



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



In the matter of:)
)
-----) ISCR Case No. 14-02686
)
Applicant for Security Clearance)

Appearances

For Government: Philip Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant's credit reports and statement of reasons (SOR) establish 13 delinquent debts totaling \$17,642. In the last two years, Applicant paid eight medical debts and one child-support debt, totaling \$6,936. He has kept some non-SOR debts current. While additional sustained financial effort is necessary, he has established a track record of debt payment and resolution. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

On July 9, 2013, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Government Exhibit (GE) 1) On October 1, 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*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF could not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (HE 2)

Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On February 23, 2015, Applicant responded to the SOR, and he requested a hearing. On January 8, 2015, Department Counsel was ready to proceed. On January 14, 2015, the case was assigned to another administrative judge; however, he was unable to arrange a video teleconference (VTC). On April 20, 2015, the case was transferred to me. Applicant was unable to make it to a VTC site until November 2015. On October 21, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 17, 2015. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits, and Applicant offered two exhibits, which were admitted into evidence without objection. (Transcript (Tr.) 17-19; Government Exhibit (GE) 1-4; Applicant Exhibit (AE) A-B) After the hearing, Applicant provided five additional exhibits, which were admitted without objection. (AE C-G) On November 30, 2015, DOHA received the transcript of the hearing.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.m. He explained he paid his child-support debt in SOR ¶ 1.h. (HE 3) He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 41-year-old employee of a defense contractor, who is a station mechanic at an isolated location. (Tr. 6) He has worked at the isolated location since 2008. (Tr. 27) He spends eight months at the site, and four months at home with his family. (Tr. 28) Applicant's spouse handles their finances while he is at the remote site. (Tr. 29) His spouse made budgeting errors and neglected some of their bills. (GE 2)

In 1993, Applicant graduated from high school, and he has not attended college. (Tr. 6) In 2007, he married, and he has four children or step children, who are ages 6, 8, 16, and 17. (Tr. 7, 15; GE 1) He had child-support obligations from a previous relationship. He has held a security clearance for 15 years. (Tr. 8)

Financial Considerations

Applicant's financial problems resulted from his spouse's and children's medical problems. (Tr. 20) From 2003 to 2013, Applicant's spouse had three back surgeries, one child has a seizure disorder, and another of his children broke the growth plate in her knee. (Tr. 20-22) Applicant had emergency room bills, ambulance bills, and medical insurance copays. (Tr. 20-25; AE A; AE B) Applicant was unable to pay his child support, and his pay was garnished. (Tr. 20)

Applicant's credit reports, SOR, and SOR response established 13 delinquent debts totaling \$17,642, and their status is as follows:

SOR ¶¶ 1.a through 1.f and 1.k through 1.m are nine delinquent medical debts for \$151, \$101, \$416, \$74, \$121, \$351, \$392, \$382, and \$355. On July 28, 2015, the medical creditor provided an account statement indicating payments received of \$253, \$347, \$309, \$94, \$77, \$52, 87, and \$136; however, \$1,080 is the consolidated remainder still owed on the medical debt. (Tr. 31-40; AE A; AE B) He intends to pay off his medical debts first. (Tr. 40-41)

SOR ¶ 1.g is a telecommunications debt for \$627. Applicant intends to pay this debt after the medical debts are resolved. (Tr. 41)

SOR ¶ 1.h is a bank debt for \$3,034. In 2007, Applicant began paying \$200 monthly for 12 months, and he believes the debt was resolved in 2008. (Tr. 43-44) He disputes his responsibility for this debt. (Tr. 43) He promised to investigate the status of this debt.

SOR ¶ 1.i is a medical credit card debt for \$7,437. (Tr. 46) Applicant was unaware of this debt until he received the SOR. (Tr. 28) The debt has been delinquent since 2009. (GE 4) He intends to pay this debt. (Tr. 48)

SOR ¶ 1.j is a debt for child support for \$4,201. On January 1, 2014, Applicant's child support was behind by \$5,581. (AE D at 2) As of May 11, 2015, Applicant's child-support debt was current, and his balance is zero. (Tr. 50-53; AE D at 1)

Applicant's 2013 and 2014 credit reports show numerous paid accounts. (GE 3; GE 4) He is current on his taxes. (GE 1; GE 3; GE 4)

Character Evidence

Applicant's supervisor for the previous 10 years describes Applicant as dedicated, diligent, dependable, courteous, honest, trustworthy, and conscientious. (AE C) A coworker describes Applicant as dependable, trustworthy, and serious about resolving delinquent debts. (AE E) A manager of Applicant's company said Applicant is a trustworthy, dependable, and highly valued, dedicated, and reliable employee. (AE G)

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. Thus, nothing 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." Applicant's history of delinquent debt is documented in his credit reports, SF 86, SOR response, and hearing record. Applicant's SOR alleges, and the evidence establishes a history of 13 delinquent debts totaling \$17,642. 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;¹ and

¹The 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

(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 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).

AG ¶¶ 20(a) through 20(d) apply. Applicant's financial problems resulted from his spouse's and children's medical problems. From 2003 to 2013, Applicant's spouse had three back surgeries, one child has a seizure disorder, and another of his children broke the growth plate in her knee. He had emergency room bills, ambulance bills, and medical insurance copays. Applicant was unable to pay his child support, and his pay was garnished. Applicant was deployed; his spouse was responsible for paying their debts; and his spouse neglected some of their bills. These are all circumstances beyond his control which adversely affected his finances. In the last two years, Applicant paid eight medical debts and one child-support debt, totaling \$6,936. He believes the debt in SOR ¶ 1.h for \$3,034 is paid. The statute of limitations may bar collection of the medical credit card debt in SOR ¶ 1.i for \$7,437, as it became delinquent in 2009, more than six years ago.

Based on Applicant's credible and sincere promise to timely pay his debts, future new delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." His payments of some of his debts showed good faith. He has sufficient income to keep his debts in current status and to

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)).

continue making progress paying his remaining delinquent debts. His efforts are sufficient to fully mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, he mitigated security concerns under the whole-person concept, *infra*.

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.

Applicant is a 41-year-old employee of a defense contractor, who is a station mechanic at an isolated location. He spends eight months at the site and four months at home with his family. Applicant's spouse handles their finances while he is at the remote site. His spouse neglected some of their bills. His spouse's and children's medical problems caused his delinquent debt. A coworker and two supervisors described him as honest, reliable, trustworthy, diligent, and dependable. Their statements support continuation of Applicant's access to classified information.

Applicant's credit reports and SOR establish a history of 13 delinquent debts totaling \$17,642. Applicant acted responsibly under the circumstances by aggressively working to resolve his debts. He paid eight medical debts totaling \$1,355, and in two years, he paid off a child-support debt of \$5,581. He believes he paid the bank debt in SOR ¶ 1.h for \$3,034, and he is working on validating this debt. He promised to pay the delinquent debts on the SOR, and he is paying the medical debts first. He understands that he needs to pay his debts, and the conduct required to retain his security clearance. 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 has established a "meaningful track record" of debt re-payment, and I am confident he will maintain his financial responsibility.²

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 security concerns are 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: FOR APPLICANT

Subparagraphs 1.a through 1.m: For Applicant

²The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [the applicant] the opportunity to have a security clearance while [the applicant] works on [his or] her financial problems."). This footnote does not imply that this decision to grant Applicant's security clearance is conditional.

Conclusion

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

MARK HARVEY
Administrative Judge