



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 09-07789
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffries, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant’s SOR lists 14 delinquent debts, totaling about \$40,466. He has a history of delinquent debt, and he did not make sufficient progress resolving his delinquent SOR debts. He did not provide complete information about his delinquent debts and judgments on his September 19, 2007 Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86); however, he provided sufficient information to place the government on notice of his financial problems. Personal conduct concerns are mitigated. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 19, 2007, Applicant submitted his SF-86. On June 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations) and E (personal conduct).¹ The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On August 31, 2011, Applicant responded to the SOR. On March 30, 2012, Department Counsel indicated she was ready to proceed on Applicant's case. On April 2, 2012, DOHA assigned Applicant's case to me. On April 17, 2012, DOHA issued a hearing notice, setting the hearing for May 15, 2012. Applicant's hearing was held as scheduled. Department Counsel offered seven exhibits, and Applicant offered one exhibit. (GE 1-7) (Tr. 8, 13) There were no objections, and I admitted GE 1-7 and AE A. (Tr. 8, 13) On May 25, 2012, I received the transcript.

Findings of Fact²

Applicant's SOR response admitted responsibility for all of the SOR debts. For SOR ¶¶ 2.a and 2.b, he admitted that he did not disclose all of the financial information requested on his SF-86. Applicant's admissions are accepted as findings of fact.

Applicant is a 34-year-old employee of a defense contractor, who is a specialist in information technology. (Tr. 14-15; GE 1) He has been working for his employer continuously since June 2010. (Tr. 16-17) He served in Afghanistan and Iraq on behalf of the contractor. (Tr. 47-48) He was scrupulous about protecting classified documents. (Tr. 48)

Applicant graduated from high school in May 1996. (Tr. 19) He has approximately 32 hours of college credits. (Tr. 19) Applicant has a 10-year-old daughter, who lived with her mother overseas for several years. (Tr. 21-22, 28-29) He does not pay the mother of his daughter any child support by mutual agreement. (Tr. 21) He married his spouse in April 2008, and they have a three-year-old son and two-year-old daughter. (Tr. 20-21) His spouse does not work outside their home because child care expenses would absorb most of her paycheck. (Tr. 42-43)

Applicant joined the Army in September 1996. (Tr. 15, 17) He served overseas in Korea and Southwest Asia. (Tr. 44-45) In 2004, he left active duty as a sergeant (E-5), and he received an honorable discharge. (Tr. 15, 17) He left active duty because he had sole custody of his daughter, and he lacked a family care plan. (Tr. 18; GE 1) His

¹At Department Counsel's request, I changed the amount of the debt alleged in SOR ¶ 1.h from "\$2,371" to "\$2,731," and in SOR ¶ 2.b, I changed the name of the document from "Questionnaire for National Security Positions" to "Electronic Questionnaires for Investigations Processing (e-QIP)." (Tr. 10-11) Applicant did not have any objection to these changes. (Tr. 10)

²Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

military occupational specialty (MOS) was wire systems installer (31L). (Tr. 18) He has held a security clearance without any security violations since 1997. (Tr. 14)

Financial considerations

Applicant's SOR and credit reports lists 14 delinquent debts, totaling about \$40,466. They describe two judgments, totaling \$6,050 as follows: 1.a was filed in 2005 for furniture (\$2,050), and 1.b was filed in 2004 (\$4,000). (Tr. 34-35) He has 12 debts that are charged off or placed for collection, totaling \$34,416 as follows: 1.c is a furniture account (\$1,927) (Tr. 34-35); 1.d is a collection account resulting from a repossessed vehicle (\$13,446) (Tr. 36); 1.e is a collection account (\$3,615) (Tr. 36); 1.f is a debt owed to the Department of Veterans Affairs (\$308) (Tr. 36-38); 1.g is a debt owed to a credit union (\$4,035) (Tr. 37-38); 1.h is a collection account for a student loan (\$2,731) (Tr. 39); 1.i is a post exchange account (\$137) (Tr. 38); 1.j is a collection account (\$1,316) (Tr. 38); 1.k is a collection account (\$384) (Tr. 38); 1.l is a collection account (\$122); 1.m is a collection account (\$6,207) (Tr. 38-39); and 1.n is a telecommunications collection account (\$188). Applicant believes the debts in SOR ¶¶ 1.b and 1.g are duplicates of each other because they are owed to the same creditor and are for approximately the same amounts. (Tr. 37-38) His statement that the post exchange credit card account (\$137) and the VA debt (\$308) are duplicates is not established because there is no evidence that the two accounts are linked to each other. (Tr. 38)

Applicant had financial difficulties after he left active duty. (Tr. 23) He was unemployed from April 2004 until October 2004. (Tr. 24) He received unemployment compensation for 16 or 17 weeks. (Tr. 25) Applicant did not make any payments to any of his SOR creditors. (Tr. 30) His income is enough to pay his current debts and expenses; however, he did not believe he had sufficient income to pay his SOR debts. (Tr. 30-31) His spouse pays their monthly bills. (Tr. 32) Applicant's personal financial statement (PFS) indicates that he has a negative remainder of \$15. (Tr. 31; GE 2 at 101)

The SOR does not include all of his financial problems. Applicant has some new medical copayments that he is unable to fully pay; however, he is making some partial payments.³ (Tr. 33) He is unsure of the status of his student loans; however, he does

³The SOR did not allege that Applicant had failed to pay medical bills, student loans, or taxes. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR misconduct for the five above purposes, and not for any other purpose.

plan to pay his student loans. (Tr. 33) He believes he owes the federal and state governments for taxes. (Tr. 37)

Applicant received financial counseling. (Tr. 40) He investigated the possibility of consolidating his debts. (Tr. 40) He decided against a debt consolidation because it was not practical, and he rejected bankruptcy because he believed it reflected poorly on his credit rating. (Tr. 40-41) He currently lives paycheck to paycheck, as he has about \$30 to \$40 left over at the end of the month after paying bills and expenses. (Tr. 42) He thought a raise was likely, and he could apply the raise to his debts. (Tr. 41-42)

Personal Conduct

SOR ¶ 2.a indicates that Section 27d of his September 19, 2007 SF-86 asked whether in the last seven years, he had any judgments filed against him that had not been paid. Applicant responded, “No” to this question, and he did not disclose the judgments in SOR ¶¶ 1.a and 1.b.

SOR ¶ 2.b indicates that Section 28b of his September 19, 2007 SF-86 asked, “Are you currently over 90 days delinquent on any debt(s)?” Applicant responded, “No,” and he did not disclose the delinquent debts discussed in the previous section.

In response to Section 27b of Applicant’s September 19, 2007 SF-86, which asked about wages garnished or property repossessed in the last seven years, Applicant indicated, “Yes” and disclosed a \$15,000 delinquent debt, resulting from a vehicle repossession. Although no creditor is specifically named, this debt appears to be associated with SOR ¶ 1.d (\$13,466 debt resulting from vehicle repossession). (GE 1) Applicant did not disclose any other derogatory financial information on this SF-86.

Applicant knew about one of the judgments and did not disclose it because he did not have the address needed for his SF-86. (SOR response) For the debts over 90 days delinquent, he said his disclosure of the \$15,000 debt was meant to be a summary of his delinquent debt total. (SOR response) He did not disclose additional negative financial information because he did not have his credit report, and he lacked specific information about his creditors and debts.

At his hearing, Applicant said that he did not disclose his delinquent debts because he did not have all of the names and addresses of the creditors. (Tr. 39) He decided to give an approximate total value of his debts to disclose the issue of delinquent debt. (Tr. 40)

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 that, “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 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 meeting the criteria contained in the 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. Adverse clearance decisions are made “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 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 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

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." 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, his SOR response, and his hearing record. Applicant's SOR alleges 14 delinquent debts, totaling about \$40,466. Some debts have been delinquent since 2004 or 2005. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;⁴ 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 in resolving his debts does not warrant full application of any mitigating conditions to all SOR debts. The debt is SOR ¶ 1.g is mitigated because it is duplicated in SOR ¶ 1.b (judgment for \$4,000).

Applicant fell behind on his debts because of the costs of daily living, his spouse's unemployment, and his own unemployment. He received financial counseling. He showed some good faith when he admitted responsibility for his SOR debts in his SOR response and at his hearing.

Applicant has not taken reasonable actions to resolve most of his SOR debts. He has three SOR debts that are less than \$200, and he has not paid them. He did not provide documentation proving that he maintained contact with his SOR creditors, and he did not provide any documentation showing his attempts to negotiate payment plans with his SOR creditors.⁵ There is insufficient evidence that his financial problem is being resolved and is under control. He did not establish his financial responsibility.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

⁴The 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)).

⁵Even 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.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 16(a) applies. Section 27d of his September 19, 2007 SF-86 asked whether in the last seven years, he had any judgments filed against him that had not been paid. Section 28b of his September 19, 2007 SF-86 asked, "Are you currently over 90 days delinquent on any debt(s)?" Applicant responded, "No" to both questions, when he knew the correct answer was "Yes." He failed to disclose the judgments in SOR ¶¶ 1.a and 1.b. and the debts in SOR ¶¶ 1.c to 1.n. Inquiry about the applicability of mitigating conditions is required.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶ 17(f) applies. Applicant disclosed the repossession of a vehicle and \$15,000 in delinquent debt. He provided notice to the Government that he had financial problems. He failed to provide requested financial information because he did not want to collect the requested information. He was derelict in his responsibilities. He did not intend to deceive the Government about his derogatory financial information. He showed some remorse when he acknowledged that the omission of the derogatory financial information was a mistake, and he regretted his decision. The allegation of intentional falsification of his July 13, 2010 SF-86 is unsubstantiated because I do not believe he intended to deceive the Government.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is a 34-year-old information technology specialist, who has been working for

his employer continuously since June 2010. He served in Afghanistan and Iraq as a contractor employee. He graduated from high school and earned approximately 32 hours of college credits. He honorably served on active duty in the Army as a wire systems installer (31L) from 1996 to 2004. He was deployed overseas in Korea and Southwest Asia. I am confident that he has the ability and maturity to comply with security requirements. He understands the importance of being honest on his SF-86. Some circumstances beyond his control, such as insufficient income and unemployment adversely affected his financial circumstances. He is an intelligent person who knows what he must do to establish his financial responsibility. There is no evidence of security violations, disloyalty, or that he would intentionally violate national security. His admissions about his debts are an important step towards rehabilitation and mitigation of security concerns.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant failed to mitigate 13 SOR delinquent debts, totaling about \$36,000. He failed to prove that he could not have made greater progress resolving and documenting resolution of his SOR debts. He did not provide documentary proof that he made any payments to any of the SOR creditors. Three SOR debts are less than \$200 each.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude personal conduct concerns are mitigated; however, financial considerations concerns are not mitigated. 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
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h to 1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge