



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-01527

Appearances

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

October 24, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists nine debts totaling \$30,816. After crediting him for paying one debt for \$933 and filing bankruptcy, there is insufficient information to fully mitigate financial considerations because of his history of financial problems. Eligibility for access to classified information is denied.

Statement of the Case

On October 4, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to him, alleging security concerns under Guideline F (financial considerations) (Hearing Exhibit (HE) 1). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005. 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 him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 23, 2011, Applicant responded to the SOR. (HE 3) On July 22, 2011, Department Counsel was prepared to proceed. On August 1, 2011, the case was assigned to me. On September 6, 2011, DOHA issued a hearing notice setting the hearing for September 27, 2011. (HE 2) The hearing was held as scheduled. At the hearing, Department Counsel offered eight exhibits (GE 1-8) (Transcript (Tr.) 15), and Applicant offered one exhibit. (Tr. 16-17; AE A) I admitted GE 1-8 and AE A. (Tr. 15, 17) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On October 12, 2011, I received the hearing transcript.

Findings of Fact¹

Applicant admitted responsibility for the eight debts alleged in SOR ¶¶ 1.a to 1.h and denied responsibility for the debt in SOR ¶ 1.i. (HE 3) 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 33-year-old employee of a defense contractor, who is seeking reinstatement of his security clearance to enable him to continue employment as a command and control room monitor. (Tr. 5; GE 1 at 18) In 1996, he graduated from high school. (Tr. 5) In about 2006, he earned an associate's degree in computer science. (Tr. 6; GE 1 at 14) From about December 2006 to about September 2009, he worked as a systems engineer for a telecommunications corporation. (GE 1 at 19) He has never served in the military. (GE 1 at 26) He has never married. (GE 1 at 29) He does not have any children. (GE 1 at 29-32)

Financial Considerations

The SOR alleges nine debts totaling \$30,816 as follows: 1.a is a collection account from a bank for \$2,672; 1.b is a collection account from a bank for \$3,351; 1.c is a charged off account for a bank debt for \$3,693; 1.d is a collection account for \$4,316; 1.e is a collection account for \$954; 1.f is a mortgage account, alleging a delinquent debt for \$14,000; 1.g is a collection account for a telecommunications debt for \$329; 1.h is a collection account for a telecommunications debt for \$568; and 1.i is an alleged delinquent federal tax debt for \$933. (HE 1)

On February 1, 2011, Applicant paid the debt in SOR ¶ 1.i (\$933) when the Internal Revenue Service (IRS) diverted or garnished part of his income tax refund for tax year 2010. (Tr. 19) His delinquent income tax bill was from his 2008 taxes. (Tr. 20)

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) or his investigative personal subject interview (PSI). (GE 2)

Applicant said that after July 2008 he made some payments on some of his debts that were listed in SOR ¶¶ 1.a to 1.h; however, he did not provide any documentary evidence to corroborate his claim of payments. (Tr. 39) The only documentation he provided at his hearing was one page to show he had filed for bankruptcy. (AE A)

On August 18, 2011, Applicant filed for bankruptcy under Chapter 7 of the Bankruptcy Code. (AE A) He said he listed all of his SOR debts on his bankruptcy filing. (Tr. 21) He paid his bankruptcy attorney \$2,000 to file his case. (Tr. 26) He had one credit card that was current when he filed for bankruptcy, and its balance was about \$500. (Tr. 44) He waited to file his bankruptcy because he was worried that he would lose his security clearance. (Tr. 56) His security office advised Applicant that filing bankruptcy would not automatically result in the loss of his security clearance. (Tr. 56) After receiving this advice, he filed for bankruptcy.

Applicant purchased a condominium in 2005 or 2006.² (Tr. 32; GE 1 at 11) The two mortgages on his condominium totaled about \$155,000. (Tr. 40) He had good credit until 2007. (Tr. 18) His mortgage payments were about \$1,200 per month, and he had difficulty making his monthly mortgage payments. He borrowed from his 401K account and used his credit cards to make payments on his mortgages. (Tr. 35, 44) He tried to sell his furniture and obtain a roommate to raise funds. (Tr. 37-38, 47) He stopped making payments on his two mortgages in September or October of 2007. (Tr. 32) He moved out of his condominium around December 2007. (GE 1 at 11)

Applicant went on a European vacation in September or October 2007 to Italy and Germany. (Tr. 34, 46; GE 2 at 11) He acknowledged the European trip was irresponsible; however, he wanted to take the trip to reduce stress from his bills and his mother's illness. (Tr. 47) He paid for the European trip using the credit card, which is listed in SOR ¶ 1.d (\$4,316). (Tr. 34) He went on a vacation-cruise to Mexico in December 2008. (Tr. 35-37) He stopped making payments on his credit cards before he was laid off from his employment in September 2009. (Tr. 30, 33) He started his current employment in November or December 2009. (Tr. 38) In December 2009, he told an Office of Personnel Management (OPM) investigator that he was going to start making payments to his creditors. (Tr. 39) He said he provided financial support to his mother, who suffered from multiple sclerosis; however, he was unable to provide details about the amount of financial support he provided to her. (Tr. 39-40)

Applicant completed a personal financial statement (PFS) in November 2010, and the financial entries remain about the same as of his hearing on September 27, 2011. (Tr. 22-23) His monthly financial entries are: gross income of \$3,840; net income of \$2,472; expenses of \$2,025; debt payments of \$175; and net remainder of about \$272. (Tr. 22-30; GE 2 at 25) His PFS indicates he was paying \$50 monthly to address a delinquent state tax debt of \$400 from 2008. (Tr. 28-29) He has not made any

² Throughout Appellant's hearing statement, he had difficulty providing dates for important financial events such as purchases and employment. For example, he was unable to state the year he moved out of his condominium. (Tr. 37) He was unsure about numerous financial details. (Tr. 37-41)

payments on his 2008 state tax debt for about nine months because of financial hardship. (Tr. 29) He does not have any savings, and he has about \$200 in his checking account. (Tr. 26, 29, 45) He has about \$5,000 in his 401K account. (Tr. 46) His only monthly payment is his vehicle loan, and that monthly payment is \$360. (Tr. 24) His bankruptcy lawyer told Applicant to stop making payments on his credit cards. (Tr. 26)

In about December 2004, Applicant used his severance pay from one job to pay off his student loan of about \$5,000. (Tr. 43; GE 1 at 22) He was unable to describe the total amount of debt that would be discharged through his bankruptcy. (Tr. 49-50) He had financial counseling, which was required for him to file for bankruptcy. (Tr. 50) He disclosed his financial problems on his October 4, 2009 security clearance application. (GE 1 at 41-47)

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, 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 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

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) with respect to the allegations set forth in the SOR.

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 security clearance application, credit reports, responses to DOHA interrogatories, and SOR response. Applicant's SOR lists nine delinquent debts totaling \$30,816. Several debts became delinquent in September or October 2007 and have not been resolved in four years. 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; 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 avoidance of future delinquent debts.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by unemployment and his efforts to support his mother, who has multiple sclerosis. However, there is insufficient evidence about these circumstances to show he acted responsibly under the circumstances. He did not provide sufficient information about his variations in income or the amount of money he provided to his mother to establish full mitigation under AG ¶ 20(b). He told the OPM investigator in December 2009 that he was going to pay the debts discussed in the interview, and the only debt that was paid was paid through the IRS diversion of his tax refund for tax year 2010. Once Applicant learned of his delinquent debts, he had an obligation to maintain contact with his creditors³ and resolve his debts. There is insufficient evidence to establish his diligence in meeting these security responsibilities.

Applicant disclosed that he defaulted on two mortgages, totaling about \$155,000, and the SOR only lists one SOR-related delinquent debt in SOR ¶ 1.f (\$14,000). He has a delinquent state tax debt for about \$400. There may be other delinquent debts listed on his bankruptcy schedules. Because these financial problems were not listed on his SOR, he has not had adequate notice, and I am not drawing any adverse inference against him concerning these financial problems.⁴

AG ¶¶ 20(c) and 20(d) do not fully apply. He received financial counseling and showed some good faith⁵ in connection with his bankruptcy. His bankruptcy will resolve

³“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.

⁴In 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 not considered these non-SOR issues and problems for any adverse purpose.

⁵The 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,

all of his delinquent non-priority debts. Applicant understands what he must do to establish his financial responsibility. However, Applicant cannot receive full credit under AG ¶ 20(c) because there is insufficient corroborating documentary evidence that his financial problem is being resolved and his finances are under control. His history of delinquent debt extends back to 2007. There is an insufficient track record of debt payment to provide assurance that he will show future financial responsibility. 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 December 2009. He did not provide enough information about how his unemployment affected his finances. Several of his delinquent debts were incurred about four years ago and most of the time from 2007 to present he was employed. There are no receipts or account statements from creditors, establishing any payments to his SOR creditors. His documented steps are simply inadequate to fully mitigate financial considerations security concerns. Applicant did not establish that he acted responsibly under the circumstances.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

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)).

Some whole-person factors support Applicant's access to classified information; however, they are not sufficient to fully mitigate security concerns. Applicant admitted responsibility for eight of nine SOR debts totaling about \$30,000. His unemployment and his mother's illness adversely affected his finances. He admitted his financial predicament in his security clearance application, to an OPM investigator, in his response to DOHA interrogatories, and at his hearing. His testimony was credible, and he is an honest, forthright person. One SOR debt was paid when the IRS diverted his 2010 federal income tax refund. His effort to resolve his delinquent debts through bankruptcy is a positive step in the resolution of his financial problems.

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. He fell behind on his debts in September or October 2007, and he has been unable to make sufficient progress on his debts to establish he is serious about paying his creditors. He took at least two vacations outside the United States, using funds that could have been applied to his debts. He did not provide sufficient information about the adverse effects of his unemployment and his mother's illness on his financial situation to meet his burden of showing his actions were reasonable under the circumstances. His documented actions were insufficient to establish he acted responsibly under the circumstances. He had sufficient opportunity to make greater progress in the resolution of his SOR debts, or to provide adequate documentation to mitigate financial issues.

A post-bankruptcy period showing financial responsibility is necessary. Applicant's promise to maintain financial responsibility after his bankruptcy is insufficient without a documented track record of financial responsibility.⁶ Lingering doubts remain concerning his current reliability, trustworthiness, and good judgment.

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 Applicant has not fully mitigated the financial considerations security concerns.

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.h:	Against Applicant
Subparagraph 1.i:	For Applicant

⁶See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (discussing importance of track record of financial responsibility).

Conclusion

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

Mark Harvey
Administrative Judge