



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 14-04213
)	
Applicant for Security Clearance)	

Appearances

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

03/25/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On February 22, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On October 27, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (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) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for

Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On November 10, 2014, Applicant responded to the SOR. On January 15, 2015, Department Counsel was ready to proceed on Applicant's case. On January 23, 2015, DOHA assigned Applicant's case to me. On January 23, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for February 12, 2015. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant did not call any witnesses, testified, and offered Applicant Exhibits (AE) A through D, which were received into evidence without objection.

I held the record open until February 27, 2015, to afford Applicant the opportunity to submit additional documents, and at his request, I granted him an extension until March 12, 2015. Applicant timely submitted AE E through G, which were received into evidence without objection. On February 24, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In his SOR answer, Applicant admitted SOR ¶¶ 1.a and 1.c with explanations, and denied ¶¶ 1.b and 1.d with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 45-year-old direct care staff member, who has a pending application with a defense contractor to work as a security guard overseas. Obtaining a security clearance is a condition of employment. Currently, he works with a residential program for at-risk youth. (GE 1; Tr. 19-24.)

Applicant graduated from high school in Jamaica in July 1987.¹ He was awarded a certificate in paralegal training in June 2011. Applicant was awarded his GED in the United States in August 2011, which was a condition of his attending community college. He was awarded an associate in science degree in criminal justice technology in December 2013. (GE 1, AE B, Tr. 24-25.)

Applicant was previously married from June 1997 to April 2006, and that marriage ended by divorce. He has been living with a cohabitant since December 2007. Applicant has two sons from his marriage, ages 12 and 9, who live with his former spouse and to whom he pays \$900 in monthly child support. He also has a 5-year-old daughter with his cohabitant. Applicant's former spouse is employed as a

¹ Applicant became a naturalized U.S. citizen in February 2003. (GE 1.)

counselor and his cohabitant is employed as an elementary school teacher. (GE 1, AE A, GE 2, Tr. 25-28, 31, 36.)

Applicant has been a member of the Army National Guard since January 2004, and holds the rank of sergeant (pay grade E-5). He has been deployed twice, once to Afghanistan from May 2005 to August 2006, and once to Kuwait from January 2010 to December 2010. (GE 1, GE 2; Tr. 28-29.)

Financial Considerations

Applicant's SOR contains four separate allegations consisting of a collection account for \$1,235, a collection account for \$4,336, a collection account for \$9,401, and a collection account for \$3,072. These debts are noted in Applicant's March 2013 and April 2014 credit reports. (SOR ¶¶ 1.a. – 1.d; GE 3, GE 4.) All of these debts stem from Applicant's previous marriage. (Tr. 29-33.)

The following summarizes the status of each SOR debt:

SOR ¶ 1.a – Credit card collection account for \$1,235. Per Applicant's marital settlement agreement, he was solely responsible for this debt. This account was subsequently sold and assumed by another creditor. See SOR ¶ 1.b. **DUPLICATE ACCOUNT.** (AE A, Tr. 34-38, 55-58, 67, 69-71.)

SOR ¶¶ 1.b – Credit card collection account for \$4,336. This creditor purchased the account from the credit card holder in SOR ¶ 1.a. and as a result of penalties and interest, the debt increased substantially. (AE A; Tr. 34-38, 67, 69-71.) Applicant settled and paid this account for \$1,500. **ACCOUNT RESOLVED.** (AE E.)

SOR ¶¶ 1.c – Credit card collection account for \$9,401. Per Applicant's marital settlement agreement, he and his wife were to split this debt. Applicant's wife is willing to acknowledge that she was responsible for half of this debt; however, she is either unwilling or unable to pay her portion. Applicant realized that his responsibility for paying the debt remains. Applicant settled and paid this account for \$3,300. **ACCOUNT RESOLVED.** (AE E, AE F; Tr. 34-38, 56-58, 67-68, 71-72.)

SOR ¶ 1.d – Collection account for \$3,072. The debt is money Applicant owes to the local section 8 housing authority for a rental property he owns. Applicant entered into a payment agreement with the housing authority and is making \$500 monthly payments. **ACCOUNT BEING RESOLVED.** (AE G, Tr. 48-55, 66-68, 72-74.)

Applicant has not sought financial counseling. Apart from these debts, Applicant is current on all of his other obligations to include child support. (Tr. 74-75.)

Character Evidence

Applicant submitted his Army National Guard non-commissioned officer evaluations reports for the years 2011 to 2014, all of which were favorable. Additionally, he submitted numerous letters and awards recognizing his service in Afghanistan and Kuwait as well as his stateside service. Applicant's DD-214 indicates that he was awarded or authorized the following decorations, medals, badges, citations and campaign ribbons: Afghanistan Campaign Medal with Campaign Star, Army Commendation Medal, Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Iraq Campaign Medal with Campaign Star, Army Service Ribbon, Overseas Service Ribbon, and Armed Forces Service Medal with M Device. Lastly, his cohabitant submitted a personal recommendation attesting to his good character. (AE C.)

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 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 financial considerations 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 established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

Full application of AG ¶ 20(b) is warranted. Applicant's divorce was costly and contentious. Additionally, his former spouse did not comply with their separation agreement leaving Applicant solely responsible for the marital debt. As noted *supra*, Applicant has paid or is resolving all of his debts and has made substantial progress in regaining financial responsibility.²

AG ¶¶ 20(c) and 20(e) are not applicable. Applicant's budget demonstrates that he living within his means. Having paid or in the process of resolving the debts in SOR ¶¶ 1.a through 1.d, Applicant is able to receive full credit under AG ¶ 20(d).

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.

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 military service, especially his service in Afghanistan and Kuwait, weighs heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that 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 omitted).

Due to circumstances beyond his control, Applicant's debts became delinquent. Despite the financial setback as a result of his divorce, it is clear from Applicant's actions that he is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's years of financial responsibility before falling into debt, the circumstances that led to his financial difficulties, his financial recovery and steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his situation, his character evidence, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

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 to 1.d: For Applicant

Conclusion

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

Robert J. Tuider
Administrative Judge