



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00923

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

05/08/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges three charged-off accounts totaling \$13,110 and a foreclosed \$225,000 mortgage account. He paid one debt, has an established payment plan on one debt, and received an Internal Revenue Service (IRS) Form 1099-A on his mortgage debt, indicating the fair market value of the foreclosed property was greater than principal outstanding. He provided sufficient documentation showing his progress resolving his financial problems. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 20, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 4) On April 30, 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) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with the 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. (Item 1)

On May 13, 2014, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 3) A complete copy of the file of relevant material (FORM), dated September 3, 2014, was provided to him on September 9, 2014.¹ On September 23, 2014, Applicant responded to the FORM and provided additional mitigating evidence. On April 1, 2015, Department Counsel did not object to my consideration of the additional evidence. On April 27, 2015, the case was assigned to me.

Findings of Fact²

In his Answer to the SOR, Applicant admitted responsibility for the debts in SOR ¶¶ 1.a, 1.b, and 1.d, and he said he believed he paid off the debt in SOR ¶ 1.c. (Item 3) He also provided extenuating and mitigating information. (Item 3) His admissions are accepted as findings of fact.

Applicant is a 42-year-old facilities technician and carpenter, who has worked for a defense contractor since August 2003.³ He has not attended college in the previous 10 years, and he did not disclose any degrees. He never served in the military. In 1997, he married, and his children were born in 1992, 1998, and 2003. There is no evidence of disciplinary problems with his employer, illegal drug use, criminal offenses, or alcohol abuse.

Financial Considerations

Applicant's father-in-law has cancer, and Applicant and his spouse moved into his home to assist him.⁴ Applicant and his spouse had three offers to purchase Applicant's home; however, the offers were too low to cover Applicant's mortgage and equity loan. His mortgage companies refused to accept the offers. The mortgage company in SOR ¶ 1.d foreclosed on his residence.

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated September 4, 2014, and Applicant's receipt is dated September 9, 2014. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

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

³Unless stated otherwise, the source for the information in this paragraph is his September 20, 2013 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 4)

⁴Applicant's response to DOHA interrogatories, SOR response, and FORM response are the sources for the facts in this paragraph.

Applicant's history of delinquent debt is documented in the following exhibits: his September 20, 2013 SF 86; his October 8, 2013 Office of Personnel Management (OPM) personal subject interview (PSI); his February 12, 2014 response to DOHA interrogatories; his September 25, 2013, and his April 11, 2014 credit reports; his SOR response; and his FORM response. (Items 3-7) His SOR alleges three charged-off accounts totaling \$13,110, and a foreclosed \$225,000 mortgage account.

Applicant had a first mortgage for \$225,000 and a second mortgage for \$10,593 (SOR ¶¶ 1.a and 1.d). He unsuccessfully attempted to sell his residence several times. (Item 5) In November 2013, the property went to foreclosure. (Item 5) A 2013 IRS Form 1099-A from the creditor in SOR ¶ 1.d indicates the balance of principal outstanding was \$225,000, and the fair market value of the property was \$252,827. (FORM response) There is no evidence that the creditors in SOR ¶¶ 1.a and 1.d are seeking payment of any deficiency.

On September 10, 2014, the collection company seeking payment on the debt in SOR ¶ 1.b for \$253 wrote that it was paid on May 30, 2014. (Item 5)

SOR ¶ 1.c alleges a bank credit card charged off in the amount of \$2,264. (Item 1) Applicant provided proof that he has been paying \$105 monthly since May 30, 2014. (FORM response) A December 2014 creditor statement indicates the balance owed is \$1,949. (FORM response)

Applicant's personal financial statement (PFS) indicates the following monthly information: gross salary for himself and his spouse of \$8,533; net income of \$5,478; expenses of \$4,130; debt payments of \$1,560; and a negative net remainder of \$212. (Item 5) The monthly payments to address the debts listed on the PFS do not total \$1,560, and it indicates "see 2nd page;" however, the second page of the PFS is missing. (Item 5)

Applicant's April 11, 2014 credit report shows 10 accounts with "closed or paid account/zero balance" indicated. (Item 6) The only derogatory notations on his April 11, 2014 credit report are the four SOR debts; however, the amount for the debt in SOR ¶ 1.c is shown as \$527 rather than \$2,264 as shown in the SOR. (Items 1, 6) There is no evidence of credit counseling.

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 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, OPM PSI, response to DOHA interrogatories, SOR response, and FORM response. His SOR alleges three charged-off accounts totaling \$13,110, and a foreclosed \$225,000 mortgage account. 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;⁵ and

⁵The 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

(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) to 20(c). His financial problems were affected by circumstances largely beyond his control. Applicant's father-in-law has cancer, and Applicant and his spouse needed to move into his home to provide him care and assistance. He paid one debt, has an established payment plan on one debt, and received an IRS Form 1099-A on his mortgage debt, indicating the fair market value of the foreclosed property was greater than principal outstanding.

An Appeal Board decision illustrates the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support to her. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that applicant's debts were unresolved at the time the Administrative Judge's decision was issued. *Id.* at 3. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence⁶ of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation of an applicant who had been sporadically unemployed and lacked the ability to pay his creditors, noting that "it will be a long time at best before he has paid" all of his creditors. The applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

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)).

⁶Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

[T]he Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

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 had to move in to the home of his father-in-law and was unable to sell his residence. His overall credit report has 10 positive entries and 4 derogatory entries. One derogatory entry involved a SOR debt that is now paid and another is a SOR debt that is now in an established payment plan. He acted responsibly under the circumstances by maintaining contact with his creditors,⁷ making payments, and bringing his debts to current status. Although he did not receive financial counseling, there are clear indications that the problem is being resolved and is under control.

AG ¶ 20(d) applies. Applicant admitted responsibility for and took reasonable and responsible actions to resolve three of his SOR debts, establishing some good faith. AG ¶ 20(e) is not applicable. He did not dispute his responsibility for any SOR debts.

In sum, Applicant fell behind on his debts primarily because of his father-in-law’s cancer and need for help in his home. Applicant has made substantial progress and taken reasonable actions to rehabilitate his finances. His efforts are sufficient to mitigate financial considerations security concerns.

⁷“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.

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 42-year-old facilities technician and carpenter, who has worked for a defense contractor since August 2003. There is no evidence of problems with his employer, illegal drug use, criminal offenses, or alcohol abuse. 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. The need to support his father-in-law caused his financial woes. I give Applicant substantial credit for maintaining contact with his creditors, and either paying, establishing payment plans, resolving or bringing all of his delinquent debts to current status, except for one debt.

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 resolve the two remaining debts on his SOR and maintain his financial responsibility.⁸

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.d:	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

⁸Of 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.