



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 14-00275
)
Applicant for Security Clearance)

Appearances

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

08/21/2014

Decision

TUIDER, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) contains ten allegations, nine of which are delinquent debts, totaling \$16,091. The tenth allegation references his 2005 Chapter 7 bankruptcy. Applicant paid, settled, or otherwise resolved all of his debts. Financial considerations are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 26, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On March 7, 2014,¹ 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) promulgated by the President on December 29, 2005.

¹ The SOR issue date was incorrectly listed as March 7, 2013 versus March 7, 2014. Without objection from either party, I modified the date to March 7, 2014. (Tr. 9-10.)

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On March 7, 2014, Applicant responded to the SOR. On April 22, 2014, Department Counsel was ready to proceed on Applicant's case. On May 20, 2014, DOHA assigned Applicant's case to me. On May 23, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for June 26, 2014. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant called one witness, testified, and offered Applicant Exhibits (AE) A through L, which were received into evidence without objection.

I held the record open until July 11, 2014, to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE M, which was received into evidence without objection. On August 15, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact²

In his Answer to the SOR, Applicant denied SOR ¶¶ 1.a through 1.i and admitted SOR ¶ 1.j., with explanations. Applicant's admissions are incorporated as findings of fact.

Background Information

Applicant is a 50-year-old mechanical technician, who has been employed by a defense contractor since January 2010. He seeks a secret security clearance, which is a condition of his continued employment. Applicant held an interim secret security clearance from October 2013 to March 2014. (Tr. 19-23, GE 1.)

Applicant graduated from high school in June 1982. He did not pursue higher education or serve in the U.S. armed forces. (Tr. 27, GE 1.) Applicant had a previous marriage from June 1984 to May 1987 that ended by divorce. He remarried in October 1991, and has a 22-year-old daughter with his second wife. Applicant's daughter is in her senior year of college and is dependent on Applicant for support. (Tr. 23-26.) His wife is employed as a general manager of a convenience store. (Tr. 36-37.)

Financial Considerations

Applicant's SOR contains ten allegations, nine of which are delinquent debts, totaling \$16,091. The tenth allegation states that he filed for Chapter 7 bankruptcy in

²Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

October 2005 and was awarded a discharge in February 2006. The ten allegations are substantiated by his October 2013 credit report, Chapter 7 Bankruptcy and Discharge Order, SOR answers, November 5, 2013 Office of Personnel Management Personal Subject Interview (OPM PSI), and hearing statements. (SOR ¶¶ 1.a – 1.j, GE 2, GE 3, GE 4.) Below is a summary of Applicant's SOR debts and their current status.

SOR ¶ 1.a – Charged-off account in the amount of \$5,791. In 1996, Applicant took out a home improvement loan for \$10,000. The account was assumed by a second creditor in interest and was sent to collections in 2007 when Applicant was unable to make payments. In September 2013, Applicant contacted the creditor and was informed that the account was charged off. In 2011, the creditor issued Applicant a Form 1099 for \$12,782 and reported this as income to the Internal Revenue Service (IRS). He resolved his tax arrearage with the IRS by payments and through recoupment of a tax refund. **Debt resolved.** (Tr. 49-57, SOR answer, GE 1, GE 2, GE 4, AE A, AE K, AE L, AE M.)

SOR ¶ 1.b – Charged-off loan account in the amount of \$2,294. In 2007, Applicant took out a loan to purchase a tanning bed for his wife. In April 2014, Applicant paid the account in full. **Debt resolved.** (Tr. 57-59, SOR answer, GE 4, AE B, AE K, AE L.)

SOR ¶ 1.c – Charged-off credit card account in the amount of \$1,254. In 2007, Applicant opened this account and testified he used it for living expenses. In March 2004, Applicant settled and paid this account for the lesser amount of \$500. **Debt resolved.** (Tr. 59-60, SOR answer, GE 4, AE C, AE K, AE L.)

SOR ¶ 1.d – Charged-off gas credit card account in the amount of \$2,017. This amount was discharged in Applicant's 2006 bankruptcy and incorrectly included in his credit report. Applicant submitted ample documentation substantiating that this debt was discharged by bankruptcy. **Debt resolved.** (Tr. 60, SOR answer, GE 3, GE 4, AE D, AE K, AE L.)

SOR ¶ 1.e – Collection account for clothing credit card in the amount of \$1,137. In March 2014, Applicant settled and paid this account for the lesser amount of \$595. **Debt resolved.** (Tr. 60-61, SOR answer, GE 4, AE C, AE E, AE K, AE L.)

SOR ¶ 1.f – Collection account for women's clothing credit card in the amount of \$1,055. In March 2014, Applicant settled and paid this account for the lesser amount of \$551. **Debt resolved.** (Tr. 60-62, SOR answer, GE 4, AE C, AE F, AE K, AE L.)

SOR ¶ 1.g – Collection account for clothing credit card in the amount of \$874. In March 2014, Applicant settled and paid this account for the lesser amount of \$457. **Debt resolved.** (Tr. 60-62, SOR answer, GE 4, AE C, AE G, AE K, AE L.)

SOR ¶ 1.h – Collection account for women's clothing credit card in the amount of \$852. In March 2014, Applicant settled and paid this account for the lesser amount of \$445. **Debt resolved.** (Tr. 60-62, SOR answer, GE 4, AE C, AE H, AE K, AE L.)

SOR ¶ 1.i – Collection account for clothing credit card in the amount of \$817. In March 2014, Applicant settled and paid this account for the lesser amount of \$427. **Debt resolved.** (Tr. 60-62, SOR answer, GE 4, AE C, AE I, AE K, AE L.)

SOR ¶ 1.j – In October 2005 Applicant filed for Chapter 7 bankruptcy petition and was awarded a discharge in February 2006. Applicant attributes his pre-bankruptcy financial problems to his wife losing her job post-9/11 and for several years experienced difficulty securing a steady job. (Tr. 40-41.)

Applicant testified that his wife contacted each of the creditors periodically to work out payment plans; however, given their limited funds, they were unable to resolve these debts until recently. (Tr. 49-62.) Applicant was able to pay off his debts through a combination of factors to include working substantial overtime and downsizing housing costs. (Tr. 62-63.)

Applicant experienced two periods of unemployment from February 2009 to March 2009 and from December 2009 to January 2010. Before being unemployed in February 2009, he made a cross-country move to accept what he thought was a better job in January 2008 and incurred unreimbursed and unanticipated moving costs. He did, however, accept responsibility for neglecting his finances post-2006 bankruptcy and not being more aggressive in monitoring them. (GE 1, GE 2, Tr. 29-40.)

Applicant testified that he consulted with a credit counselor in 2010, but was unable to make significant headway due to lack of funds. (Tr. 41-42.) Post-hearing, Applicant submitted a comprehensive joint budget that reflects monthly income of \$6,337, with an average net remainder of \$1,900. Applicant's budget reflects that he lives within his means and maintains a modest lifestyle. (Tr. 63-67, GE 4, AE M.)

Character Evidence

Applicant provided three very favorable reference letters from his landlord, facility security officer and supervisor. Their letters attest to Applicant's good character, trustworthiness, diligence, responsibility, and contributions to his employer and community. (AE J.) Applicant's coworker (CW) testified on his behalf. He has known Applicant for 4 ½ years and maintains daily contact with him. CW stated that Applicant was dependable, knowledgeable, honest, and makes a significant contribution at work. CW recommended that Applicant be granted a security clearance. (Tr. 81-86.)

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 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." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply. (internal citation omitted).

Applicant's history of delinquent debt is documented in his credit reports, his OPM PSI, his SOR answer, his bankruptcy filing, and his statement at his hearing. 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; 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)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant's conduct in resolving his debts warrants partial application of AG ¶ 20(b). Applicant's two short periods of unemployment in 2009 and 2010 no doubt caused an interruption in his income stream; however, too much time has elapsed since his unemployment to receive full credit. His financial problems were generated, in part, by circumstances beyond his control. Applicant acted responsibly by remaining in contact with his creditors; however, he did not have the money to pay them. When he did acquire the money, albeit several years past the due date, he paid or settled all of his accounts.

AG ¶ 20(c) is partially applicable. Applicant consulted with a credit counselor in 2010, but did not have the money to pay his creditors. Four years later when he did have the money, he was able to follow through with the advice he received from credit counseling. His budget reflects he is living within his means and has regained financial responsibility.

Full mitigation is warranted under AG ¶ 20(d).³ There are clear indications that his financial problems are resolved. All of Applicant's debts are paid or settled. The debt

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)).

in SOR ¶ 1.d was discharged in his 2006 bankruptcy. Furthermore, his 2006 bankruptcy is of limited security significance given the time elapsed and the fact that Applicant has regained financial responsibility. AG ¶ 20(e) is not relevant. Applicant did not provide documentation showing he disputed any of his delinquent SOR debts.

In sum, Applicant has taken reasonable actions to resolve his delinquent debts and maintain his financial responsibility. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

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 50-year-old mechanical technician, who has worked for a defense contractor since January 2010. He is sufficiently mature to understand and comply with his security responsibilities. There is every indication that he is loyal to the United States and his employer. Applicant's financial situation was adversely affected by unreimbursed moving costs, two brief periods of brief unemployment, and not being more attentive to his financial situation. I give Applicant substantial credit for admitting responsibility for his delinquent debts in his e-QIP, OPM PSI, responses to DOHA interrogatories, SOR response, and at his hearing.

Even though Applicant lacked the financial resources to pay his SOR debts when due, he made numerous other payments and maintained his rent, utilities, and taxes in current status. Applicant's character letters and witness testimony attest to his good character for trustworthiness, diligence, responsibility, and conscientious, detail-oriented contributions to his employer and community. He is an intelligent person, and he

understands how to budget and what he needs to do to 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.j: 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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuider
Administrative Judge