



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



In the matter of:)
)
-----) ISCR Case No. 14-01054
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

08/26/2014

Decision

Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges three delinquent credit card debts, totaling \$46,653. Applicant’s spouse suffers from a severe mental illness, and in 2011, she charged numerous purchases on credit cards where Applicant was a cosigner. Over the last three years, Applicant paid and settled numerous debts. He has resolved or is in the process of resolving the last three delinquent debts listed on his SOR. He has established a track record of debt resolution. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On November 5, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On April 30, 2014, the Department of Defense (DOD) 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 Guidelines F (financial considerations) and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked. (HE 2)

On May 18, 2014, Applicant responded to the SOR and indicated he wanted a hearing. (HE 3) On July 14, 2014, Department Counsel indicated he was ready to proceed on Applicant's case. On July 17, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On July 18, 2014, Applicant received email notice of the date of the hearing. (Tr. 15-16) On August 5, 2014, DOHA issued a formal written hearing notice, setting the hearing for August 11, 2014. (HE 1) Applicant's hearing was held as scheduled.¹

At the hearing, Department Counsel offered three exhibits, and Applicant offered five exhibits. (Tr. 25-28, 46-47; GE 1-3; AE A-E) There were no objections, and I admitted GE 1-3 and AE A-E. (Tr. 26, 28-29, 47) On August 15, 2014, DOHA received the transcript of the hearing.

Procedural Issue

Department Counsel moved to withdraw the allegation in SOR ¶ 2.a. Department Counsel indicated Applicant may not have had any debts currently delinquent over 90 days or delinquent over 180 days in the previous seven years at the time he answered, "no" to these two questions on his November 5, 2011 SF 86. (Tr. 18-19, 46) Applicant did not object, and I granted the motion to withdraw SOR allegation ¶ 2.a. (Tr. 19)

Findings of Fact²

In his Answer to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.a-1.c; however, he explained a law firm was resolving the three debts on his behalf. He admitted answering "no" to the question about delinquent debts on his November 5, 2011 SF 86; however, he explained on his SF 86 that he had hired a law firm to resolve his accounts. (HE 3) Applicant emphasized in his SOR response that he believed all of his debts were being resolved by a law firm and were not delinquent. His admissions are accepted as findings of fact.

Applicant is a 63-year-old helicopter mechanic, who has worked continuously for a defense contractor for 18 years. (Tr. 8) In 1970, he graduated from high school, and he has not attended college. (Tr. 7) He served in the Army from 1971 to 1992, and he

¹Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Tr. 15-16)

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

honorably retired from active duty. (Tr. 38-39; GE 2) When he left active duty, he was a first sergeant (E-8) for a special operations unit. (GE 2) He served in combat in the Republic of Vietnam for 11 ½ months from 1971 to 1972 and in Southwest Asia during Desert Shield/Storm in 1991. (Tr. 40) In 1970, he married, and his two children are ages 30 and 36. (Tr. 7; GE 1)

Financial Considerations

Applicant's history of delinquent debt is documented in his credit report, Office of Personnel Management personnel subject interview (OPM PSI), SOR response, and statement at his hearing. Applicant's spouse was responsible for paying the family debts and maintaining the family finances. About three years ago, she informed Applicant that she had spent a large sum of money on eight or nine credit card accounts, and that these accounts were delinquent. (Tr. 48-50) They had about \$54,000 of delinquent credit card debt, and their mortgage was delinquent. (Tr. 48-50) His spouse was unable to explain what she had done to their finances and how she had spent their funds because of her mental illness. (Tr. 51-52)

Applicant's SOR alleges three delinquent credit card debts, totaling \$46,653 as follows: (1) ¶ 1.a (\$28,090); (2) ¶ 1.b (\$2,684); and (3) ¶ 1.c (\$15,879). Applicant's most recent credit report shows a zero balance for the debt in SOR ¶ 1.a and charged-off status. (Tr. 71) The debt in SOR ¶ 1.c may be a duplication of the debt in SOR ¶ 1.a. (Tr. 71) Applicant's credit report shows eight credit card accounts and 12 revolving accounts have been closed or resolved. (Tr. 72-73)

In November 2011, Applicant hired a law firm to determine his responsibility for the delinquent debts on his credit report, and once his responsibility was established, to arrange settlements with his creditors. (Tr. 53-54, 57; AE C) Applicant paid his attorney about \$1,300 monthly for 25 months. (Tr. 59-61; AE E) His attorney told Applicant not to communicate directly with his creditors and to leave the negotiations and communications to counsel. (AE C) Applicant complied with his attorney's recommendations. His attorney asked the creditors to waive some of the interest charges on the debts. (Tr. 54-55) Some of the debts were and are being disputed because of violations of federal law. (Tr. 65-66; AE C) Three debts owed to the same creditor and totaling \$55,000 were resolved. (AE C) Applicant's spouse is no longer responsible for paying the family debts and handling the family finances. (Tr. 55-56) She does not have access to Applicant's bank accounts and credit cards. (Tr. 55-56)

Character Evidence

Applicant's supervisor has known him for five years and has worked closely with Applicant for three years. (Tr. 30) Applicant told him that he was having financial problems because his spouse went on a spending spree. (Tr. 34) He gave Applicant an excellent performance rating. (Tr. 35-36) He described Applicant as having strong integrity and as being diligent, responsible, honest, and reliable. (Tr. 31-33) He rated Applicant as being in the top ten percent of the 26 personnel he supervises. (Tr. 33) He recommended reinstatement of Applicant's security clearance. (Tr. 31-32, 36)

Applicant's deputy program manager indicated Applicant has worked for the same corporation since 1996 and had no disciplinary actions in his personnel file. (AE A) He has a good relationship with other employees. He is punctual, dependable, and professional. (AE A) Another supervisor wrote praising Applicant for his reliability, efficiency, initiative, good moral character, friendliness, and problem-solving ability. (AE B)

Applicant earned numerous Army awards including the following: Meritorious Service Medal (MSM); Army Commendation Medal (ARCOM) (3 OLC); Army Achievement Medal (AAM) (1 OLC); Overseas Ribbons (OSR) (3); National Defense Service Medal (NDSM) (2); NCO Professional Military Education Ribbon (PMER) (3); Armed Forces Expeditionary Medal (AFEM); Army Good Conduct Medal (GCM) (5); Air Medal (3); Vietnam Service Medal (VSM) (w/CS); Vietnam Campaign Medal (VCM); Vietnam Gallantry Cross Unit Citation (VGCUC) w/Palm; Southwest Asia Service Medal (SWASM) with 2 Bronze Service Stars (BSS); and several other awards and ribbons. (AE D, DD Form 214)

Policies

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

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision

should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Analysis

Financial Considerations

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

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." 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 report, OPM PSI, SOR response, and statement at his hearing.

Several of Applicant's debts became delinquent about three years ago when his wife abused their credit cards. In 2011, Applicant had eight or nine delinquent credit card debts and a problem paying his mortgage. Applicant's SOR alleges three delinquent credit card debts, totaling \$46,653. 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 in resolving his debts warrants full application of AG ¶¶ 20(a) to 20(d). AG ¶ 20(e) is not applicable because Applicant's counsel did not provide documented proof to substantiate the basis of the dispute and evidence of actions to resolve the issue. Applicant's spouse's mental illness caused her to obtain and abuse credit cards. Her misuse of credit was the cause of Applicant's financial problems, which is a circumstance largely beyond his control. He settled, paid, or resolved about 20 debts on his credit report. He understands what he must do to establish and maintain

his financial responsibility. Applicant promised to continue to work with his counsel to resolve his SOR debts.³

The Appeal Board explained that circumstances beyond one's control can cause unresolved debt, and are not necessarily a bar to having access to classified information stating:

However, the 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). Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing some good faith.⁴ He established and maintained contact with his creditors through his counsel.⁵ Applicant did not describe any financial counseling; however, there are clear indications the problem is being resolved and is under control. Applicant's financial problems are unlikely to recur; and they do not cast doubt on his current reliability, trustworthiness, or good judgment. His efforts are sufficient to fully mitigate financial considerations security concerns.

³ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

⁴The 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)).

⁵"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 that guideline, but some warrant additional comment.

Applicant is a 63-year-old helicopter mechanic, who has worked continuously for a defense contractor for 18 years. Applicant's supervisor, a coworker, and his deputy program manager lauded his work performance and character for integrity, diligence, responsibility, and reliability. Their statements support reinstatement of his security clearance. Applicant served in the Army from 1971 to 1992, and he honorably retired from active duty as a first sergeant for a special operations unit. He served in combat in the Republic of Vietnam for 11 ½ months and in Southwest Asia during Desert Shield/Storm. He deserves substantial credit for supporting the U.S. Government during his Army active-duty service for 21 years. Applicant earned numerous Army awards including the following: MSM-1; ARCOM-4; AAM-2; OSR-3; NDSM-2; NCO PMER-3; AFEM-1; Army GCM-5; Air Medal-3; VSM w/CS-1; VCM-1; VGCUC w/Palm-1; and SWASM with 2 BSS. He is sufficiently mature to understand and comply with his security responsibilities. There is every indication that he is loyal to the United States, the DOD, and his employer.

Applicant is credited for admitting responsibility for his delinquent debts. Applicant's spouse's mental illness caused her to obtain and abuse credit cards. Her misuse of credit was the cause of Applicant's financial problems, which is a circumstance largely beyond his control. She is no longer allowed access to his bank accounts, and he is not cosigned on any credit cards with her. Applicant paid his counsel about \$1,300 a month for 25 months to resolve his delinquent debts. He settled, paid, or otherwise resolved about 20 debts. The three remaining SOR debts are either resolved or in the process of resolution through his counsel's actions. He has sufficient financial resources to resolve any remaining delinquent SOR debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination). There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant is an intelligent person, and he understands what he needs to do to establish and maintain his financial responsibility. There is simply no reason not to trust him. Moreover, he established a "meaningful track record" of debt repayment. 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. 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.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	Withdrawn

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.

Mark Harvey
Administrative Judge