



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



In the matter of:)
)
) ISCR Case No. 14-02152
)
Applicant for Security Clearance)

Appearances

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

08/24/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On July 31, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to continue Applicant's security clearance. On October 27, 2014, Applicant answered the SOR and requested a hearing. On March 4, 2015, Department Counsel amended the SOR by adding allegations. Applicant answered the SOR amendment on March 19, 2015. The case was assigned to me on March 30, 2015. The Defense Office of

Hearings and Appeals (DOHA) issued a Notice of Hearing on April 24, 2015, and the hearing was convened as scheduled on May 12, 2015.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 7. Applicant testified and offered Applicant's Exhibits (AE) A through W. The record of the proceeding was left open until May 26, 2015, to provide Applicant the opportunity to submit additional documents. He timely submitted documents that were marked as AE X through AA. The record was reopened from August 10-17, 2015, to provide Applicant an opportunity to respond to questions and submit additional matters. He provided responses to the questions and additional matters that were marked as AE AB through AE. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 20, 2015.

Findings of Fact

Applicant is a 51-year-old aircraft mechanic who has been working for a defense contractor since 2005. He graduated from high school in 1981 and attended college for two years to earn a professional license. He served on active duty in the U.S. Air Force from 1981 to 1991 and in the Air National Guard from 1991 to 2005. He has been married twice. He married his current wife in 1994. He has four adult children and three adult stepchildren. He has held a security clearance since about 1981.¹

As amended, the SOR alleged that Applicant had 11 delinquent debts, totaling about \$40,000 (SOR ¶¶ 1.a-1.i). In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings of fact.²

Applicant attributed his delinquent debts to his wife's medical problems. She was unable to work after her medical issues began in about 2004. He took a job overseas to earn additional money. She eventually joined him overseas after some of her medical problems were resolved. They continued to maintain a home in the United States so that their daughter could reside there with her two children. He indicated that he supported his daughter because she was in an abusive relationship. Applicant spent between \$800 and \$1,200 per month to maintain the home in the United States for his daughter and her children. He also noted that the father of his daughter's children was in prison at some point.³

¹ Tr. 6-8, 16-17, 130-132; GE 1, 2; AE J.

² Applicant's Answer to the SOR.

³ Tr. 65-70, 109-114, 122-130; GE 1, 2; AE U. In August 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) that reflected he had financial problems because his wife was ill and could no longer work. He said he was working with an attorney to resolve these matters and hoped to have everything cleaned up within the next year. A credit report dated August 18, 2007, reflected that Applicant had three judgments against him and nine collection accounts with past-due balances. Several of the collection accounts had dates of last activity that predated 2004. None of the delinquent debts on the 2007 credit report appear to correlate to the debts alleged in the SOR. See GE 6 and 7. Of note, delinquent debts not alleged in the SOR will not be considered in applying the

Applicant testified that his overseas job unexpectedly ended when his company's contract terminated. He had thought that he would be working overseas for a much longer period and purchased vehicles believing his income would remain the same. When the contract ended, he attempted to remain in that overseas job with the new contractor, but was not able to do so. He moved back to the United States and continued to work for the company that he worked for overseas. He was required to pay for the expenses of shipping his household goods back to the U.S. and for the cost of his wife's return flight. He earned substantially less in the U.S. than he earned overseas. While overseas, his company provided him housing and treated the housing costs as taxable income to him. After he returned from overseas, his company continued to credit him with receiving overseas housing benefits even though he was no longer receiving those benefits, which created problems with his taxable income for 2014.⁴

SOR ¶ 1.a – unpaid federal taxes in the amount of \$10,000. This debt was for past-due taxes for 2008, 2010, and 2011. The total amount of this indebtedness was \$16,310. Applicant apparently did not have sufficient tax withholdings taken from his pay for the years in question. He testified that he contacted the IRS about the tax deficiency, but was unable to resolve the matter while overseas. He also indicated that he did not file his federal income tax returns for 2008, 2010, and 2011 until he returned from overseas. On March 21, 2014, the IRS issued a Notice of Levy of Wages to his employer for the past-due taxes. Around that time, his tax withholdings were also involuntarily increased. The IRS apparently thought he was still working overseas, when he was working in the United States and earning much less than he did while overseas. The combination of the tax levy and increased tax withholdings significantly reduced his take-home pay, limited his ability to address his bills and other debts, and resulted in an overpayment of his 2014 taxes. From that overpayment, Applicant's 2008, 2010, 2011, and 2012 past-due tax obligations were resolved, plus he received a tax refund of \$12,405 for 2014.⁵

SOR ¶ 1.b and 1.c – collection accounts for \$250 and \$426, respectively. These were his wife's medical debts. Shortly before the hearing, Applicant entered into a repayment agreement for those debts. Under that agreement, he was to make \$150 payments from May through August 2015 and a \$76 payment in September 2015 to resolve these debts. After the reopening of the record in August 2015, Applicant provided proof that he made payments of \$150 in May and June and a payment of \$76 in July. As discussed below, these debts are now enrolled in Applicant's debt settlement plan that is scheduled to begin in September 2015.⁶

disqualifying conditions, but may be considered for assessing Applicant's credibility, evaluating the mitigating conditions, and applying the whole-person concept.

⁴ Tr. 68-70, 105-110; GE 3; AE J, W; Applicant's Answer to the SOR.

⁵ Tr. 51-73; GE 2, 3; AE I, K; Applicant's Answer to the SOR.

⁶ Tr. 73-77; GE 2, 4; AE G, AC; Applicant's Answer to the SOR.

SOR ¶ 1.d – collection account for \$1,073. This debt involves a lease that Applicant signed for his sister. In 2004, his sister became ill, could no longer work, and became homeless. While awaiting disability benefits, she needed a place to live. Applicant cosigned a lease for her. The lease was renewed a number of times. In 2012, she broke the lease to move to another state to assist her daughter with an unspecified issue. About two months before the hearing, Applicant contacted the creditor in an attempt to settle this debt, but could not reach an agreement with the creditor. He indicated that he made arrangements with his sister for her to take care of this debt and stated she made some payments to reduce the debt to about \$800. He testified that he contacted the creditor to obtain a document showing the payments, but the creditor refused to provide such a document until the debt is paid. After the reopening of the record, Applicant provided receipts that showed regular \$25 monthly payments have been made on this debt since December 2014. This debt is now enrolled in Applicant's debt settlement plan that is scheduled to begin in September 2015. This debt is a duplicate of the debt alleged in SOR ¶ 1.g.⁷

SOR ¶ 1.e – collection account for \$117. This was a medical debt. Applicant provided a receipt showing he paid this debt in January 2013.⁸

SOR ¶¶ 1.f and 1.j – accounts past due for \$961 and \$311, respectively. These are credit card accounts that had balances of \$10,743 and \$8,228, respectively. His ability to pay these accounts was negatively impacted by the IRS levy and tax withholdings. He provided no proof of payments on these delinquencies. He testified that he was planning to address both accounts through a debt management plan. After the record reopened, Applicant provided documentation showing the debt in SOR ¶ 1.f is enrolled in a debt settlement plan that is scheduled to begin in September 2015. The debt in SOR ¶ 1.j is not listed in that plan. Applicant's intentions concerning the debt in SOR ¶ 1.j are unknown.⁹

SOR ¶ 1.g – delinquent account for \$1,073. This debt is a duplicate of the debt in SOR ¶ 1.d. I find for Applicant on this allegation.¹⁰

SOR ¶ 1.h – delinquent account for \$211. This is a utility debt for a house Applicant maintained in another state for his daughter. He was unaware of this debt until he received credit reports from Department Counsel. He contacted the creditor and made arrangements to pay \$50 per month until the debt is resolved. The first payment

⁷ Tr. 77-82; GE 2, 4, 5; AE A, AC; Applicant's Answer to the SOR.

⁸ Tr. 82-83; GE 2, 4, 5; AE F; Applicant's Answer to the SOR.

⁹ Tr. 83-88; 93-97; GE 2, 4, 5; AE E, AC; Applicant's Answer to the SOR.

¹⁰ Tr. 88-89; GE 4, 5.

was to have been withdrawn from his bank account on the date of the hearing. No proof of payment was provided in his post-hearing submissions.¹¹

SOR ¶ 1.i – delinquent account for \$85. This is a medical debt. Applicant testified that he would gladly pay this debt if he could identify the creditor. He indicated that he searched the Internet and made several calls to medical groups, but could not identify the creditor.¹²

SOR ¶ 1.k – charged-off account for \$9,892. This was a vehicle loan that became delinquent when Applicant returned to the United States and his income was dramatically reduced. He testified that he made a \$5,000 payment toward this debt after he received his income tax refund for 2014. He provided a document from a collection agency dated May 7, 2015, showing the balance had been reduced to \$4,412 and indicating the creditor agreed to accept monthly payments of \$476 until this debt was resolved. He testified that he was able to make those monthly payments. In his post-hearing submission, he provided a budget that reflected a \$475 monthly car payment, but he provided no proof of the monthly payments.¹³

SOR ¶ 1.l – charged-off account for \$15,640. This debt was a vehicle loan that was opened in June 2012. Following his return from overseas, he had a difficult time making the payments. He advised the creditor that he was planning to sell this vehicle and thought that after the sale he would have a balance of only a few thousand dollars. He indicated the creditor claimed that it could sell the vehicle for a higher amount. He turned over the vehicle to the creditor and later received a bill for the amount listed above. He believed that he was totally misled by the creditor. At the hearing, he provided a letter from a collection agency indicated they could settle this debt for \$7,821 in 12 monthly payments. This debt is now enrolled in Applicant's debt settlement plan that is scheduled to begin in September 2015.¹⁴

In his Office of Personnel Management (OPM) interview in April 2014, Applicant was questioned about many of the alleged debts and indicated that he would resolve them within the next 90 days. At the hearing, he testified that he has received credit counseling and obtained second and third jobs so that he could earn additional money to pay his debts. In his post-hearing submission, he provided a budget that reflected his monthly income was \$4,397 and his monthly expenses were \$3,833, which left him a net monthly remainder of \$564.¹⁵

¹¹ Tr. 89-93; GE 5; AE V; Applicant's Answer to the SOR.

¹² Tr. 93; GE 5; Applicant's Answer to the SOR.

¹³ Tr. 97-102; GE 5; AE B, C, H; Applicant's Answer to the SOR.

¹⁴ Tr. 102-105; GE 5; AE D.

¹⁵ Tr. 85-88, 103-130; AE J, L, M, N, P, Y.

Applicant's post-hearing budget also reflected that he was paying \$663 monthly to a debt management company. In a marginal note on the budget, he indicated that the debt management program was for debts that appeared to correlate to the debts alleged in SOR ¶¶ 1.b, 1.c, 1.f, 1.j, and 1.l. Based on that submission, I reopened the record to provide Applicant an opportunity to submit documentation establishing the debt management program existed, confirm the debts in that program, and receive credit for the payments he made under that program in the three months that elapsed following the hearing.¹⁶

In response to the reopening of the record, Applicant failed to provide any documents showing the debt management plan existed or that he made any payments under such a plan. Instead, he provided an application for a debt settlement program dated August 13, 2015, which notably was after he was notified the record was reopened. The application reflected that Applicant's monthly income was \$4,397 and his monthly expenses were \$3,705. The debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, and 1.l are listed in that program. The total amount of the debts listed in the program was \$27,344. Applicant is scheduled to make a setup fee payment of \$390 on September 14, 2015, and to start making monthly payments of \$451 in October 2015 that will continue until the program is finished. The payments are to be made by automatic withdrawals.¹⁷

A company official indicated that Applicant's performance reviews reflected that he has always met or exceeded performance expectations and has not had any disciplinary problems. He has received various spot awards for his work performance. Coworkers provided letters of reference that indicated Applicant was a dedicated employee who is a knowledgeable manager and team player.¹⁸

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁶ Tr. 85-88, 103-130; AE J, L, M, N, P, Y.

¹⁷ AE AC.

¹⁸ Tr. AE J, O, Q-AA.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, in reaching a decision.

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 of 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), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 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

Guideline F, Financial Considerations

The security concern for this guideline is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that he was unable or unwilling to pay for an extended period. The evidence is sufficient to raise the above disqualifying conditions.

Four 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In about 2004, Applicant wife's suffered from medical problems that precluded her from working. The loss of her job significantly reduced their income. Applicant obtained a job overseas to earn greater income. His overseas job terminated unexpectedly when his company lost the contract. He incurred expenses in returning from overseas and his income upon returning to the United States is substantially less than what he earned overseas. He also supports his daughter and her family because she was in an abusive relationship. While these events were conditions beyond his control that contributed to his financial problems, he does not merit full credit under AG ¶ 20(b) because he failed to

show that he has acted responsibly under the circumstances. Specifically, he failed to show that he has been making regular payments towards the delinquent debts even though he had about \$690 to \$1,200 in discretionary income per month.¹⁹

Applicant paid the \$117 debt in SOR ¶ 1.e in January 2013. AG ¶ 20(d) applies to that debt. He paid \$5,000 of his 2014 tax refund toward the debt in SOR ¶ 1.k, and either he or his sister made regular \$25 payments toward the debt in SOR ¶ 1.d since December 2014. AG ¶ 20(d) applies to the payments toward the debts in SOR ¶¶ 1.d and 1.k. AG ¶ 20(d) does not apply to the resolved tax debt in SOR ¶ 1.a because that debt was not resolved by Applicant's "good-faith" efforts, but only after the IRS issued a levy of wages and involuntarily raised his tax withholdings. AG ¶ 20(c), however, applies to the resolved tax debt.

Applicant has made a number of unfulfilled assertions about how he would address the delinquent debts. In his OPM interview, he said he would resolve the discussed delinquent debts within the next 90 days, but failed to do so. At the hearing, he claimed he entered into repayment plans for some of the debts, but did not establish that he followed through on those plans. In his post-hearing submission, he provided a budget showing he was paying \$663 a month on a debt management plan. The record was reopened to provide him an opportunity to submit proof of the debt management plan and the associated payments. He failed to provide that proof, but instead provided documentation of a debt settlement plan that is scheduled to start in the future. Based on his failure to establish a meaningful track record of payments toward his delinquent debts, I am not convinced that Applicant will follow through with the proposed debt settlement plan.

From the record evidence, I am unable to find that Applicant's financial problems are under control, are being resolved, and are unlikely to recur. His delinquent debts cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

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 relevant 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

¹⁹ The discretionary income figures are derived from his monthly budget (AE X) and his debt settlement program (AE AC). The budget reflected that he had a net monthly remainder of \$564 and also incorrectly indicated that he was paying \$663 a month on a debt management program. Those figures added together total \$1,227.

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.

My comments under Guideline F are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant served about 23 years in the military. He is a valued employee. He has held a security clearance for many years. Nevertheless, his financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns under the financial considerations guideline.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b -1.c:	Against Applicant
Subparagraphs 1.d -1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant

Decision

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

James F. Duffy
Administrative Judge