



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00245
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

August 31, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 24 debts totaling about \$35,946. He did not make sufficient progress resolving his delinquent debts. Applicant failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 17, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF-86) (Government Exhibit (GE) 1). On May 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant (GE 8), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On June 5, 2009, Applicant responded to the SOR (GE 9). On June 25, 2009, Department Counsel was prepared to proceed. On July 1, 2009, the case was assigned to me. On July 2, 2009, DOHA issued a hearing notice (GE 7). On July 21, 2009, Applicant's hearing was held. Department Counsel offered six exhibits (GE 1-6) (Transcript (Tr.) 16), and Applicant offered one exhibit at the hearing (Tr. 30-31; AE A). Applicant did not object to my consideration of GE 1-6, and Department Counsel did not object to my consideration of AE A (Tr. 16, 31). I admitted GE 1-6 and AE A into evidence (Tr. 16, 31). Additionally, I admitted the Notice of Hearing, SOR, and response to the SOR (GE 7-9). On July 24, 2009, I received the transcript of the hearing. On August 3, 2009, I received AE B and C. Department Counsel did not object to my consideration of AE B and C, and I admitted them into evidence.

Findings of Fact¹

In Applicant's SOR response, he denied knowledge of most of the SOR debts. He asserted several were satisfied, or he was working out a payment plan with the particular creditor concerned (GE 9). He thought the debts in SOR ¶¶ 1.n and 1.o were satisfied (GE 9). For the debts in SOR ¶¶ 1.s to 1.v, he said, "payment installments have been made and are in progress" (GE 9). His admissions are accepted as findings of fact.

Applicant is a 37-year-old employee of a defense contractor (Tr. 5). He has worked for his current employer since April 2003 as a security guard or supervisor of security guards (Tr. 42). He graduated from high school in 1989, and attended a university from 1989 to 1993 (Tr. 5). He did not receive a degree from the university (Tr. 5). He does not currently hold a security clearance and has not held a security clearance in the past (Tr. 6-7).

Applicant married in 1996 and divorced in 2000 (GE 1). His twin children were born in 1996 (GE 1). He never served in the military (GE 1). He remarried in December 2008 (Tr. 38).

Financial Considerations

Applicant has not been unemployed in more than ten years (Tr. 40). The last time Applicant was unemployed was in 1994, and the duration of his unemployment was about two months (Tr. 40). He attributed his debts to insufficient income (Tr. 41). He

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

was reassigned at work and his hourly wage was decreased (Tr. 42). He is current on his state and federal income taxes (Tr. 41).

SOR ¶ 1.a (\$1,343). Applicant had a telecommunications account related to the collection agent in SOR ¶ 1.a (Tr. 18). He thought his debt was resolved when he paid the creditor \$500. He said his account was “messed up”; however, he intended to pay this debt (Tr. 18-19). After his hearing, he called the creditor and is now waiting for a response from the creditor (AE C).

SOR ¶ 1.b (\$104). Applicant had a medical account, which he thought was related to his two children (Tr. 19).

SOR ¶ 1.c (\$100). Applicant had a medical account, which he said he planned to pay (Tr. 28).

SOR ¶ 1.d (\$2,596). Applicant did not recognize this account (Tr. 28). Two weeks before his hearing he contacted the credit reporting company to find out about the account.

SOR ¶ 1.e (\$741). Applicant had a cable account with this creditor (Tr. 29). He turned in his equipment and closed his account (Tr. 29). He did not understand why he owed this debt (Tr. 29). After his hearing, he contacted the creditor and asked for information about the debt (AE C).

SOR ¶ 1.f (\$1,457). The debt in SOR ¶ 1.f pertains to a collection agency (Tr. 29). He did not recognize the account (Tr. 29). He intends to investigate and resolve the debt (Tr. 29-30). After his hearing, he telephoned the creditor and asked for information about the debt (AE C). The creditor told Applicant to send a letter and they would try to resolve the matter (AE C).

SOR ¶ 1.g (\$8,673). The debt in SOR ¶ 1.g pertains to a vehicle loan account (Tr. 20, 21). Applicant returned the vehicle to the creditor (Tr. 21). The creditor sent Applicant a settlement offer for \$1,700 (Tr. 20, 21). Applicant offered to pay \$100 per month; however, he had not heard the result from the creditor (Tr. 20). He said he left documentation about this account at his home and did not bring it to the hearing (Tr. 21).

SOR ¶ 1.h (\$712). The debt in SOR ¶ 1.h pertains to a collection agency. On June 29, 2009, he received an offer to settle this debt for \$499 and he provided a copy of the settlement proposal (Tr. 30; AE A). Applicant intends to follow-up on this settlement offer (Tr. 32).

SOR ¶¶ 1.i (\$177) and 1.j (\$464). These two debts are from collection agencies and Applicant did not recognize the creditors in SOR ¶¶ 1.i and 1.j (Tr. 32).

SOR ¶ 1.k (\$511). This debt pertains to a telecommunications account (Tr. 32-33). He said he made one \$40 payment in June 2009 (Tr. 33). He intended to continue to make payments on this debt (Tr. 32-33).

SOR ¶ 1.l (\$509). Applicant admitted responsibility for the debt in SOR ¶ 1.l and said he was going to make his first \$40 payment the Friday after the hearing (Tr. 22). He thought maybe the debts in SOR ¶ 1.k and ¶ 1.l were the same debt (Tr. 33). After the hearing, he noted he is still waiting for the installment agreement (AE C).

SOR ¶ 1.m (\$13,000). Applicant admitted responsibility for the debt in SOR ¶ 1.m, which pertains to a vehicle loan account (Tr. 22, 21). Applicant returned the vehicle to the creditor (Tr. 23). Applicant is waiting for the creditor to send him a settlement offer (Tr. 23).

Applicant admitted responsibility for the debts in SOR ¶¶ 1.n (\$148) and 1.o (\$718) (Tr. 22). He said he paid the debts in SOR ¶¶ 1.n and 1.o (Tr. 24, 25). These debts were possibly paid last year (Tr. 25). He was unable to locate documentation showing the debt in SOR ¶ 1.o was paid (AE C).

SOR ¶¶ 1.p (\$1,060), 1.q (\$162), 1.r (\$1,362), 1.x (\$103). Applicant did not recognize these four debts (Tr. 33-35).

Applicant said he was making payment arrangements for the debts in SOR ¶¶ 1.s (\$392), 1.t (\$222), 1.u (\$936), and 1.v (\$138). He was waiting to hear from the creditors in SOR ¶¶ 1.t, 1.u, and 1.v (Tr. 26). After his hearing, he provided an undated letter to the creditor asking for information about the accounts in SOR ¶¶ 1.t, 1.u, and 1.v (AE B). Although Applicant had previously indicated he had payment arrangements and would resolve the debt in SOR ¶ 1.v by June 2009, the creditor advised him the debt for \$138 was resolved and he did not owe anything (Tr. 27). He thought he had proof of satisfaction of the account in SOR ¶ 1.v in a closet; however, he was worried that he lost the proof in a move (Tr. 27).

SOR ¶ 1.w (\$318). This is a telecommunications debt (Tr. 34). About two years ago Applicant contacted the creditor and asked the creditor to add the debt to his current account (Tr. 34-35). His account with the creditor was current (Tr. 35). After the hearing, the creditor advised him that he would soon receive a bill for \$318 (AE C).

Appellant has not received any credit counseling (Tr. 36). He did not attempt to resolve most of his SOR debts prior to his hearing because of a lack of funds (Tr. 36). Applicant and his spouse earn about \$5,300 monthly (Tr. 37-38). He listed monthly expenses are as follows: rent (\$2,500), car payment (\$630), and child support (\$600) (Tr. 38-39). He has about \$150 left at the end of the month (Tr. 39). In their marriage, Applicant pays the rent, his car payment, and his child support, and his wife pays for everything else (Tr. 38-39). Applicant does not have any savings (Tr. 40).

Applicant said he kept copies of his correspondence to the creditors, and I held the record open for ten days so that Applicant could provide copies for the record of

documentation showing his investigative efforts, payment plans, and anything else he believed would be helpful to his case (Tr. 23).

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 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 and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. 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 as to 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 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

Upon consideration of all the facts in evidence and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline F (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." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern." Applicant's history of delinquent debt is also documented in his SOR response, his oral statement at his hearing, and the documentation he submitted. He failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶¶ 20(a)-20(e) 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 he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are "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)). Applicant's SOR lists 24 debts totaling about \$35,946. He did not recognize several debts. He thought several other debts were paid or resolved. He is investigating several debts. Important documentation about his debts was lost during a move. He did not provide documentary evidence of any payments or paid SOR debts. It is particularly clear that he has not made significant progress on resolution of four SOR debts totaling about \$22,000: ¶ 1.c (\$100), ¶ 1.g (\$8,673), ¶ 1.h (\$712), and ¶ 1.m (\$13,000). Applicant admitted responsibility for these four SOR debts; however, he failed to provide documentation to establish the resolution of these accounts. Applicant has about \$22,000 in unresolved, delinquent debt, and this substantial unresolved debt continues to "cast doubt on [his] current reliability, trustworthiness, or good judgment."

Applicant receives partial credit under AG ¶ 20(b) because a transfer reduced his salary and caused a decrease in his hourly pay. Despite this issue, he does not receive full mitigating credit because he did not establish that he acted responsibly under the circumstances.²

AG ¶ 20(c) does not apply. Applicant did not receive financial counseling. Financial counseling would be very helpful to Applicant because he is evidently not sophisticated about budgeting and financial matters. There are not "clear indications

²Even 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 the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

that the problem is being resolved or is under control” because most of the SOR debts totaling about \$30,000 remain unresolved. He has also established some, but not full mitigation under AG ¶ 20(d) because he showed some, recent good faith³ in the resolution of his debts and by contacting some SOR creditors and seeking to begin payment plans. Applicant did not provide documentation contesting the validity of any debts, and AG ¶ 20(e) does not apply.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. In the last year, his efforts to document the resolution of most of his SOR debt have been inadequate. Applicant was given additional time after his hearing to obtain more information about his efforts to resolve his SOR debts. His response on August 3, 2009, did not provide additional, meaningful assistance in resolving the status of his SOR debts. He did not provide sufficient information about his finances and debt resolution to establish his financial responsibility.

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 relevant 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.

³The 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 [or statute of limitations]) 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 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). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant provided some important mitigating evidence under the whole person concept. There is no evidence of any security violation(s). He is generally a law-abiding citizen. His current financial problems were partially caused by a factor beyond his control, that is, decreased income due to a transfer.

Applicant has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He graduated from high school and earned credits towards a university degree. His employment history and contributions to a defense contractor speak well for his character. He understands the importance of a budget and what he needs to do to establish his financial responsibility. Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service to the Department of Defense as a contractor. These factors, especially his past government service, show substantial responsibility.

The evidence under the whole person concept against mitigating Applicant's financial conduct is more substantial. Applicant's SOR lists 24 debts totaling about \$35,946. The SOR was based on his credit reports. He did not recognize several debts. He thought several other debts were paid or resolved. He is investigating several debts. Important documentation about his debts was lost during a move. It is clear that he has not made sufficient progress on resolution of four SOR debts totaling about \$22,000: ¶ 1.c (\$100), ¶ 1.g (\$8,673), ¶ 1.h (\$712), and ¶ 1.m (\$13,000). Applicant admitted responsibility for these four SOR debts; however, he failed to provide sufficient documentation to establish the resolution of these accounts. He did not provide documentation showing payment or resolution of any SOR debts. These debts have been delinquent for a substantial period of time. He did not meet his evidentiary burden of establishing his plan to resolve or actual resolution of these four debts. He has not paid anything to these four creditors in the past several years. Ultimately, he did not establish that he acted with sufficient effort and self-discipline to resolve these four delinquent debts and to better document his remedial efforts. All the factors considered together show too much financial irresponsibility and lack of judgment. His history of delinquent debt raises unmitigated security concerns.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has not sufficiently mitigated 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 Guidelines. Applicant

has not fully mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d to 1.f:	For Applicant
Subparagraphs 1.g and 1.h:	Against Applicant
Subparagraphs 1.i to 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n to 1.x:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge