



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02594

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

09/11/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges 12 delinquent or collection accounts and one judgment totaling \$19,328. He paid one \$188 SOR debt in 2014, and he has not made any payments to SOR creditors in 2015. He disputed one debt for \$210. He failed to provide sufficient documentation of his progress in resolving his financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 21, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On July 28, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (HE 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly

consistent with the national interest to grant Applicant access to classified information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, revoked, or denied. (HE 2)

On April 16, 2015, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On June 27, 2015, Department Counsel was prepared to proceed. On July 23, 2015, Applicant's case was assigned to me. On August 5, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing setting the hearing for August 20, 2015. Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 14-15) Department Counsel offered four exhibits into evidence, and Application offered one exhibit into evidence. (Tr. 17-19, GE 1-4; AE A) There were no objections and all exhibits were admitted into evidence. (Tr. 18-20; GE 1-4; AE A) On August 28, 2015, DOHA received the transcript of the hearing.

Findings of Fact¹

In Applicant's SOR response, he admitted SOR debts ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.i.² He denied the other SOR debts, and he provided extenuating and mitigating information as part of his SOR response. Applicant's admissions are accepted as findings of fact.

Applicant is a 34-year-old logistics analyst, who has worked for a large defense contractor for the previous five years, except the period from 2011 to 2013, when he worked for another employer. (Tr. 6-7, 21-22, 29, 32-35) In 1999, he graduated from high school. (Tr. 6) He has never been married, and he does not have any children. (Tr. 7-8) He is the guardian of his 30-year-old sister and 7-year-old nephew. (Tr. 8) He has never served in the military. (Tr. 6) There is no evidence of security violations, abuse of alcohol, or use of illegal drugs. (GE 1; GE 2)

Financial Considerations

In 2006 or 2007, Applicant was admitted as a hospital inpatient for assessment of his severe back pain, and while in the hospital, he had heart problems. (Tr. 23-24, 27; Ex. 2) From September 2007 to April 2009, he was self-employed in construction and photography. (Tr. 28) In April 2009, he began employment with his current employer, and his starting annual salary was \$50,000. (Tr. 29-30) By 2010, his annual salary was increased to \$60,000. (Tr. 31) In 2012, he was unemployed for six months from his primary employment, and he stayed busy with part-time employment. (Tr. 31-32, 36) His salary from the government contractor from 2014 to 2015 has been \$59,000 annually. (Tr. 34, 71) For the past five years, he has supported his sister, who has medical problems, and his nephew. (Tr. 36, 39) His sister receives social security disability

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

²The source for the information in this paragraph is Applicant's SOR response. (HE 3)

payments. (Tr. 39) He also provided financial support to his mother, who had medical problems until she passed away. (Tr. 40, 65)

On February 21, 2011, Applicant disclosed the debts in SOR ¶¶ 1.a, 1.e through 1.h, and 1.l on his SF 86. (Tr. 51; GE 1) During his March 30, 2011 Office of Personnel Management personal subject interview (OPM PSI), Applicant discussed the SOR debts, and he told the OPM investigator that he “has contacted all creditors to set up a payment plan now that he has a stable job and income. [Applicant] is awaiting paperwork from each creditor so that he can get all delinquent bills caught up and paid.” (GE 2, OPM PSI at 3)

In 2012, a credit union obtained a judgment against Applicant for \$4,557. (SOR ¶ 1.a) Applicant said he purchased something like lapse insurance, which would pay for the lien on the vehicle if he was ill or unemployed. (Tr. 52-53) His vehicle was repossessed in 2005 or 2006. (Tr. 54-56) Ultimately, he decided he would pay other debts and bills and not to pay this debt until he had more funds available. (Tr. 53) He has not responded to correspondence received from the creditor. (Tr. 56-57)

Applicant accepted responsibility for the \$1,840 debt in SOR ¶ 1.b, which resulted when he broke a lease for an apartment in 2011 or 2012. (Tr. 42-44, 48) He most recently communicated with the creditor in 2012, when the creditor asked for payment in full. (Tr. 43) He did not make any payments to the creditor after he broke the lease.

Applicant’s \$188 utility debt in SOR ¶ 1.c related to the apartment lease he broke in 2011 or 2012. Applicant said he paid his \$188 utility debt in 2014; however, he did not have any documentation showing payment with him at his hearing. (Tr. 45-47) He has service from the utility, and the utility debt is mitigated. (Tr. 47)

Applicant disputed his responsibility for the debt in SOR ¶ 1.d for \$210 because he believed the debt was his mother’s responsibility. (Tr. 57-58; HE 3) In 2014, he contacted the creditor and disputed the debt, and he noted that it was not on his April 13, 2015 credit report. (Tr. 58; AE A)

The SOR includes seven medical debts totaling \$5,069 as follows: ¶ 1.e for \$422; ¶ 1.f for \$855; ¶ 1.g for \$157; ¶ 1.h for \$288; ¶ 1.i for \$28; ¶ 1.j for \$35; ¶ 1.k for \$1,318, and ¶ 1.m for \$1,966. In 2007, Applicant was admitted to the hospital for five days and medical bills totaling about \$30,000 were generated during the treatment of his heart and back. (Tr. 59-60) He did not have medical insurance. (Tr. 60) When he was in the hospital, he completed documentation asking for relief from the debt. (Tr. 60-61) Two of the seven debts appear on his April 13, 2015 credit report: SOR ¶ 1.e for \$422 (generated in 2009) and SOR ¶ 1.j for \$35 (generated in 2009). (AE A)³ He said he might have made some payments to some of the creditors. (Tr. 62-63)

³The April 13, 2015 credit report Applicant provided was from one of the three major credit reporting companies (AE A). He did not provide copies of the reports from the other two major credit reporting companies, and those other two reports may list additional delinquent debts.

Applicant could not remember when he contacted the creditor of the credit card debt in SOR ¶ 1.i for \$7,464. (Tr. 64-65) He did not pay the creditor or collection company, and he believed it dropped off of his credit report due to the passage of time. (Tr. 67)

In sum, Applicant said the only SOR debt with a record of making any payments was his \$188 utility debt in SOR ¶ 1.c, which he paid in 2014. (Tr. 68-69) He successfully disputed the debt for \$210 in SOR ¶ 1.d. Nothing was paid to any of the SOR creditors in 2015. (Tr. 69) The April 13, 2015 credit report Applicant presented included a non-SOR \$522 credit card debt that was charged off. (AE A at 4) Applicant has not had financial counseling. (Tr. 79) He has generated a budget; he did not provide a copy of his budget for the record; and he occasionally has some funds left over at the end of the month. He often invests his excess funds in equipment for his photography and computer business, or he pays expenses for his sister and nephew. (Tr. 80)

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.

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. 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 SF 86, OPM PSI, credit reports, SOR response, and hearing record. Applicant's SOR alleges 12 delinquent or collection accounts and one judgment totaling \$19,328. 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;⁴ 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.

⁴The 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)).

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 is credited with paying the \$188 utility debt in SOR ¶ 1.c, which he paid in 2014. SOR ¶ 1.c is mitigated. He said the debt in SOR ¶ 1.d for \$210 was his mother's debt. He communicated with the SOR ¶ 1.d creditor, and the debt does not appear on his April 13, 2015 credit report. The debt in SOR ¶ 1.d is mitigated.

Applicant's conduct in resolving his delinquent debt does not establish full application of any mitigating conditions to all of his SOR debts. He did not provide sufficient information about his finances to establish his inability to make greater progress paying his creditors. He described his medical problems in 2007, and several periods where he was unemployed or underemployed. He is caring for his sister and nephew. However, he did not provide sufficient evidence about how these circumstances largely beyond his control caused his financial problems, and he did not provide proof that he acted responsibly under the circumstances.

Applicant did not provide documentation showing his income and expenses, and he did not provide a budget. He presented insufficient evidence about what he has done since becoming employed with his current employer to pay his SOR debts or his other debts. He 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 any creditors to establish maintenance of contact with creditors;⁵ (3) a credible debt dispute indicating he did not believe he was responsible for the debt and why he held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting

⁵Even 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.

to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of his SOR debts.

Applicant's failure to prove that he has made more substantial steps to resolve his debts shows a lack of judgment and responsibility that weighs against approval of his security clearance. There is insufficient evidence that he was unable to make greater progress resolving his delinquent debts, or that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial consideration concerns are mitigated.

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.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 34-year-old logistics analyst, who has worked for a large defense contractor for the previous five years, except the period from 2011 to 2013, when he worked for another employer. He is the guardian of his sister and nephew. On February 21, 2011, Applicant disclosed six debts on his SF 86. During his March 30, 2011 OPM PSI, Applicant acknowledged and discussed his SOR debts. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. His SOR, OPM PSI, and credit reports provide substantial evidence of 12 delinquent or collection accounts and one judgment totaling \$19,328. He paid one \$188 debt in 2014, and he has not made any payments to SOR creditors in 2015. He successfully disputed one \$210 SOR debt. Applicant failed to provide sufficient documentation of progress to resolve his financial problems. He did not provide any documentary evidence of

payments to SOR creditors, payment plans, or his communications to SOR creditors, showing his attempts to resolve his SOR debts. His failure to provide more corroborating documentation shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More specific and documented information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. Based on the facts before me and the adjudicative guidelines that I am required to apply, I conclude that it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

I have carefully applied the law, as set forth in *Egan*, 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.

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
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraphs 1.e through 1.m:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge