



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



In the matter of:)
)
-----) ISCR Case No. 09-03979
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

April 26, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 15 delinquent debts totaling \$41,667. He did not make any payments on any of his SOR debts. Ten SOR debts totaling \$24,395 are established and not sufficiently resolved to be mitigated. 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 January 15, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Item 4). November 23, 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 December 18, 2009, Applicant responded to the SOR allegations, and requested a decision on the record (Item 2). A complete copy of the file of relevant material (FORM), dated January 31, 2010, was provided to him on February 16, 2010, and he was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant responded to the FORM with a letter with one enclosure. The case was assigned to me on April 12, 2010.

Findings of Fact²

In Applicant's response to the SOR, he admitted responsibility for the ten debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, 1.h, 1.i (owes \$6,500 rather than \$20,008), 1.j, 1.m, and 1.n (Item 2). He denied the other five SOR allegations. 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 39-year-old manufacturing engineer, who has been employed by a defense contractor since February 2008.³ He was awarded his bachelor of science degree in mechanical engineering in May 1994. Except for being unemployed from October 2007 to January 2008, Applicant has been continuously employed from December 1997 to the present. He has never been married and does not have any children. He has never served in the military.

Applicant did not disclose any unpaid liens, garnishments, or civil court actions. He did disclose debts currently over 90 days delinquent, and debts over 180 days delinquent in the last seven years. He did not disclose any illegal drug use, or alcohol-related offenses on his January 15, 2009, security clearance application. He disclosed that \$480 was garnished from his pay for past due vehicle property taxes, as well as four delinquent credit card debts for \$950, \$548, \$520, and \$980. He explained, "As a result of my job loss in 2007, I became delinquent on several of my credit card obligations. Now that I have obtained employment, I am working with my creditors to bring my accounts current. The goal is to have all accounts current by 3/31/09."

¹The DOHA transmittal letter is dated February 4, 2010; and Applicant's receipt is dated February 16, 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 January 15, 2009, SF 86 (Item 4).

Financial Considerations

Applicant's earliest credit report is dated February 24, 2009 (Item 7). It shows 12 delinquent debts and last activity for one debt in 2003, two in 2005, and three in 2007 (prior to October 2007, when Applicant's unemployment began). The delinquent debts, last activity, and source information from his February 24, 2009 credit report is as follows: \$1,178 (June 2003, Item 7 at 4); \$21,585 (December 2008, Item 7 at 5); \$1,107 (April 2007, Item 7 at 5); \$1,291 (April 2007; Item 7 at 5); \$2,509 (November 2007; Item 7 at 6); \$6,512 (February 2005; Item 7 at 7); \$128 (February 2008; Item 7 at 11); \$454 (June 2007; Item 7 at 13); \$3,996 (February 2009, Item 7 at 14); \$123 (July 2008, Item 7 at 14); \$352 (October 2005; Item 7 at 14); and \$4,040 (November 2008, Item 7 at 15).

Applicant's SOR ¶¶ alleged the following delinquent debts: 1.a (\$480); 1.b (\$128); 1.c (\$352); 1.d (\$1,447); 1.e (\$1,196); 1.f (\$454); 1.g (\$692); 1.h (\$6,512); 1.i (\$20,008); 1.j (\$2,509); 1.k (\$1,482); 1.l (\$439); 1.m (\$3,996); 1.n (\$1,694); and 1.o (\$278).⁴

For SOR ¶ 1.i, Applicant owed \$20,437 for a 2006 BMW that was repossessed.⁵ The creditor sold his vehicle at an auction for \$14,250. On October 16, 2009, his balance owed to the creditor in SOR ¶ 1.i was \$6,107.

An Office of Personnel Management (OPM) investigator interviewed Applicant on March 25, 2009 (Item 4 at 9-12). The OPM investigator reviewed several of the SOR debts with Applicant. Applicant promised to pay his debts in the "near future." He intended to use a debt consolidation program. He asserted that part of his financial problems was related to his sister's inability to work because of cancer, and his provision of financial assistance to her (Item 4 at 9). In his FORM response, he said from January 2007 to September 2009, his sister, brother, and mother had major medical problems. He related that these medical problems caused him severe emotional distress and caused him to lose focus on his financial matters. The illnesses caused unexpected travel and support expenses to care for family members. He did not provide the amounts of funds expended, or dates of any expenditures caused by these family emergencies.⁶

On August 21, 2009, Applicant responded to interrogatories. For 11 delinquent debts he explained, "I have yet to contact this creditor. They will be part of my consolidation plan scheduled for 9/18/09." (Item 4).

Applicant's response to interrogatories said he planned to pay a telecommunications debt for \$123 (Item 4 at 3). This \$123 debt does not appear on the

⁴Department Counsel's FORM provided an exceptionally thorough description of the SOR debts, and included citations to Applicant's various credit reports (FORM pages 3-5).

⁵The source for facts in this paragraph is an October 16, 2009, letter from the creditor (FORM response, enclosure 1).

⁶Without a more detailed description of the expenses caused by these unexpected events, it has not been possible to assess the degree of resulting mitigation.

SOR. He said he planned to make a \$127 payment towards a settlement of \$379 on a collection debt of \$726 (Item 4 at 3). This \$726 debt does not appear on the SOR. Applicant said he planned to pay the \$128 utility debt in SOR ¶ 1.b on August 31, 2009 (Item 4 at 4). However, he did not provide proof of payment of the debt in SOR ¶ 1.b.

On December 18, 2009, Applicant responded to the SOR. In his SOR response, he did not promise to pay any of the SOR debts, or provide proof of any payments on his SOR debts (Item 2).

The FORM cites lack of documentation showing payments, payment arrangements, good faith efforts to resolve debts, and financial counseling, placing Applicant on notice of what he needed to do to alleviate or mitigate security concerns (FORM at 6). The FORM response states Applicant is in contact with his creditors and he is trying to get payment plans established.

Applicant's file does not contain any documentary evidence that debts are paid, disputed,⁷ in established payment plans, or that Applicant has received financial counseling. Although not required, the file does not contain a personal financial statement or any letters from character references or job appraisals.

Applicant concluded his FORM response with the following comments:

Throughout my adult life, I have been a proud and productive citizen. I have never been involved in any illegal activity, and I treat all people with dignity and respect. I do admit that I have not been very efficient in handling of financial matters, but I am working to improve in that area. I would never do anything that would breach the security of our great nation, which I love dearly.

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.

⁷Applicant's FORM response said he disputed an education-related debt; however, this debt does not appear to be listed on the SOR. This creditor appears at least seven times on his February 24, 2009, credit report, with the highest amount owed in the amount of \$9,885 with one \$68 payment being overdue (Item 7 at 9). Applicant did not provide the basis of the dispute or dispute documentation. No adverse inference is drawn concerning this account. It is mentioned merely to emphasize that it not being considered as part of this security clearance determination.

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, his SOR response, and his FORM response. His 15 delinquent SOR debts total \$41,667. His 2006 BMW was sold at auction, and his actual debt was \$6,107 rather than \$20,008. Actually, his SOR debt total is \$27,766. His SOR debts have been delinquent for more than a year. 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 illnesses in his family, and his unemployment. However, there is insufficient evidence about these circumstances to show their effect on his financial situation, and that he acted responsibly under the circumstances. Five debts show a last activity prior to the start of his unemployment in October 2007. Moreover, one account became delinquent in 2003 and two accounts became delinquent in 2005 before any family members became ill. There is insufficient evidence he maintained contact with his creditors on several of his SOR debts.⁸ Once he learned of his delinquent debts at his OPM interview on March 25, 2009, and even more importantly when he responded to DOHA interrogatories on August 21, 2009, 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 did not provide a personal financial statement or budget. Applicant is well educated and he understands 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

⁸Even 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.

problem is being resolved or is under control.” He has admitted responsibility for 10 SOR debts totaling \$24,395, and documented his communication with one of them (the debt relating to his repossessed BMW). He also established some mitigation under AG ¶ 20(d) by showing some good faith⁹ in the resolution of his SOR debts by admitting responsibility for 10 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 from February 2008 to the present. He did not provide proof of any payments to his SOR creditors. He did not provide enough information about the effect on his finances caused by the illness in his family. He has not provided documentation showing sufficient progress on his SOR debts. His documented 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

⁹The 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].

(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)).

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 39 years old. He is sufficiently mature to understand and comply with his security responsibilities. He has earned a bachelors 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 unemployment and illnesses in his family contributed to his financial woes. He communicated with several creditors and discussed payment arrangements. He admitted responsibility for 10 SOR debts totaling \$24,395. These factors show some responsibility, rehabilitation, and mitigation.

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 2003. When an OPM investigator interviewed him on March 25, 2009, and then when he responded to DOHA interrogatories, it should have been evident to a person with his education and background as an engineer that delinquent debts were a security issue. The issue of financial considerations was further emphasized when he received the SOR, and again when he received the FORM. He had ample notice of his delinquent SOR debts, and sufficient opportunity to make greater progress in the resolution of his SOR debts, or to provide adequate documentation to mitigate financial issues. 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.

I give Applicant substantial credit for admitting 10 of his delinquent debts. Moreover, he admitted the largest debts and denied five of the smaller debts. The five debts he denied are all allegedly owed to collection companies, and as such could be duplications or have been transferred to different creditors. I am satisfied that he would have admitted the last five debts, if he had more assurance from the creditors of his responsibility for them. Accordingly, I find "For Applicant" on the debts in SOR ¶¶ 1.a (\$480), 1.g (\$692), 1.k (\$1,482), 1.l (\$439), and 1.o (\$278).

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 fully 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b to 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h to 1.j:	Against Applicant
Subparagraphs 1.k to 1.l:	For Applicant
Subparagraphs 1.m and 1.n:	Against Applicant
Subparagraph 1.o:	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