



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 14-02455
)	
Applicant for Security Clearance)	

Appearances

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

11/26/2014

Decision

TUIDER, Robert J., Administrative Judge:

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

Statement of the Case

On October 29, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On August 6, 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 August 22, 2014, Applicant answered the SOR. On September 23, 2014, Department Counsel was prepared to proceed. On September 29, 2014, the case was assigned 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 offered Applicant Exhibits (AE) A through H, 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, and denied SOR ¶¶ 1.b and 1.c. with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 50-year-old principal radio frequency engineer, who has been employed by a defense contractor since June 2008. He seeks a security clearance to enhance his position within his company. Applicant held a security clearance from 1997 to 1999 during previous employment. (GE 1, Tr. 19-21.)

Applicant was awarded a bachelor of science degree in electrical engineering in December 1995. He completed several graduate level classes towards a master's degree, but did not complete the program. (GE 1, Tr. 21-23.) He served in the U.S. Marine Corps from December 1983 to February 1984, and received an entry level separation. (GE 1, Tr. 25.)

Applicant was married from September 1996 to November 2011, and that marriage ended by divorce. Applicant has a 13-year-old daughter from that marriage and pays his former wife \$1,200 in child support and \$2,800 in spousal support monthly, for a total of \$4,000 per month. His spousal support will decrease to \$1,000 per month in November 2015. Child and spousal support will end when his daughter turns 18 years old or graduates from high school, whichever occurs later. His former wife works full-time at a child care facility. Applicant also has two daughters, ages 28 and 23, from two previous relationships. Applicant remarried in March 2012 and has two stepdaughters, ages 13 and 9. His wife works as an instructional assistant for a local elementary school. (GE 1, 23-25, 38-41.)

Financial Considerations

The SOR alleges three debts totalling \$23,547 – SOR ¶ 1.a – a collection account for a home improvement loan for \$20,196; SOR ¶ 1.b – a collection account owed to a previous landlord for \$2,380; and SOR ¶ 1.c. a collection account owed to a cable company for \$971.

Applicant took out a home improvement loan in 2005 to make upgrades and improvements to his former home. He was unable to recoup his improvement investments when the home short sold in August 2010. Applicant has taken the position that he will not settle the debt until the creditor produces a “paper trail so I can see that they have their documentation” with a breakdown of costs. Applicant stated that his last

communication with the creditor was on the telephone in March 2014. **DEBT NOT RESOLVED.** (GE 2, GE 3, Tr. 25-32, 42-47, 64-66.)

Applicant's debt with his former landlord stems from purported damages and clean-up costs incurred when he vacated his apartment in August 2009. Applicant stated that he left his apartment in good condition and his landlord disagreed. The original amount owed was \$700, but increased to the current amount of \$2,380 after his account was turned over to collections. Applicant stated that his last communication with the creditor was on the telephone in June 2013. **DEBT NOT RESOLVED.** (GE 2, Tr. 32-35, 47-58.)

Applicant's debt with his former cable company stems from his failure to return cable equipment in 2008 when he vacated his home. He stated that the cable company was supposed to send him a box with a preaddressed label to return the equipment, but never did. The original amount owed was \$300, but increased to the current amount of \$971. Applicant stated that his last communication with the creditor was on the telephone "at least a year" ago. **DEBT NOT RESOLVED.** (GE 2, Tr. 35-38, 58-64.)

During Applicant's Office of Personnel Management Personal Subject Interview (OPM PSI) in December 2013, he stated these financial issues are not characteristic of him and it embarrasses him to be in this position. He stated that he would resolve these debts even if it meant that he had to pay the debts in full in order to clear up his credit report. (GE 2.) In his August 2014 SOR answer, he stated that he was still trying to resolve his debts and stated these debts "are due to disputes, not irresponsibility." (SOR answer.)

Applicant provided no documentation to demonstrate efforts to resolve his long, ongoing debts with these three creditors. Applicant's annual gross salary is \$125,000 per year and his wife's annual gross salary is \$20,160¹, for a total combined annual gross salary of \$145,160. (Tr. 67.)

Character Evidence

Applicant submitted two favorable performance appraisals covering the timeframe of 2012 to 2014 as well documentation reflecting a 2013 salary increase and a 2014 bonus. He also submitted three favorable personal reference letters. The authors of these letters collectively speak very highly of Applicant and recommend him for a security clearance. (AE B – 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

¹Applicant's wife's salary is based on his testimony in which he stated that her gross income was \$420 per week. (Tr. 67.)

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 disqualifying conditions that apply and 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 reports, e-QIP, OPM interview, and SOR response.

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 three delinquent debts have been ongoing for several years. Despite having been put on notice of the Government's concerns regarding his finances, he has done little to address those concerns. Although he has good intentions and claims that he wants to resolve his debts, which he characterizes as disputes, he has done little to do so. Applicant's promises to regain financial responsibility ring hollow in light of his having stated that he would address his debts during his December 2013 OPM PSI and in his August 2014 SOR answer. Furthermore, Applicant failed or was unable to provide any documentation at his hearing of efforts to resolve his SOR debts. In short, Applicant provided insufficient evidence to mitigate his debts.²

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.

²“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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

