



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01112

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

09/30/2014

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges three delinquent, collection, or charged-off accounts totaling \$39,559. He failed to provide sufficient documentation of the cause of and progress to resolve his financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 27, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 4) On April 29, 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 preliminary affirmative finding under the Directive that it is clearly consistent with the national interest 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 June 6, 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 July 18, 2014, was provided to him on August 5, 2014.¹ Applicant did not respond to the FORM. The case was assigned to me on September 25, 2014.

Findings of Fact²

In Applicant's SOR response, he admitted responsibility for the debts in SOR ¶¶ 1.a and 1.c. (Item 3) He denied that the debt in SOR ¶ 1.b was delinquent, and he provided some extenuating and mitigating information. (Item 3) Applicant's admissions are accepted as findings of fact.

Applicant is a 41-year-old senior master installer, who has worked for a defense contractor since 2006.³ In 2000, he received an associate's degree. In 2004, Applicant married. He does not have any children.

Applicant served on active duty in the Army from 2002 to 2005. He left active duty as a specialist (E-4), and he received an honorable discharge. He did not describe any periods of his unemployment. There is no evidence of security violations. He disclosed his delinquent mortgage and indicated that he was applying for mortgage assistance. He did not disclose any other delinquent debts, collection, or charged-off accounts.

Financial Considerations

Applicant's credit report and SOR allege three delinquent, collection, or charged-off accounts totaling \$39,559. His spouse's stroke in December 2012, her unemployment, and some expenses related to his father's funeral damaged the family finances.

SOR ¶ 1.a (\$8,326) is a credit card debt that has been placed for collection.⁴ In May 2009, Applicant's father passed away. Applicant put the family travel expenses and

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated July 28, 2014, and Applicant's receipt is dated August 5, 2014. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³ Unless stated otherwise, Applicant's March 27, 2013 SF 86 is the source for the facts in this paragraph and the next paragraph. (Item 4)

⁴Unless stated otherwise, the source for the information in this paragraph and the next two paragraphs is Applicant's SOR response. (Item 3)

funeral costs on his credit card. He reduced the debt from about \$10,000 by making payments. When his spouse's unemployment compensation ended, he stopped making payments. He discussed a payment plan with the creditor; however, he could not afford the payment plan.

SOR ¶ 1.b (\$9,005) is a mortgage account that is 90-days delinquent. His April 9, 2013 credit report indicated his Department of Veterans Affairs (VA) mortgage had been opened in 2009, had a balance of \$204,306, and was 60 days past due in the amount of \$4,580. (Item 5) His February 21, 2014 credit report shows a history of late payments and a past due amount of \$9,005. (Item 7) Applicant made payments for six or seven months and was able to qualify for a mortgage assistance plan. He believes the debt is current. The FORM invited Applicant **"to submit documentation to show that his mortgage is no longer delinquent, when he responds to this filing."** (FORM at 4; emphasis in original)

SOR ¶ 1.c (\$22,228) is a debt owed to a bank. Applicant and his spouse borrowed funds to pay other debts. They were late with payments "on numerous occasions." When his spouse had a stroke in December 2012, he stopped making payments.

Notice to Applicant of Necessity for Additional Information

The FORM states, "Provided he can document the current status of his mortgage, the two other debts remain outstanding. . . . [T]here is no information in the record at this time about his current financial information. In responding to this FORM, Applicant has the opportunity to submit . . . information" about his income and budget. (FORM at 4-5) The FORM suggested Applicant provide evidence of mitigation as follows:

As yet, Applicant provides no documentation of: a) payments being made on any debts; b) verification that any debts have been fully resolved; or c) verification that any debt he denies has been paid, resolved, or is not his responsibility as the Government has alleged. More documentation is needed from Applicant for application of Mitigating Condition 20(d). Applicant is welcome to submit such documentation as to the status of the two remaining debts alleged, if it is available. . . . As noted, he needs to submit documentation of the current status of his mortgage, to support his denial that this debt remains delinquent. (FORM at 7)

Applicant's FORM in its concluding paragraph explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. . . . If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely on this FORM." (FORM at 8-9) Applicant did not respond to the FORM.

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 report and SOR response. Applicant’s SOR alleges three delinquent, collection, or charged-off accounts totaling \$39,559. 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

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to any debts. He did not provide sufficient

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 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)).

information about his finances to establish his inability to make greater progress paying his creditors. Applicant's spouse's stroke and unemployment and some expenses related to his father's funeral damaged the family finances and are circumstances largely beyond his control; however, he did not establish that he acted responsibly under the circumstances. He did not establish how long his spouse was unemployed or the amount the family income was reduced. He presented insufficient evidence about what he did over the last two years to pay his SOR debts.

Applicant did not provide any of the following documentation relating to the SOR creditors: (1) proof of payments such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact with the creditor;⁶ (3) a credible debt dispute; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of his SOR debts. There is insufficient evidence that his financial problems are being resolved, are under control, and will not recur in the future.

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.

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. 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.

⁶ "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.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 41-year-old senior master installer, who has worked for a defense contractor since 2006. In 2000, he received an associate's degree. In 2004, Applicant married. He does not have any children. He served on active duty in the Army from 2002 to 2005. He left active duty as a specialist (E-4), and he received an honorable discharge. He did not describe any periods of his own unemployment. There is no evidence of security violations. He disclosed his delinquent mortgage and indicated that he was applying for mortgage assistance. His spouse's stroke and unemployment and some expenses related to his father's funeral damaged the family finances and are circumstances largely beyond his control.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. His SOR alleges three delinquent, collection, or charged-off accounts totaling \$39,559. He failed to provide sufficient documentation of the cause of and progress to resolve his financial problems. He was well aware of his financial problems, as they were listed in the SOR, and he briefly addressed each debt in his SOR response. His failure to provide more corroborating documentation shows lack of financial responsibility and lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

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. Financial considerations concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information at this time.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge