



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



In the matter of:)
)
-----) ISCR Case No. 14-02164
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges one delinquent mortgage account for \$173,000. The debt was resolved through a short sale. He received the Internal Revenue Service (IRS) forms 1099-A and 1099-C from his mortgage creditor, and he filed appropriate documents with the IRS. All of his debts are current. He established he is financially responsible, and financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On May 10, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1) On October 8, 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) as revised by the Under Secretary of Defense for Intelligence on August 30, 2006, which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (HE 2) The SOR detailed reasons why DOD CAF 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. (HE 2)

On June 3, 2014, Applicant responded to the SOR. (HE 3) On December 15, 2014, Department Counsel was prepared to proceed. On December 18, 2014, DOHA assigned the case to me. On January 7, 2015, DOHA issued a notice of the hearing, setting the hearing for January 14, 2015. (HE 1) The hearing was held as scheduled. Applicant waived his right to 15 days of notice of the date, time, and place of the hearing. (Tr. 18-19) Department Counsel offered four exhibits into evidence, which were admitted without objection. (Tr. 22-24; GE 1-4) Applicant offered 18 exhibits into evidence, which were admitted without objection. (Tr. 25-31; AE A-R) I received the transcript of the hearing on January 23, 2015.

Findings of Fact¹

In Applicant's SOR response, he admitted that at one time he owed the debt in SOR ¶ 1.a; however, he denied responsibility for it because it was resolved. Applicant also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 38 years old, and he has worked for a defense contractor since April 2012. (Tr. 7, 10, 36-37) In 1995, he graduated from high school, and in 1999, he was awarded a bachelor's of science degree in hazardous materials management. (Tr. 7-8) In 2000, he received a master's degree in environmental management. (Tr. 7-8) He has never served in the military. (Tr. 8) Applicant married in 2012, and he has two children who are three years old and two years old. (Tr. 9) He was issued a security clearance in June 2012. (Tr. 37)

Financial Considerations

In February 2010, Applicant was involved in a near-fatal automobile accident. (Tr. 31) He sustained a serious brain injury; he spent a month in the hospital; and then he needed a lengthy period to heal. (Tr. 32) He chose not to sue the trucking company that owned the truck that caused the accident. (Tr. 32-36)

The SOR alleges that Applicant owed \$12,061 on a principal balance of about \$173,000 for a mortgage. (SOR ¶ 1.a) In 2007, Applicant purchased a residence in state M for \$173,000. (Tr. 40-41) The mortgage was for about \$155,000. (Tr. 43) In 2010, Applicant moved from state M to state O, and in 2011, he purchased a residence in state O for \$170,000. (Tr. 43-45) In 2011, he listed his state M residence for sale. (Tr.

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

47) He spent \$8,000 to improve the property for the sale. (Tr. 48) Applicant was unemployed from January 2012 to April 2012. (Tr. 37-38) In February 2013, he wrote the creditor holding the mortgage on the state M property and described his efforts to sell the property, and he explained his financial situation. (Tr. 50-52) He told the creditor that he was unable to make payments on the mortgage. (Tr. 50-52) He told his security officer about defaulting on his state M mortgage. (Tr. 52) The state M property was sold in a short sale for \$141,635 in August 2013. (Tr. 55) He received a 1099-A and 1099-C from the creditor. (Tr. 61; AE A-D) The difference between the mortgage, interest costs, transfer costs, and sales price was about \$25,000. (Tr. 55) Applicant filed the necessary documents with the IRS to address a paper savings of \$22,205 for Applicant on the transfer of the state M property. (Tr. 57-59, 80; AE A-D)

Applicant is current on his state O mortgage, spouse's student loans, vehicle loan, state and federal taxes, credit cards, and other debts. (Tr. 45, 62-73; AE F, G, I) He has no delinquent debts. (Tr. 62-73) He generated a budget. (Tr. 69-70; AE P)

Applicant received positive evaluations from his employer. (Tr. 75; AE Q, R) He helped his employer successfully accomplish their mission. (Tr. 75-76) He described himself as a trustworthy and responsible person, who contributes to his company. (Tr. 77)

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, his SOR response, and hearing record. His SOR alleges a delinquent mortgage account for about \$173,000. He was unable to pay his

state M mortgage as agreed, and 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;² 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

²The 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)).

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 debts warrants full application of AG ¶¶ 20(a) to 20(d). His financial problems were affected by circumstances largely beyond his control. Applicant was seriously injured in an accident, was unemployed, and needed to move to state O.

Once he was employed, he ensured all of his debts were current or resolved. Applicant is current on his state O mortgage, spouse’s student loans, vehicle loan, state and federal taxes, credit cards, and other debts. He has no delinquent debts. He generated a budget.³ He acted responsibly under the circumstances by maintaining contact with his creditors,⁴ making payments, and bringing or maintaining his debts in current status. Although he did not receive financial counseling, there are clear indications that the problem has been resolved and is under control. Applicant’s delinquent debt “occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on [his] current reliability, trustworthiness, or good judgment.”

The Appeal Board, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009), explained that a delinquent debt was 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).

³ 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)).

⁴“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.

Applicant admitted responsibility for and took reasonable and appropriate actions to resolve his SOR debt, establishing his good faith. AG ¶ 20(e) is not applicable. Applicant did not dispute his responsibility for any debts. Applicant has done all that is reasonably possible for him to do to establish his financial responsibility. His efforts are sufficient to fully mitigate financial considerations security concerns.

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 38 years old, and he has worked a defense contractor since April 2012. In 1999, he was awarded a bachelor's of science degree in hazardous materials management, and in 2000, he received a master's degree in environmental management. He is sufficiently mature to understand and comply with his security responsibilities. He deserves some credit for volunteering to support the U.S. Government as an employee of a contractor. He received good evaluations for his work for his employer. There is every indication that he is loyal to the United States and his employer. His financial problems were affected by circumstances largely beyond his control. He was seriously injured in an accident, was unemployed, and needed to move to state O. I give Applicant substantial credit for maintaining contact with his creditors, establishing payment plans, resolving his delinquent mortgage and filing the resolution documentation with the IRS, and either paying or bringing all of his debts to current status.

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 resolution. I am confident he will continue to pay his debts and 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, 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
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge