financial Considerations

Applicant's SOR contains 11 separate debt allegations. The FORM does not contain any information regarding circumstances under which the debts occurred precluding application of potential mitigating conditions. The following describes Applicant's debts and their known status.

SOR ¶ 1.a - Judgment filed against Applicant in January 2012 in the amount of \$23,051. Applicant stated that he was the victim of identity theft and this debt, as well as other debts, were incorrectly attributed to him. He filed a police report dated March 19, 2015 reporting same. Furthermore, he retained an attorney and was counseled to file bankruptcy. Applicant's attorney submitted a letter stating that Applicant had initiated bankruptcy proceedings to address this debt, as well as "some other medical bills and old accounts." Before pursuing bankruptcy to address this debt, Applicant submitted documentation of making monthly payments to a law firm from 2010 to 2014. **DEBT BEING RESOLVED.** (Item 1; FORM response)

¹Applicant's additional information will be referred to as "FORM response."

SOR ¶ 1.b – Internal Revenue Service (IRS) tax lien in the amount of \$5,037 filed in August 2008. Applicant is making \$100 monthly payments to the IRS by payroll deduction. **DEBT BEING RESOLVED.** (Item 1)

SOR ¶¶ 1.c and 1.d – Two local government tax liens in the amounts of \$4,976 filed in August 2008, and \$4,592 filed in September 2007, respectively. Neither the SOR allegations nor Government evidence indicate the tax year or years to which the tax liens apply. Applicant submitted a copy of a notice from his local government entitled “Notice of Correction and Tax Bill” dated September 8, 2014. The notice states that his new tax due balance was \$5,894.75. Applicant began making monthly payments in October 2014. **DEBTS BEING RESOLVED.** (Item 1, Item 4, Item 5)

SOR ¶ 1.e – Cell phone collection account in the amount of \$1,773. Applicant stated that this account has been settled and closed. This debt does not appear on his most recent credit report. **DEBT RESOLVED.** (Item 1, Item 5)

SOR ¶ 1.f – Charged-off credit card account in the amount of \$475. Applicant stated that this account has been settled and closed. This debt does not appear on his most recent credit report. **DEBT RESOLVED.** (Item 1, Item 5)

SOR ¶ 1.g – Leasing company collection account in the amount \$2,372. Applicant set up a payment plan and began making payments in October 2015. **DEBT BEING RESOLVED.** (Item 1)

SOR ¶ 1.h – Cable company collection account in the amount of \$532. Applicant stated that this account has been settled and closed. **DEBT RESOLVED.** (Item 1)

SOR ¶ 1.i – Local government collection account in the amount of \$100. Applicant stated that this account has been paid. This debt does not appear on his most recent credit report. **DEBT RESOLVED.** (Item 1, Item 5)

SOR ¶ 1.j - Local government collection account in the amount of \$50. Applicant stated that this account has been paid. This debt does not appear on his most recent credit report. **DEBT RESOLVED.** (Item 1, Item 5)

SOR ¶ 1.k – Charged-off cell phone bill in the amount of \$721. Applicant stated that this account has been settled and closed. **DEBT RESOLVED.** (Item 1)

Personal Conduct

Applicant’s SOR contains one allegation under this concern pertaining to an outstanding bench warrant issued for failure to appear in court for a misdemeanor traffic-related offense.

SOR ¶ 2.a – On April 17, 2011, Applicant was charged with “No Permit” by a local government for a traffic-related offense. He failed to appear on May 5, 2011, and a bench warrant was issued. On May 12, 2014, he pled guilty and was sentenced to 15

days in jail, execution of sentence suspended, placed on unsupervised probation for six months, and ordered to pay a \$50 fine. All terms of his sentence have been met to include paying his fine. **CONCERN RESOLVED.** (Item 1)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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."

The evidence establishes 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; and

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

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

There is no evidence in the FORM to support application of AG ¶ 20(b). AG ¶¶ 20(c) is partially applicable and 20(d) is fully applicable. Although Applicant did not receive formal financial counseling, his debts are being resolved and there are clear indications that his financial problems are resolved or under control. As noted above, Applicant has made a concerted effort to repay his creditors through a series of actions to include repayment or setting up payment plans. Given Applicant's resources, he is approaching his debts in a responsible and measured way.²

AG ¶ 20(e) is applicable to SOR ¶ 1.a, his largest debt for \$23,051. Applicant stated that this debt arose as a result of identity theft for which he initially made payments to a law firm. However, he has since sought advice from counsel, filed a police report, and is filing bankruptcy to void this debt as well as any other debts that may have arisen from identity theft.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

²“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 provides two disqualifying conditions that could raise a security concern and may be disqualifying with respect to Applicant's bench warrant for failure to appear for a misdemeanor traffic-related offense.

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The evidence establishes the disqualifying conditions in AG ¶¶ 16(c) and 16(d), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 17 provides two conditions that could mitigate security concerns in this case:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶¶ 17(d) and 17(e) are applicable. Applicant has resolved the misdemeanor charge of No Permit and bench warrant for failing to appear at his hearing. As noted, he fully completed his sentence to include paying the \$50 fine levied against him.

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). The discussion in the Analysis section under Guidelines F and E is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guidelines F and E and the whole-person analysis support a favorable decision. Applicant's employment with a defense contractor and having previously held a security clearance weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts are resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating 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 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 omitted).

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. His efforts at debt resolution have established a “meaningful track record” of debt re-payment. I am confident he will resolve the remaining debts on his SOR and maintain his financial responsibility.³

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

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.k:	FOR APPLICANT
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	FOR APPLICANT

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance. Clearance is granted.

Robert J. Tuidor
Administrative Judge

³Of 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.