



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



In the matter of:)
)
) ISCR Case No. 09-07186
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

May 5, 2011

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 2, 2008. On May 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

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 Applicant's security clearance. It recommended referral of his case to an administrative judge for a determination whether to deny or revoke his security clearance.

Applicant answered the SOR on January 10, 2011. He elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM) dated February 2, 2011, was provided to him by cover letter dated February 3, 2011. Applicant received his copy of the FORM on February 14, 2011. He was given 30 days from the date he received the FORM to submit any objections and information in mitigation or extenuation. He did not submit additional information within the 30-day period. The case was assigned to me on April 11, 2011.

Findings of Fact

Applicant is a 26-year-old field technician, who has been employed by a defense contractor since April 2008. He was awarded a high school diploma in May 2002. He attended college for approximately one year. He has never been married and has one child, who is eight years old. He has not served in the military, but indicated his background was previously investigated by the U.S. Government on behalf of the Army & Air Force Exchange Service in January 2008.¹

The SOR lists 37 debts consisting of 2 judgments, 31 collection accounts, 3 charged-off accounts, and 1 past-due account. Those delinquent debts total about \$46,025. Credit reports dated June 19, 2008; March 6, 2009; November 17, 2009; November 19, 2009; and February 2, 2011, contain prima facie evidence of the alleged debts.²

In his Answer to the SOR, Applicant admitted 14 of the alleged debts totaling about \$18,432. Of those admitted debts, he claimed that 2 (child/family support debts) were resolved in a court proceeding, 11 were paid and removed from his credit reports, and 1 is under investigation. His admissions are incorporated herein as findings of fact. Some of the admitted debts have been delinquent for a number of years. One admitted debt's last recorded activity dated back to 2002. He denied the remaining 23 debts and, in doing so, claimed he was the victim of identity theft. He indicated the denied debts were deleted from his credit report. From his Answer, Applicant is essentially claiming only one debt (SOR ¶ 1.f – a collection account for \$3,545 – which he stated is under investigation) remains unresolved.³

¹ Background information is derived from Applicant's e-QIP.

² Items 1, 4, 8-12.

³ Item 4. Applicant claimed that the debts resolved in the court proceeding were SOR ¶¶ 1.a and 1.h; the debts that were paid and removed were SOR ¶¶ 1.b, 1.e, 1.k, 1.n, 1.o, 1.s, 1.t, 1.x, 1.z, 1.bb, and 1.ff; and the debt under investigation is SOR ¶ 1.f. Item 12 reflects that the date of last activity for the debt in SOR ¶ 1.k was September 2002, while that date for the debt in SOR ¶ 1.n was June 2004. Item 11 reflects that the date of last activity for the debt in SOR ¶ 1.j was June 2005.

Applicant provided no explanation of why he became delinquent on the admitted debts. He also has not provided any proof of payments towards the admitted debts. He worked in Iraq from early 2008 to March 2009 and claimed he was not aware of the delinquent debts until returning from Iraq. He was scheduled to return to Iraq at the end of March 2009. He stated that he made substantial income in Iraq and could afford to pay these debts. He also indicated that he would make arrangements to have child support payments made in his absence.⁴

The details of Applicant's claimed identity theft are largely unknown. In his e-QIP, Applicant stated, "My financial records contains (sic) things on it that my mother got in my name." In responding to interrogatories, he also stated, "I am a victim of Identity Theft and I am in the process of correcting the issues with the credit bureaus." A fraud alert has been placed on his credit reports. He, however, did not provide a police report or any other information supporting his claim that he is the victim of identity theft. The deletion or removal of debts from his credit reports is the only documentation he has provided to support his dispute pertaining to the denied debts. In Section 27 of his e-QIP, he indicated that three of his delinquent debts were for "Leased apartment for mother" or "Leased home for mother." While at least two of the admitted debts appear to have been for leased property, it cannot be determined from the information provided whether those leases were for his mother. For a repossessed vehicle disclosed in his e-QIP, he stated, "Car bought for my mother when I was in high school."⁵

Applicant has made inconsistent statements about some of the alleged debts. During an Office of Personnel Management (OPM) background interview on March 23, 2009, he indicated that the collection account from a university for \$718 was for an education loan and that he would make arrangements to pay that debt before returning to Iraq. In his Answer, he denied the university debt (SOR ¶ 1.j) claiming it was the result of identity theft. Furthermore, he indicated during the OPM interview that a collection for \$3,482 was a medical debt for treatment received in a particular city for which he would make payment arrangements. Again, in his Answer, he denied that debt (SOR ¶ 1.y) claiming it was the result of identity theft. Similarly, he acknowledged at his OPM interview the debts in SOR ¶¶ 1.g, 1.u, 1.v, 1.w, and 1.aa, but denied them in his Answer. He also claimed that he paid the debt in SOR ¶ 1.e; however, it was still reported as unpaid in a subsequent credit report. His credit reports also reflect that he has disputed some of the debts that he admitted in his Answer. These inconsistencies raise concerns about his credibility.⁶

⁴ Items 4, 6, and 7.

⁵ See, Section 27 and Additional Comments in the e-QIP (Item 5) and Item 6. The two leased-property debts are SOR ¶¶ 1.f, and 1.x. Another possible leased-property debt is SOR ¶ 1.u; however, Applicant denied that debt.

⁶ Items 4, 7, and 8. In his e-QIP, Applicant did not list that university as a school he attended. Additionally, Applicant admitted the debt in SOR ¶ 1.i during the OPM interview, but denied it in his Answer. During the interview, he indicated it was a medical debt. Since this is a debt for telecommunication services, he was obviously confused about it during the interview.

From an analysis of the record evidence, 15 of the alleged debts totaling \$22,244 are found to be unresolved. The unresolved debts are broken down into the following categories:

a. Seven are debts that he acknowledged as his during the OPM interview, but later denied claiming they were the result of identity theft (SOR ¶¶ 1.g, 1.j, 1.u, 1.v, 1.w, 1.y, and 1.aa). No explanation was provided for his change of position regarding those debts. Given his prior acknowledgement of those debts, the mere deletion of those debts from his credit reports was insufficient documentation to establish a legitimate basis for disputing them.⁷

b. Four debts remain unresolved because Applicant provided insufficient evidence to contradict the information in the credit reports. Three of these debts he either disputed or claimed were paid, but they still appear on his latest credit report as unpaid (SOR ¶¶ 1.e, 1.m, and 1.q). This category also includes the one debt that he indicated was under investigation for settlement (SOR ¶ 1.f).⁸

c. Two of the unresolved debts were only reported as delinquent by the Trans Union credit bureau (SOR ¶¶ 1.z and 1.kk). Applicant failed to submit either a subsequent Trans Union credit report or other persuasive documents to establish that they were resolved.⁹

d. One of the unresolved debts he disputed, and it was deleted from his credit report (SOR ¶ 1.d). However, it reappeared under another debt collector on his latest Equifax credit report.¹⁰

e. One of the unresolved debts he claimed was paid, and it was deleted his credit report (SOR 1.k). However, the date of last activity for that debt was in September 2002. Since it was beyond the seven-year period for reporting collection accounts on credit reports, I found its deletion from the credit reports was not sufficient proof of payment or resolution.¹¹

The remaining 22 debts were resolved. In his Answer, Applicant provided an Experian credit report dated May 24, 2010, that reflects 23 of the alleged debts were

⁷ Items 4 and 7.

⁸ Items 4 and 8.

⁹ Items 4 and 8 through 12. SOR ¶¶ 1.z and 1.kk were reported in Items 11 and 12.

¹⁰ Items 4 and 8.

¹¹ Items 4 and 12. Debts are removed from credit reports for various reasons. See ISCR Case No. 98-0111 (App. Bd. Nov 13, 1998) (Fair Credit Reporting Act [15 U.S.C. § 1681(c)] requires credit reporting agencies to not list debts more than seven years old).

deleted from that report. However, those 23 deleted debts do not exactly match the 23 debts he denied in his Answer. The resolved debts are broken down into the following categories.

a. Eight debts were resolved because he claimed they were paid, and they were later deleted or removed from credit reports (SOR ¶¶ 1.b, 1.n, 1.o, 1.s, 1.t, 1.x, 1.bb, and 1.ff).¹²

b. Similarly 12 debts were resolved because he consistently denied them or claimed no knowledge of them, and they were deleted or removed from later credit reports (SOR ¶¶ 1.c, 1.i, 1.l, 1.p, 1.r, 1.cc, 1.dd, 1.ee, 1.gg, 1.hh, 1.ii, and 1.jj).¹³

c. The two child support debts were resolved because he provided part of a court record reflecting that he had no child support arrearages as of April 30, 2010 (SOR ¶¶ 1.a and 1.h).¹⁴

Applicant presented no information to establish that he sought or obtained any financial counseling. Five delinquent debts totaling \$1,709 that were not alleged in the SOR appear on his latest credit report. He has not provided any information about what, if any, action he intends to take regarding the unresolved alleged debts or the non-alleged delinquent debts.¹⁵

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S.

¹² Item 4, 6, 7, and 8.

¹³ Item 4, 6, 7, and 8.

¹⁴ Item 4. The court document does not contain a signature page; however, on its face, it appears to be authentic. It also indicates that Applicant had medical arrearages in the amount of \$566. The release information for the medical arrears was on the next page, which was not provided. Although it would appear that the medical arrearages were also released, that fact is unknown. The Attorney General debt was deleted from his Experian credit report of May 24, 2010. Applicant was never married, so this debt would most likely be limited to child support. Department Counsel indicated the debts in SOR¶¶ 1.a and 1.h were resolved.

¹⁵ Item 8. I have not considered the unlisted debts for disqualifying purposes, but have considered them in analyzing Applicant’s total financial situation, determining his ability to repay his debts, and applying the “whole-person” concept.

Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, to reach his decision.

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 of 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, a clearance decision is merely an indication that the applicant has or 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 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 or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the concern is that an applicant's 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 ¶ 18.)

In his Answer to the SOR, Applicant admitted 14 of the alleged debts totaling about \$18,432. These delinquent debts span many years. For the reasons detailed above, 15 of the alleged debts totaling \$22,244 remain unresolved. Applicant's history of indebtedness is well documented. AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations" apply.

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 unresolved delinquent debts are recent, ongoing, significant, and cast doubt on his reliability. AG ¶ 20(a) does not apply. He has presented no evidence that those debts were due to conditions beyond his control. Additionally, he presented no evidence that he has received financial counseling or that the reasons for those

delinquent debts have been resolved or are under control. AG ¶¶ 20(b) and 20(c) do not apply.

Applicant merits partial credit under AG ¶¶ 20(d) and 20(e). He claimed that he paid eight of the alleged debts, and they have been either removed or deleted from his credit reports. I found those eight debts were resolved. Additionally, he claimed that he was the victim of identity theft. He has consistently denied or claimed no knowledge of 12 debts. In his Answer, he claimed those 12 debts were the result of identity theft, and they have been either removed or deleted from his credit reports. I found those 12 debts were resolved. He also produced a court document showing he no longer has any child support arrearages, which resolved two of the alleged debts. In total, 22 of the alleged debts totaling about \$23,781 were resolved. Nevertheless, Applicant's unresolved delinquent debts remain a security concern, and he provided no plan for resolving them.

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 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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. I also considered Applicant's years of service to his employer, including his service in Iraq. Nevertheless, Applicant's financial problems are ongoing and significant. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person concept, I conclude he has not mitigated the security concerns pertaining to financial considerations.

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

Applicant has not 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 1a - 1c:	For Applicant
Subparagraphs 1.d - 1.g:	Against Applicant
Subparagraphs 1.h - 1.i:	For Applicant
Subparagraphs 1.j - 1k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n - 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraphs 1.r - 1t:	For Applicant
Subparagraphs 1.u - 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y - 1.aa:	Against Applicant
Subparagraphs 1.bb - 1.jj:	For Applicant
Subparagraph 1.kk:	Against Applicant

Decision

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 eligibility for a security clearance for Applicant. Clearance is denied.

JAMES F. DUFFY
Administrative Judge