



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-02205
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 4, 2014. On September 23, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on October 27, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 23, 2015, and the case was assigned to me on February 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2016, scheduling the hearing for March 21, 2016. I convened the hearing

as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until April 4, 2016, to enable Applicant to submit additional evidence. He did not submit any additional evidence. DOHA received the transcript (Tr.) on March 29, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old sheet-metal worker employed by a defense contractor since September 2012. He worked as a sales clerk and mechanic for 14 years before starting his current job. He has never held a security clearance.

Applicant has a second job with a cleaning service, working 20 hours a week, which he has held for about 12 years. He testified he took the second job in an effort to resolve his debts. (Tr. 63-64.)

Applicant has an 11th-grade education. He has never married. He has two children, ages 13 and 4, who live with their mothers. He pays \$247 per week in child support for both of them, and his payments are current. (Tr. 30-31, 73.) He has resided with his current cohabitant since November 2013.

Applicant's credit bureau reports (CBRs) reflect the debts alleged in the SOR. (GX 3, 4, and 5.) The evidence concerning those debts is summarized below.

SOR ¶ 1.a, judgment entered in December 2011 for delinquent payments on furniture (\$2,371). While living with a former fiancée, Applicant purchased furniture solely in his name. When he and his fiancée separated, they agreed that she would keep the furniture and make the payments. She failed to make the payments, and the lender who financed the purchase obtained a judgment against Applicant. He testified that he was unaware of the judgment until he received the SOR. He has not contacted the creditor. The debt is not resolved. (Tr. 39-42.)

SOR ¶ 1.b, judgment entered in May 2010 for delinquent car payments (\$8,698). Applicant purchased a car for his brother, who could not qualify for a loan because of bad credit. His brother agreed to make the payments. Applicant learned that the loan payments were delinquent when the car was repossessed. Applicant contacted the lender, but he could not afford to pay the \$4,000 demanded by the lender to recover the car. When he was contacted by a collection attorney shortly after starting his current job in 2012, he learned that the car had been sold and a judgment entered against him for the deficiency. He made a payment agreement, but could not afford to make the payments, and a second judgment was entered against him. He made another payment

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to other documents in the record.

agreement and is now paying \$100 per month. He has paid about \$600 and has a balance of \$10,922. (AX A; Tr. 43-47.)

SOR ¶ 1.c, delinquent mortgage loan, referred for collection in August 2009 (\$8,945). Applicant tried to sell his mobile home to a woman who could not obtain financing. He did not know the woman, who was a friend of his then fiancée. He agreed to keep the mobile home in his name and to allow the woman to live in it, and she agreed to make the mortgage payments. She moved out and made no payments. Applicant discovered that she had not made any payments when the trailer park contacted him about unpaid rent for the lot on which the home was parked. He testified that he contacted the mortgage lender about two years ago and learned that the lender intended to sell the mobile home. He was unaware that he owed money for the deficiency after the sale until he was interviewed by a security investigator about the debts reflected in his CBRs. (Tr. 37-38, 48-51.)

SOR ¶ 1.d, cellphone bill, referred for collection in September 2013 (\$1,130). Applicant obtained a cellphone for his brother, who failed to pay the bill. Applicant testified that he settled this debt for \$690, payable in two installments. (Tr. 51-52.) He did not provide any documentation of the settlement agreement or any payments.

SOR ¶ 1.e, delinquent payments on electronic equipment, referred for collection in November 2013 (\$919). About four years ago, Applicant purchased electronic equipment for himself and financed the purchase. He fell behind on his payments when his pay was garnished for another debt. He contacted the creditor, who demanded payment in full. He has not had any recent contact with the creditor. (Tr. 54-56.) The debt is not resolved.

SOR ¶ 1.f, cellphone bill, referred for collection in July 2013 (\$546). Appellant testified that this was another cellphone for his brother. In September 2014, he told a security investigator that this was his debt. At the hearing, he testified that his brother fraudulently opened this account, using Applicant's Social Security number. He testified that he did not tell the investigator about his brother's fraudulent conduct because he did not want to get his brother in trouble. He has not disputed the debt with the creditor or the credit bureaus. The debt is not resolved. (GX 2 at 4; Tr. 56-58.)

SOR ¶ 1.g, car insurance bill, referred for collection in June 2014 (\$379). Applicant testified that this debt arose when his car insurance company cancelled his coverage because he was a bad risk, but he owed money for the last month's coverage. He has not contacted the creditor. The debt is not resolved. (Tr. 60-62.)

SOR ¶ 1.h, finance company debt, referred for collection in July 2014 (\$134). Applicant admitted this debt in his answer to the SOR, but at the hearing he testified that he did not recognize the debt. However, he has not filed a dispute with the creditor or the credit bureau. The debt is not resolved. (Tr. 62-63.)

SOR ¶ 1.i, judgment for unpaid rent (\$2,150). Applicant testified that this judgment was obtained by his current landlord for unpaid rent. He testified that the debt has been satisfied. (Tr. 64.) He provided no documentation to support his testimony.

SOR ¶¶ 1.j and 1.l, past-due car payments (\$2,288) that are included in a judgment for \$5,755 filed in April 2015.² Applicant testified that he bought a car in his name for a former fiancée, they separated about three years ago, and they agreed that she would keep the car and make the payments. She did not make the payments, the car was repossessed, and Applicant refinanced his truck to redeem the car. The refinancing increased his truck payments and he fell behind. Applicant testified that this judgment is being collected by garnishment and the balance has been reduced to \$1,200. (Tr. 65-69, 71.) He did not submit any documentation to corroborate his testimony about the garnishment and the outstanding balance on the debt.

SOR ¶ 1.k, telecommunications bill, referred for collection for \$284. Applicant's CBR reflects that this account was referred for collection of \$323 in December 2014, but that a payment was made in April 2015. (GX 5 at 2.) Applicant testified that the bill was for unreturned equipment. He testified that he contacted the creditor about two weeks before the hearing, showed a customer service representative a document he received from the technician who picked up the equipment, and was informed that he would be contacted in ten days if the matter was not resolved. He heard nothing further and assumed it was resolved. He testified that he no longer had the document he showed to the customer service representative. (Tr. 69-71.) The debt is not resolved.

Applicant's current take-home pay is about \$1,600 per month and his expenses are about \$2,190. Once the garnishment for the debt in SOR ¶¶ 1.j and 1.l ends, he will have a net monthly remainder of about \$200. (Tr. 72-78.) He was notified in January 2016 that he owes about \$6,000 in federal income taxes for tax year 2013. He testified that his tax advisor has informed him that the tax debt will be satisfied after he files his 2015 tax returns. (Tr. 79-80.) He provided no documentation of the status of his federal tax debt. The tax debt is not alleged in the SOR.³

Policies

"[N]o 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

² The SOR erroneously alleges that the judgment was filed in 2005 instead of 2015. (GX 5 at 1.)

³ Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered his tax debt for these limited purposes.

President has authorized the Secretary of Defense or his designee to grant applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[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

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The evidence shows that the debt in SOR ¶ 1.i is included in the judgment alleged in SOR ¶ 1.j. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.i in Applicant’s favor.

Applicant’s admissions, corroborated by his CBRs, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established for the debt in SOR ¶ 1.b, but not for the other debts alleged in the SOR. The debt in SOR ¶ 1.f may have been incurred through identify theft by Applicant's brother, but he has provided no proof of fraud, and he has not acted responsibly. He has not disputed the debt or taken steps to resolve it. The debts in SOR ¶¶ 1.a-1.d, 1.j, and 1.l were incurred because of his financial gullibility: trusting a stranger to make the payments on his mobile home, trusting his brother to make the payments on a car and a cellphone, and trusting a former fiancée to make the payments on furniture and a car. He claimed to have settled the debts in SOR ¶¶ 1.d and 1.i, but he submitted no documentation to support his claims, even though he was given extra time after the hearing to submit it.¶

AG ¶ 20(c) is not established. Appellant has not sought or received financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is established for the debt in SOR 1.b. It is not established for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant claimed that the debt in SOR ¶ 1.f was fraudulently incurred by his brother, and he claimed that he did not recognize the debt in SOR ¶ 1.h, but he has not disputed them with the creditors or the credit bureaus.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based raised by his delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge