



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01001
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

March 30, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists six delinquent debts totaling \$32,712. He did not provide proof of any payments, or corroborating documentation of any SOR debt resolution. He failed to make sufficient effort to resolve his delinquent SOR debts. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 8, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (SF 86) (Item 5). On August 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations) (Item 1). 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 (Item 1).

On September 10, 2009, Applicant responded to the SOR allegations, and requested a hearing (Item 2). On October 13, 2009, the case was scheduled for a hearing; however, Applicant requested a continuance. Administrative Judge Crean denied the request for a continuance. Department Counsel orally notified Applicant that the request for delay was denied, and the hearing would be held as scheduled on October 19, 2009 (Item 4). Applicant did not appear at the hearing. Applicant subsequently requested a decision on the record, which Administrative Judge Crean granted (Item 4).

A complete copy of the file of relevant material (FORM), dated December 24, 2009, was provided to him on January 12, 2010, and he was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant did not respond to the FORM. The case was assigned to me on March 7, 2010.

Findings of Fact²

In Applicant's response to the SOR, he admitted responsibility for the three debts in SOR ¶¶ 1.a, 1.b, and 1.d (Items 1, 2).³ He also described why he did not resolve some of his debts. His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 43-year-old employee of a defense contractor.⁴ His position title is individual training specialist. He received a bachelor of science degree in June 1997. In 2006 he married, and he was divorced in 2008. His children were born in 1991 and 1995. He served in the Army from March 1987 to the present.

Applicant did not disclose any unpaid liens, garnishments, debt currently over 90 days delinquent, debt over 180 days delinquent in the last seven years, illegal drug use,

¹The DOHA transmittal letter is dated December 29, 2009; and Applicant's receipt is dated January 12, 2010 (file). The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information (file).

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's September 10, 2009, SOR response (Item 2).

⁴Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's October 8, 2008, SF 86 (Item 5).

or alcohol-related offenses on his October 8, 2008, security clearance application. He disclosed that a sexual assault charge was dismissed in 2002, and the record of the charge was expunged.

Financial Considerations

An Office of Personnel Management (OPM) investigator interviewed Applicant on November 13, 2008 (Item 6). The OPM investigator reviewed the SOR debts with Applicant. Applicant asserted that he was separated from his fiancée and then wife for a time, and she was receiving the bills, which she did not pay (Item 6). In 2008, they were divorced (Item 6).

On June 1, 2009, Applicant completed a personal financial statement (PFS) (Item 7 at 4). His monthly gross salary is \$4,188. His monthly net salary is \$2,956. His monthly expenses are \$1,870. His monthly debt payments total \$760. His net remainder is \$826. None of the SOR debts are listed as a financial obligation on his PFS. Applicant's SOR lists six delinquent debts totaling \$32,712. A detailed description of the status of those debts follows:

SOR ¶ 1.a (\$192)—DEBT UNRESOLVED. On September 5, 2009, Applicant said this account was transferred, and he is in the process of contacting the new creditor concerning the debt (Item 2 at 1). On January 12, 2010, Applicant was served with the FORM and notified he had 30 days to provide updated information. He did not provide an update about resolution of this debt.

SOR ¶ 1.b (\$14,867)—DEBT UNRESOLVED. On September 5, 2009, Applicant said he and his wife were mutually responsible for this debt. He stated, "This debt was contested due to divorce agreement that entitles her to the vehicle. This debt is currently going through litigation proceedings to counter it's legitimacy" (Item 2 at 1). On January 12, 2010, Applicant was served with the FORM and notified he had 30 days to provide updated information. He did not provide an update about resolution of this debt. He did not provide a copy of his divorce decree or any other documentation showing the dispute of this debt.

SOR ¶ 1.c (\$15,490)—DEBT UNRESOLVED. Applicant's vehicle was repossessed in 2002 (FORM at 3; Item 6 at 3-4; Item 8 at 5). There were two settlement offers; however, there is no evidence of acceptance and payments (FORM at 4). On June 1, 2009, Applicant said he asked for more information from the creditor and was waiting for the creditor to further decrease their settlement offer (Item 7 at 5). On September 5, 2009, Applicant provided a copy of a September 2, 2009, settlement offer from the creditor seeking \$1,566 in a lump sum, or payments of \$10 per month (Item 2 at 3). The offer expired on September 30, 2009 (Item 2 at 3). On January 12, 2010, Applicant was served with the FORM and notified he had 30 days to provide updated information. He did not provide an update about resolution of this debt.

SOR ¶ 1.d (\$257)—DEBT UNRESOLVED. On September 5, 2009, Applicant admitted responsibility for the debt; however, he said this account was transferred (Item

2 at 2). On January 12, 2010, Applicant was served with the FORM and notified he had 30 days to provide updated information. He did not provide an update about resolution of this debt.

SOR ¶ 1.e (\$363)—UNRESOLVED. On September 5, 2009, Applicant said this account was disputed. Applicant said an insurance company overcharged him for a vehicle that he sold two years previously (Item 2 at 2). On January 12, 2010, Applicant was served with the FORM and notified he had 30 days to provide updated information. He did not provide any correspondence to or from the creditor or update the status of the resolution of this debt.

SOR ¶ 1.f (\$1,543)—UNRESOLVED. On September 5, 2009, Applicant said this account was disputed. Applicant said a telecommunications debt was generated in 1998. He unsuccessfully attempted to have it removed from his credit report (Item 2 at 2). On January 12, 2010, Applicant was served with the FORM and notified he had 30 days to provide updated information. He did not provide any correspondence to or from the creditor or update the status of the resolution of this debt.

The FORM cites lack of documentation showing disputed debts, payments, and financial counseling, placing Applicant on notice of what he needed to do to alleviate or mitigate security concerns. The file does not contain any documentary evidence that debts are paid, disputed, in established payment plans, or that Applicant has received financial counseling.

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 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 applicant 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).

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 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.” 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 credit reports, responses to interrogatories, Office of Personnel Management interview, and his SOR response. His six delinquent SOR debts total \$32,712. One debt became delinquent in 1998, and has not been resolved. One creditor offered to settle a debt for 10% of the amount owed, and Applicant did not take action to accept the settlement and pay the debt. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Additional inquiry about the possible applicability of mitigating conditions is required.

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 any mitigating conditions 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 does not receive credit under AG ¶ 20(a) because he did not establish that his financial problems "occurred under such circumstances that [they are] unlikely to recur." There is some residual doubt about whether Applicant is fully committed to resolving his delinquent SOR debts and is making adequate steps to do so.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by his fiancée and then spouse's failure to pay the family debts, when she was in a position to do so. In 2008, he was divorced. However, there is insufficient evidence about these circumstances to show their effect on his financial situation, and that he acted responsibly under the circumstances. There is insufficient evidence he maintained contact with his creditors on several of his SOR debts.⁵ Once he learned of his delinquent debts at his OPM interview on November 13, 2008, his documented actions were insufficient to establish he acted responsibly under the circumstances.

AG ¶ 20(c) does not apply. He did not receive financial counseling. Applicant provided a PFS or budget, and he understands from the FORM what he must do to establish his financial responsibility. Applicant cannot receive full credit under AG ¶ 20(c) because he has not paid, established payment plans (by making payments), adequately documented disputes of debts, or otherwise resolved any of his SOR debts. There are some initial, positive "indications that the problem is being resolved or is under control." He has admitted responsibility for three SOR debts, and documented his communication with one of them. He also established some mitigation under AG ¶ 20(d) by showing some good faith⁶ in the resolution of his SOR debts by admitting

⁵"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 or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁶The 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].

responsibility for three SOR debts, and promising to pay them. AG ¶ 20(e) is not applicable because Applicant did not provide documentation showing he disputed any of his SOR debts.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He has had steady employment. He did not provide proof of any payments to his SOR creditors. He has not provided documentation showing sufficient progress on his SOR debts. His steps are simply inadequate to fully mitigate financial considerations security concerns.

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). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his clearance. Applicant is 43 years old. He is sufficiently mature to understand and comply with his security responsibilities. He has served in the Army since 1987, and has a bachelor of science degree. He deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor. There is no evidence that he has ever violated security rules. There is every indication that he is loyal to the United States, the Department of Defense, and his employer. There is no evidence that he abuses alcohol or uses illegal drugs. His fiancée and then spouse's failure to pay their bills, and his divorce contributed to his financial woes. He communicated with several creditors and discussed payment arrangements. These factors show some responsibility, rehabilitation, and mitigation.

(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 whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a history of financial problems. His oldest delinquent SOR debt became delinquent in 1998. When an OPM investigator interviewed him on November 13, 2008, he learned of several delinquent SOR debts. Financial security concerns were further highlighted when he responded to DOHA interrogatories, and on September 10, 2009, when he responded to the SOR. He had ample notice of his delinquent SOR debts, and sufficient opportunity to make greater progress in the resolution of his SOR debts. He did not pay, start payments, document and justify any disputes, or otherwise resolve any SOR debts. He did not prove he lacked sufficient income to make greater progress resolving his debts. Applicant has not proven that he has an established payment plan on any SOR debts. His promises to pay some of the SOR debts are insufficient to mitigate these debts because there is insufficient evidence to explain why he has not done more to address his SOR debts after becoming aware that they raised a security concern.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not 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 and Adjudicative Process factors and supporting evidence, and my interpretation of my responsibilities under the Guidelines. Applicant has failed to mitigate 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 to 1.f:	Against 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