



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-03615

Appearances

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

October 12, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists five debts totaling \$24,910. Applicant's spouse handles the family's financial matters. On March 28, 2009, she placed 10 of the family's 11 delinquent debts into a 47-month debt-consolidation plan (DCP), and she has consistently made monthly \$450 payments into their DCP. Applicant and his spouse have been making \$150 monthly payments on their other delinquent debt for 24 months. All debts are in current status. Financial considerations concerns are mitigated. Access to classified information is granted.

Statement of the Case

On December 2, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On June 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, 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 18, 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 nine exhibits (GE 1-9) (Transcript (Tr.) 18), and Applicant offered four exhibits. (Tr. 35-36; AE A-D) There were no objections to the admissibility of any documents, and I admitted GE 1-9 and AE A-D. (Tr. 18-19, 36) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On October 6, 2011, I received the hearing transcript.

Findings of Fact¹

Applicant admitted responsibility for the debts alleged in SOR ¶¶ 1.a to 1.d and denied responsibility for the debt in SOR ¶ 1.e because the debt was paid. (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 62-year-old employee of a defense contractor, who is seeking reinstatement of his security clearance to enable him to continue driving sensitive DoD cargo in his company's truck. (Tr. 9, 47-48, 60; GE 1) He began his employment with the government contractor in December 2009 as a truck driver. (GE 1 at 13)

Applicant served two years on active duty (1967-1969) in the Air Force. He did not serve in Vietnam. (Tr. 7) He served in the Air Force Reserve from 1978 to 2006. (Tr. 6; GE 1 at 19) His specialty in the Air Force Reserve was heavy equipment operator. (Tr. 6) He honorably retired at the grade of master sergeant. (Tr. 6) He held a security clearance during his military service.

Applicant married in 1995. (GE 1 at 24) His children were born in 1976, 1977, and 1989; and his stepchildren were born in 1962 and 1970. (GE 1 at 29-32) Applicant's 21-year-old granddaughter lives with Applicant and his spouse. (Tr. 25) Applicant needs five more credits to complete his associate's degree and his certification as a tool and die machinist. (Tr. 5)

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 December 24, 2009 investigative personal subject interview (PSI).

Applicant's family has a proud tradition of service to the United States in peace and war. His grandfather served in combat in World War I and II, and his father served in the Army during the Korean War. (Tr. 62) His brother was killed in an aircraft accident while serving in the U.S. Air Force. (Tr. 63)

Financial Considerations

The SOR alleges five delinquent debts totaling \$24,910 as follows: ¶ 1.a is a collection account, alleging a delinquent debt from a bank for \$3,490; ¶ 1.b is a collection account, alleging a delinquent debt from a bank for a credit card debt for \$6,407; ¶ 1.c is a charged off account for a credit card debt for \$1,663; ¶ 1.d is a collection account, alleging a delinquent debt from a bank for \$11,000; and ¶ 1.e is a judgment entered in February 1999 for \$2,350. (HE 1)

Applicant is away from home driving his truck 27 or 28 days each month. (Tr. 60) His wife handles their finances and bills. She provided most of the information about their financial status at his hearing. Applicant's spouse was primarily responsible for his debts becoming delinquent because she charged their living expenses on charge cards, which resulted in delinquent debt. Applicant was underemployed and they were not able to keep their debts out of delinquent status.

On March 28, 2009, Applicant and his spouse enrolled in a 47-month DCP.² Under the DCP, they pay \$450 per month to an agent, who settles their debts using funds paid into the DCP. The DCP was designed to pay ten debts totaling \$32,355. Applicant's DCP agent told him not to contact the ten creditors and not to make any more payments directly to the ten creditors. (Tr. 29-30) Applicant has not missed any payments to the DCP because the payment is made through an allotment from his bank account. (Tr. 36-37) Since 2009, the DCP has paid four debts totaling \$4,121. The DCP is currently making payments to address a \$5,741 debt. Their DCP agent indicates the DCP is in current status, and the agent provided a list of actions and contacts made on Applicant's behalf over the last four months. (AE C-D)

Applicant made monthly \$150 payments for 24 months on the \$14,643 bank debt in SOR ¶ 1.d, which is now being collected by a law firm, and he has reduced this debt to \$11,381. (Tr. 43-47, 50; AE A, B) This debt is not part of his DCP. Applicant uses his Air Force retirement check to pay their mortgage through an automatic allotment. (Tr. 24) He also generated a personal financial statement (PFS) as part of his response to DOHA interrogatories. Applicant has about \$500 left at the end of each month to address unforeseen financial problems. (Tr. 29) Applicant does not have a car loan, and he does not have any open credit cards. (Tr. 30) All of their accounts and bills are current. (Tr. 60)

Applicant's security officer described him as having a good reputation when he came to her company and as being a very conscientious driver. (Tr. 55) He is a problem

² The sources for the facts in this paragraph is Applicant's August 9, 2011 debt consolidation plan (DCP), and his agent's August 8, 2011 letter providing the status of the DCP. (Tr. 36-41; AE C, D)

solver who shows initiative and accomplishes his mission. (Tr. 55) She supports reinstatement of his security clearance. (Tr. 55)

Applicant described himself as hard working, loyal, and responsible. (Tr. 58) He is financially responsible and will continue to pay his bills and comply with his payment plans. (Tr. 58-59)

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 credit reports, his responses to DOHA interrogatories, his SOR response, and the

evidence elicited during his hearing. Applicant's SOR lists five delinquent debts totaling \$24,910. Actually, Applicant's financial plight was worse than indicated in his credit reports and SOR. On March 28, 2009, he began a DCP that was intended to address ten delinquent debts totaling \$32,355. Additionally, he had a delinquent debt of over \$14,000 that was not being resolved. 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 in resolving his debts warrants full application of AG ¶¶ 20(b) and 20(c), and partial application of AG ¶ 20(d).³ In ISCR Case No. 08-06567 at 3 (App.

³ The 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)).

Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant who had been sporadically unemployed lacked the ability to pay his creditors noting that “it will be a long time at best before he has paid” all of his creditors. That applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the administrative judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the administrative judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not “responsible” in light of his limited circumstances.” *Id.*

Although Applicant did not receive formal financial counseling, he received financial advice and counseling through his DCP, which is a program for establishing financial responsibility and eliminating delinquent debt. He also generated a PFS as part of his response to DOHA interrogatories. His spouse maintains the family budget. Applicant’s financial situation was damaged by insufficient income, underemployment, and somewhat by his spouse’s use of credit cards in 2008 to maintain the family living standard. In March 2009, 10 of their 11 debts were placed into a DCP and they have made all of their monthly payments thereafter. Applicant has made \$150 monthly payments on the debt in SOR ¶ 1.d (currently owed: \$11,381). Applicant established that he acted responsibly under the circumstances. Their DCP maintained contact with some of his creditors.⁴ Their DCP is scheduled to complete resolution of the remaining five of ten DCP debts in about two years. His financial problem is being resolved or is under control. He admitted responsibility for and is taking reasonable actions to resolve his SOR debts, showing some good faith. AG ¶ 20(e) is not applicable.

⁴“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.

In sum, Applicant's spouse fell behind on paying the family debts while Applicant was away from home 90% of the time driving a truck. In March 2009, she placed ten debts into a DCP, and six months later, she started making separate payments to address one large debt. It is unlikely that financial problems will recur. Applicant and his spouse have paid about \$15,000 to address their delinquent debts since March 2009, and 5 of 11 debts have been paid. Resolution of each debt permits Applicant to more aggressively address his other remaining debts. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

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 these guidelines, but some warrant additional comment.

Applicant is 62 years old, and he is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor, and previously during more than 30 years of Air Force active and reserve service. There is every indication that he is loyal to the United States and his employer. His spouse's handling of their finances before March 2009 contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for four of five SOR and for seven non-SOR previously delinquent debts. He did not admit one SOR debt because it was paid. Applicant used a DCP to pay five debts, one debt is being paid by DCP, and four debts will be paid through DCP in the next two years. Applicant has been making payments for 24 months on one non-DCP debt. All bills are current. I am confident he will keep his promise to continue resolving his previously delinquent debts and avoid future delinquent debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility. He and his spouse are using the DCP to resolve their debts and establish their financial responsibility. There is simply no reason not to trust Applicant. Moreover, he has established a “meaningful track record” of debt re-payment. He is trustworthy, responsible, conscientious, and reliable.

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 financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

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: For APPLICANT

Subparagraphs 1.a to 1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge