



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-00906
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

11/06/2014

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant has not mitigated the security concerns raised by his numerous delinquent debts and failure to file federal and state income tax returns for several years. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 9, 2013. On May 29, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on June 6, 2014; answered it on June 19, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 14, 2014, and the case was assigned to me on August 19, 2014.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 20, 2014, scheduling the hearing for September 10, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. Department Counsel's letter providing Applicant with copies of all documents she intended to submit at the hearing is attached to the record as Hearing Exhibit I. I kept the record open until September 26, 2014, to enable Applicant to submit additional documentary evidence. He did not submit any additional evidence or request additional time to obtain it.¹ DOHA received the transcript (Tr.) on September 25, 2014.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations except SOR ¶¶ 1.b, 1.k, and 1.r. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 26-year-old welder employed by a defense contractor since June 2013. He attended high school from September 2003 to June 2005 but did not receive a diploma. He dropped out of high school because his mother was in prison and he needed to support himself. He has never known his father. (GX 3 at 2.) He received a general educational development (GED) certificate in October 2005. He attended a community college from August 2006 to January 2008. He did not receive a degree, but he earned enough credits to obtain certification as a welder.

Applicant worked as a line cook from April 2005 to March 2008. He also worked as a welder for a defense contractor from August 2007 to September 2011. He was disciplined for missing work in May 2010 and fired in September 2011 for providing misleading information. He worked as a welder for other employers from September 2011 until he began his current job. He has never held a security clearance.

In a personal subject interview (PSI) in October 2013² and at the hearing, Applicant testified that his firing for providing misleading information occurred because his supervisor did not charge him for vacation time when he came to work late, but he did not notice the overpayments because they were minimal. He believes he was fired

¹ Applicant asked for three weeks to obtain and submit additional evidence. I informed him that I would hold the record open for 15 days, but that I would extend the deadline if he needed more time. (Tr. 84-85.) On October 6, 2014, and again on October 14, 2014, Department Counsel reminded him of the deadline. (HX II.) He did not submit any additional evidence or request additional time to obtain it.

² The summary of the PSI was not authenticated as required by the Directive ¶ E3.1.20. I explained the authentication requirement to Applicant, and he affirmatively waived it. (Tr. 21.)

because he did not report his supervisor's misconduct. (Tr. 77-79.) Applicant's firing is not alleged in the SOR.³

Before Applicant was fired, he was being trained to be a supervisor and was earning about \$23 per hour. He found another job shortly thereafter, earning about \$17 an hour. His current pay is about \$21 per hour. (Tr. 73-75.)

Applicant has never married. He has lived with a cohabitant since April 2012. He has three children, ages seven, five, and one, and he pays \$608 per month in child support for the seven-year-old child. (GX 1 at 22-23; GX 3 at 2-3; Tr. 30.) His cohabitant is not employed outside the home. (Tr. 67.)

The SOR alleges 18 delinquent debts (SOR ¶¶ 1.a-1.r) totaling about \$23,158. All the delinquent debts are reflected on his credit bureau reports (CBRs). (GX 2; GX 4.) In his response to the SOR, he promised to contact his creditors and make payment arrangements for the debts.

The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a, unsatisfied judgment entered in August 2012 for unpaid rent (\$799). Applicant rented an apartment in his name for his mother when she was released from prison. His mother worked for a short time, lost her job, and left the apartment without paying the rent. The judgment is unsatisfied. (Tr. 33-34.)

SOR ¶ 1.b, unsatisfied judgment entered in August 2012 (\$314). In his answer to the SOR, Applicant denied this debt, stating he did not know what it was. He testified that he called the courthouse but could not obtain any information about the judgment by telephone. He has not tried to obtain a copy of the judgment. (Tr. 39-40.) The debt is not resolved.

SOR ¶ 1.c, deficiency from auto repossession in December 2011 (\$7,335). Applicant was stopped by the police for using a cell phone while driving. Because he had no insurance, his vehicle was impounded. He could not afford to buy insurance or pay the impoundment fees, and the vehicle was repossessed. (Tr. 40-42.) The debt is not resolved.

SOR ¶ 1.d, delinquent credit card account referred for collection in November 2007 (\$1,387). Applicant opened this credit card account for his mother, and he was held responsible when she did not pay the amount due. Applicant's April 2014 CBR reflects that the account is disputed. The debt is not resolved. (Answer to SOR; Tr. 43-44.)

³ Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the evidence that Applicant was fired for these limited purposes.

SOR ¶ 1.e, credit union loan, referred for collection in June 2008 (\$5,803). Applicant testified that he borrowed \$5,000 to buy a car. After he made monthly payments for more than the required \$155 for about two years, the lender sent him the car title. He testified that he believed that his debt was satisfied when he received the title, but he admitted at the hearing that he did not keep track of the balance owed on the loan. (Tr. 46-48.) This debt is not resolved.

SOR ¶¶ 1.f, and 1.g, delinquent credit union accounts referred for collection in May and June 2012 (\$1,707 and \$1,199). These debts arose when Applicant overdrew his checking accounts. (GX 3 at 6.) They are not resolved.

SOR ¶ 1.h, delinquent electric bill referred for collection in January 2013 (\$711). Applicant incurred this debt for the apartment he rented for his mother. He testified that he has a payment arrangement to repay this debt at the rate of \$85 per month. He testified that the \$90 debit on his September 2014 bank statement (AX A) is for this debt. He also testified that the payment plan is not in writing, but that he receives a written reminder every month. He promised that he would produce a copy of the monthly reminder within five to seven days after the hearing. (Tr. 35-37.) He did not submit any additional evidence. This debt is not resolved.

SOR ¶ 1.i, cell phone account referred for collection in December 2012 (\$462). Applicant admitted that this debt is not resolved. (Tr. 55-56.)

SOR ¶¶ 1.j, 1.l, 1.m, 1.o, 1.p, medical debts referred for collection in May 2009 (\$333); January 2012 (\$197); March 2010 (\$108); and two debts for \$25, referred for collection in March and June 2012. Applicant incurred these debts when he and his children required medical care. He had no medical insurance. He testified that he had payment plans for these debts but that he had no documentation for his payment plans. (Tr. 57-58.) He testified that the \$108 debt alleged in SOR ¶ 1.m was satisfied by the \$123 debit reflected on his September 2014 bank statement. (AX A; Tr. 58.) He testified that the two \$25 debts alleged in SOR ¶¶ 1.o and 1.p were paid, but that he had no documentation of payment. (Tr. 60.) I conclude that the debt in SOR ¶ 1.m is resolved, but the debts in SOR ¶¶ 1.j, 1.l, 1.o, and 1.p are not resolved.

SOR ¶ 1.k, cell phone account referred for collection in December 2011 (\$299). Applicant testified that he contacted the collection agency and was told that the debt was paid. He stated that he could obtain documentation that the debt was paid. (Tr. 52-54.) However, he did not submit any evidence of payment. The debt is not resolved.

SOR ¶ 1.n, delinquent credit union account referred for collection in March 2012 (\$105). This debt was for an overdraft on a checking account. (Tr. 59.) At the hearing, Applicant presented evidence that his checking account was debited in September 2014 for a \$130 payment to the collection agency for this debt. (AX A.) This debt is resolved.

SOR ¶ 1.q, delinquent cell phone account, referred for collection in February 2014 (\$1,143). Applicant admitted that this debt is not resolved. (Tr. 60.)

SOR ¶ 1.r, collection account for \$1,206, original creditor not identified, with last activity in August 2008. In his answer to the SOR, Applicant denied this debt. At the hearing, he testified that he thought this debt might be related to the credit union debts alleged in SOR ¶¶ 1.f and 1.g. (Tr. 50.) It is not resolved.

Applicant did not file federal and state income tax returns for tax years 2009 through 2012. His failures to file tax returns are alleged in SOR ¶¶ 1.s and 1.t. During his October 2013 PSI, he told the investigator that he could not afford to pay his taxes because his pay was being garnished for child support and other debts. At the hearing, he submitted a copy of his request for tax transcripts that he submitted in November 2013. (AX B.) He did not present any evidence of progress in resolving his delinquent federal and state taxes. As of the date of the hearing, he had not filed any of the required returns. (Tr. 61.)

During his October 2013 PSI, Applicant told the investigator that he was working with a tax professional and a debt consolidation agency. (GX 3 at 4.) However, he submitted no evidence at the hearing to show that he sought or obtained assistance with his delinquent income taxes or received financial counseling.

Policies

“[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his CBRs establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

The following mitigating conditions are potentially relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. The financial irresponsibility of his mother was a circumstance beyond his control. However, he did not act responsibly. Even though he has been employed almost continuously since August 2007, he has not taken any meaningful steps to resolve the debts attributable to his mother. He claims that his loss

of employment was unjustified. Even if it was unjustified, he did not act responsibly because he took no meaningful action to resolve his delinquent debts until he paid two small debts in September 2014. The repossession of his automobile was due to his decision to drive without insurance.

AG ¶ 20(c) is not established. Although Applicant told a security investigator that he intended to consult with a tax professional and a debt consolidation agency, there is no evidence that he did so.

AG ¶ 20(d) is not fully established. Applicant presented evidence that he paid the debts alleged in SOR ¶¶ 1.m and 1.n. He claimed that he made payments on the car loan alleged in SOR ¶ 1.e, and paid the debts alleged in SOR ¶¶ 1.k, 1.o, and 1.p, but he presented no documentary evidence to support his claims. He claimed that he had a payment agreement for the utility bill in SOR ¶ 1.h, but he presented evidence of only one payment and no evidence of an agreement.

AG ¶ 20(e) is not established. The debt in SOR ¶ 1.d is listed on the CBR as disputed, but the record does not reflect the basis for the dispute or its resolution.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant grew up without experiencing a stable family life. Nevertheless, he was able to obtain his GED certificate and enough college credits for certification as a welder. He had a well-paying job with a defense contractor and was on track to become a supervisor until he was fired. He found another job almost immediately but at a lower

pay rate. Although he has been employed almost continuously for seven years, he has not paid attention to his financial obligations. He was candid and sincere at the hearing, but he appears to be unable to translate his good intentions into actions. Throughout the security clearance process, he has been confronted with his financial record, promised to take meaningful action, and has not followed through on his promises.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.l:	Against Applicant
Subparagraphs 1.m-1.n:	For Applicant
Subparagraphs 1.o-1.t:	Against Applicant

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge