



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 14-01708
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate financial considerations security concerns. Clearance is denied.

Statement of the Case

On October 15, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 9, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On July 7, 2014, Applicant answered the SOR. On September 13, 2014, Department Counsel was prepared to proceed. On September 29, 2014, DOHA assigned the case to me. On October 16, 2014, DOHA issued a notice of hearing scheduling the hearing for November 5, 2014. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and did not offer any exhibits. I held the record open until November 14, 2014, to afford the Applicant the opportunity to submit documents. Applicant timely submitted AE A through O, which were received into evidence without objection. On November 17, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant admitted SOR ¶ 1.a with an explanation, and denied SOR ¶ 1.b with an explanation. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 27-year-old contract administrator, who has been working for a defense contractor since July 2012. He seeks a security clearance to enhance his position within his company. (GE 1; Tr. 19-20, 25-26, 30.)

Applicant graduated from high school in May 2005. He was awarded a bachelor of science degree in military history in July 2009. (GE 1; Tr. 20.) Applicant is unmarried and has no dependents. (GE 1, Tr. 20.) He was enrolled in the Naval Reserve Officer Training Corps (NROTC) during the four years he attended college until he was involuntarily disenrolled from the program in 2009, discussed *infra*. The primary reason for his disenrollment was failure to pass the physical readiness test. Applicant sought relief from his Defense Finance and Accounting Service (DFAS) debt by appealing to the Commander of the Naval Service Training Command and his local U.S. Senator's office. His efforts were unsuccessful. (GE 1; Tr. 21-22; 42-49; AE A – AE M.)

Financial Considerations

The SOR contains two separate allegations – a charged-off debt to DFAS in the amount of \$90,007, and a charged-off “starter loan” debt from a bank that specializes in serving the military community (bank) for \$15,253. (SOR ¶¶ 1.a and 1.b; Tr. 37.)

As noted, Applicant admitted the \$90,007 debt, which arose from his involuntary disenrollment from NROTC after his senior year in college. He denied the \$15,253 credit card debt stating that he settled this debt for a lesser amount and paid that amount in full, but did not provide documentation of same. (SOR answer; Tr. 24-25, 49-50.)

Applicant's plan to resolve his DFAS debt is to apply at some future date to become an officer in the Navy Reserve and repay his DFAS debt through military service. Applicant has a college friend who recently became a Navy Officer Recruiter who “has found a way for me to get back in the Navy by becoming a reserve officer.” As of his hearing date, Applicant had not applied for a commission. If that plan fails, Applicant stated “I will work with the government in order to pay it via financial means.”

It is Applicant's understanding that he could repay his obligation to DFAS through six years of Navy service. (SOR answer; Tr. 22-23.) Currently, DFAS is collecting Applicant's \$90,007 debt through involuntary recoupment from his federal income tax refunds. As of the hearing date, DFAS had recouped two of Applicant's federal income tax return refunds and applied them to his debt. Applicant estimated the first year's return was \$800 and the second year's return was \$1,556. As of the hearing date, he had not contacted DFAS to set a payment plan. Nor did Applicant submit any post-hearing documentation of having contacted DFAS. (Tr. 33-36, 45-46, 49-50, 56-57; AE O.)

Applicant received \$25,000 as a starter loan from the bank in his junior year and estimated that he had used "probably 30 to 40 percent" of that loan by graduation. He stated that this debt was paid off; however, the bank was "still holding \$15,000 on my credit ... due to \$60 which was paid in fines because of overdrafts on the account." Applicant stated he sent the bank a check, but the check was returned to him because they could not locate his account number. He settled the amount owed for \$15,000 and claimed he paid this amount. As noted, Applicant did not provide documentation of payment nor did he submit documentation of payment post-hearing. (Tr. 37-42, 49-52.)

Applicant has not sought financial counseling. (Tr. 41.) His post-hearing budget reflects a gross monthly salary of \$4,052, a net monthly salary of \$2,835, and a net monthly remainder of \$855. (AE N.)

Character Evidence

Applicant's NROTC Midshipman Evaluation Report and Counseling Records and counseling records are favorable apart from the problems he encountered primarily as a result of his physical readiness test during his senior year in college. (Tr. 26-32; AE H.)

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

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 financial considerations 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 established by the evidence presented. The Government established disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations 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.

None of the mitigating conditions are fully established. Applicant’s two delinquent debts have been ongoing for several years. Despite having been put on notice of the Government’s concerns regarding his finances, the action he has taken to address those concerns is insufficient to address those concerns. Although he has good intentions and claims that he wants to repay his DFAS debt, his plan to join the Navy reserve at some future date and repay his debt by military service is too attenuated as a viable resolution. Additionally, Applicant has not contacted DFAS to negotiate a settlement or payment plan which would have served as a sign of good faith.

Furthermore, with regard to the bank debt, Applicant claims to have settled this debt and that documentation of same was available and forthcoming. He did not submit the documentation as he represented and I am therefore unable to give him credit for resolving this debt. In short, Applicant provided insufficient evidence to mitigate his debts.¹

¹“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

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). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's employment as a Government contractor weighs in his favor. He is a law-abiding citizen and contributes to the national defense. Apart from his SOR debts, there is no evidence to suggest that he is not current on his day-to-day expenses.

A security clearance adjudication is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. June 21, 2010.) An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

However, Applicant's inability to address a significant debt to the U.S. Government or provide documentation of a debt that he claims is settled precludes a favorable decision. I am mindful of the circumstances that led to his financial difficulties. Applicant was unable to sufficiently address the security concerns raised as a result of an inability or unwillingness to resolve his significant debt.

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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. For the reasons stated, I conclude he is not eligible for access to classified information.

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 and 1.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Clearance is denied.

Robert J. Tuider
Administrative Judge