



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



In the matter of:)
)
-----) ISCR Case No. 14-03039
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

06/09/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 13 charged-off or collection accounts totaling \$22,241 and a mortgage foreclosure. His mortgage debt was resolved through a short sale; he paid 10 SOR debts totaling \$20,697; and he successfully disputed the remaining three SOR debts, totaling \$1,544. His delinquent debts were caused by circumstances beyond his control. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On February 25, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1) On August 25, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) 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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD could not make the

affirmative finding under the Directive that it is clearly consistent with national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On September 30, 2014, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On February 27, 2015, Department Counsel was prepared to proceed. On March 19, 2015, the case was assigned to me. On April 10, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for May 12, 2015. (HE 1) The hearing was held as scheduled. Department Counsel offered five exhibits into evidence, and Applicant offered 39 exhibits into evidence. (Tr. 17-29; GE 1-5; AE A-AM) There were no objections, and all exhibits were admitted into evidence. (Tr. 18-19, 29; Government Exhibit (GE) 1-5; Applicant Exhibit (AE) A-AM) On May 20, 2015, the transcript was received.

Findings of Fact¹

In his Answer to the SOR, Applicant admitted responsibility for the SOR debts in ¶¶ 1.a, 1.b, 1.e, 1.f, 1.h, 1.i, 1.l, and 1.m. (HE 3) He denied responsibility for the other SOR debts, and explained he was investigating to determine his responsibility for several of them. He also provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 34-year-old systems engineer, who has worked for a defense contractor since 2008.² (Tr. 5) In 1999, he graduated from high school. (Tr. 5) In 2003, he graduated from college with a bachelor of science degree in electrical engineering. (Tr. 6) He never served in the military. (Tr. 6) In June 2006, he married, and in November 2014, he divorced. (Tr. 6) He has a seven-year-old daughter. (Tr. 7) His monthly child support is \$1,044. (Tr. 7) There is no evidence of disciplinary problems with his employer, illegal drug use, criminal offenses, or alcohol abuse.

Financial Considerations

Applicant and his spouse went through a lengthy and expensive divorce process. (SOR response) His daughter had some medical problems. His former spouse generated debts during their marriage; the debts became delinquent; and she kept that information from Applicant. (Tr. 55; SOR response)

Applicant's SOR alleges 13 collection or charged-off accounts, totaling \$22,241, and a mortgage foreclosure. The status of the 14 SOR accounts is as follows:

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

²Unless stated otherwise, the source for the information in this paragraph is Applicant's February 25, 2013 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1)

¶ 1.a is a utilities collection debt for \$120. On October 17, 2014, the creditor wrote that the debt was paid in full. (Tr. 34-35; AE A)

¶¶ 1.b to 1.d and 1.i to 1.k are six medical collection debts for \$491, \$307, \$993, \$374, \$237, and \$657. On March 30, 2015, the creditor wrote the medical debt in SOR ¶ 1.b was paid, and the balance is zero. (Tr. 35-36; AE B) Applicant's credit reports indicate the medical debts in SOR ¶¶ 1.c and 1.d were successfully disputed and removed from his credit report. (Tr. 37-41; AE C; GE 3; GE 4) The creditor for the medical debt in SOR ¶ 1.i wrote that the debt was paid in full. (Tr. 46-47; AE I) On April 14, 2015, the creditor for the medical debt in SOR ¶ 1.j wrote the debt was paid in full, and the balance is zero. (Tr. 47; AE J) On May 4, 2015, the creditor for the medical debt in SOR ¶ 1.k wrote the debt was paid in full, and the balance is zero. (Tr. 47-48; AE K)

¶¶ 1.e and 1.l are bank collection debts for \$8,404 and \$6,024. SOR ¶¶ 1.e and 1.l are duplications of each other. (Tr. 14, 41-42; SOR response; GE 5 at 14) On March 26, 2015, the creditor wrote that Applicant paid \$4,000, and the debt was satisfied in full. (AE E)

¶ 1.f is a bank collection debt for \$3,435. Applicant made payments from October to December 2014, and on January 12, 2015, the creditor wrote that the debt was settled. (Tr. 43-44; AE F)

¶ 1.g alleges Applicant has a mortgage loan resulting in a foreclosure. In 2010, Applicant transferred ownership of his rental property through a short sale. (Tr. 44-45) In August 2010, Applicant paid \$3,500 at the settlement to ensure completion of the sale. (Tr. 44-45; AE G)

¶ 1.h is a utility debt for \$189. On March 26, 2015, the creditor wrote that the debt was paid, and the balance is zero. (Tr. 45-46; AE H)

¶ 1.m is a city collection debt for \$244. On March 5, 2015, the creditor wrote that the debt was paid, and the balance is zero. (Tr. 48-49; AE M)

¶ 1.n is a telecommunications debt for \$766. On March 26, 2015, the creditor wrote that Applicant's dispute was approved, and the derogatory entry would be removed from his credit report. (Tr. 49-50; AE N)

Applicant's budget indicates he makes a \$400 monthly payment to divorce lawyers, a \$250 monthly payment on a credit card, and a \$106 monthly payment on another debt. (AE O) He has a \$1,117 monthly remainder available after paying his expenses and debts. (Tr. 50; AE O) Applicant received financial counseling. (SOR response)

Applicant resolved several non-SOR debts. (Tr. 51; AE P-U) On May 11, 2010, the creditor for a \$2,821 debt wrote that Applicant settled the debt by paying \$1,277. (AE P-Q) On July 6, 2010, the creditor for a \$29,043 debt wrote that the debt was settled for a payment of \$9,200. (AE R, S)

Applicant has \$120,000 in his 401(k) account. (Tr. 53) His annual salary is \$135,000. (Tr. 54) He does not have a vehicle loan, and his state and federal taxes and his child support are current. (Tr. 50-54)

Character Evidence

Applicant's facility security officer, former mother-in-law, and four coworkers positively described Applicant's character and work performance. (AE W-AE AB) He is conscientious, patriotic, honest, loyal, trustworthy, and reliable. (AE W-AE AB) He made important contributions to his company and mission accomplishment. (AE W-AE AB) In 2008, 2010, 2012, 2013, and 2014, he received star awards for his or his team's technical achievements. (AE AD-AE AJ) His employer's performance rating showed he provides excellent work. (AE AC)

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 [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

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 credit reports, SF 86, SOR response, and hearing record. His SOR alleges 13 charged-off or collection accounts totaling \$22,241. The mortgage on his rental property was delinquent. 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;³ 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 in resolving his debts warrants full application of AG ¶¶ 20(a) through 20(e). His financial problems were affected by circumstances largely beyond his control. Applicant and his spouse went through a lengthy and expensive divorce process; his daughter had some medical problems; his former spouse generated debts; the debts became delinquent; and she kept financial information about delinquent debts from Applicant.

Applicant's delinquent debts "occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on [his] current reliability, trustworthiness, or good judgment." He is divorced, and his spouse was the source of his delinquent debt. Applicant has learned from his experience; there are clear indications that the problem is being resolved; his finances are under control; he received financial counseling; and

³The 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) 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)).

he showed good faith. Applicant successfully disputed the debts in SOR ¶¶ 1.c, 1.d, and 1.n. He has a \$1,117 monthly remainder available after paying his expenses and debts.

Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts. His mortgage debt was resolved through a short sale; he paid 10 SOR debts totaling \$20,697; and he successfully disputed the remaining three debts, totaling \$1,544. He does not have debts that are currently delinquent. His efforts are sufficient to 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 34-year-old systems engineer, who has worked for a defense contractor since 2008. In 2003, he graduated from college with a bachelor of science degree in electrical engineering. There is no evidence of disciplinary problems with his employer, illegal drug use, criminal offenses, or alcohol abuse.

Five statements of coworkers or colleagues and Applicant's former mother-in-law laud Applicant's good character and work performance as conscientious, patriotic, honest, loyal, trustworthy, and reliable. He made important contributions to his company and mission accomplishment, and he received star awards for five of the six years he has worked for his employer.

In June 2006, he married, and in November 2014, he divorced, and he has a seven-year-old daughter. His SOR debts became delinquent because of his divorce; his spouse generated delinquent debts; his daughter had medical problems; and Applicant was unaware that his spouse had generated delinquent debt. Once Applicant learned of his spouse's delinquent debts, he maintained contact with the creditors; he established

payment plans; and he paid, or otherwise resolved all of his delinquent SOR debts. In 2010, he paid or settled several large non-SOR debts. All of his debts are now in current status.

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. His efforts at debt resolution have established a “meaningful track record” of debt re-payment. I am confident he will maintain his financial responsibility.

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.n:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge