



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 10-05521
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On January 26, 2010, Applicant's employer submitted a Joint Personnel Adjudication System (JPAS) incident report after Applicant's fellow employees complained that he fraudulently sold candy for a school fundraiser and failed to deliver the candy. The JPAS incident report also stated that a review of Applicant's credit bureau report (CBR) reflected numerous delinquent debts. (GX 7.) On January 3, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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) implemented by DOD on September 1, 2006.

Applicant received the SOR on January 11, 2013; answered it on January 24, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 18, 2013, and the case was assigned to me on March 28, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 2, 2013, scheduling the hearing for April 24, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 9 were admitted in evidence without objection. Department Counsel also submitted a demonstrative exhibit summarizing the Government's evidence, and it is attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibit (AX) A, a collection of exhibits labeled Appendix A through G, which was admitted without objection. I kept the record open until May 10, 2013, to enable Applicant to submit additional documentary evidence. He timely submitted AX B through D, which were admitted without objection. Department Counsel's comments regarding AX B through D are attached to the record as HX II. DOHA received the transcript (Tr.) on May 2, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d-1.g, 1.i, 1.r, and 1.t. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 42-year-old employee of a federal contractor. He worked for other federal contractors from May 2004 to October 2011. He was fired for sleeping on the job in September 2007, which he attributed to sleep apnea. (GX 3 at 7.) He began working for another federal contractor in October 2007 and remained in that job until he was laid off due to a reduction in force in September 2011. (AX A at Appendix F.) Four days after being laid off, he was hired by his current employer, but his current pay is about \$24,000 less (from \$65,000 to \$41,000) than he earned at his previous job. (AX A at Appendix G; Tr. 23, 46.) He has held a security clearance since April 2003. He submitted an application to continue his clearance in August 2008, and his clearance was continued in March 2009. (GX 1 at 28; GX 7.)

Applicant married in April 1999, separated in November 2005, and divorced in March 2007. (Tr. 46-47.) One child was born during the marriage. He has joint custody of this child and pays child support to the child's mother. (Tr. 37-38.) When he divorced, he gave the family home and furnishings to his wife. (Tr. 42.) He has sole custody of another child, who was born out of wedlock in April 1997, and he receives child support of \$500 per month from the child's mother, who is on active duty in the U.S. Navy. (GX 3 at 5-6.)

Applicant enlisted in the U.S. Army in April 1990 and served on active duty until November 1995. He was then transferred to the U.S. Army Reserve until he was honorably discharged in January 2000. (GX 3 at 6.) He attended college from February 2004 to April 2005 but did not receive a degree.

Applicant received a Chapter 7 bankruptcy discharge in 1999. His total liabilities were about \$31,794 and his assets were about \$3,627. All of his debts were included in the bankruptcy except for a \$5,000 student loan. (GX 9.)

During a personal subject interview (PSI) in October 2011, Applicant told an investigator that he began to have financial problems in late 2009. He admitted that his problems were caused by overspending and helping family members. (GX 3 at 9.) At the hearing, he testified that his financial problems began in 2007 or 2008. He gave money to his brothers, who were in financial distress. He was contemplating marriage to a woman who had four children, and they moved into a larger, more expensive house and split the rent. When they broke up, Applicant was solely responsible for the rent for the remainder of the lease, which expires in June 2013. (Tr. 88-91.) When Applicant's grandmother passed away in November 2010, he contributed \$2,500 for her funeral expenses. (Tr. 87-91; AX A at Appendix D.)

In his PSI, Applicant explained that the incident in the JPAS report occurred because he sold candy for his daughter's school fundraiser but that some deliveries were delayed. He refunded the purchase money. He received a written warning, because selling candy at work violated company policy. (GX 2 at 7-8; GX 3 at 7-8.)

In August 2012, Applicant signed a contract with a debt management company, and several of his delinquent debts are included in his debt management program. The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.a: \$252, credit card account referred for collection in November 2006. In his answer to the SOR, Applicant stated that he intended to pay this debt in February 2013. At the hearing, he testified that he could not afford the full amount due and the creditor would not accept partial payments. He intends to add this debt to his debt management program, but he presented no evidence that the creditor will agree to participate in his program. (Tr. 53-54.)

SOR ¶ 1.b: \$625, credit card account charged off in October 2007. In his answer to the SOR, Applicant stated that he intended to pay this debt in March 2013. At the hearing, he testified that he offered to pay \$75 per month but the creditor demanded \$150, which he could not afford. He intends to add this debt to his debt management program, but he presented no evidence that the creditor will agree to participate in his program. (Tr. 54-55.)

SOR ¶¶ 1.c: delinquent personal loan charged off for \$1,500 in June 2008. This debt is included in Applicant's debt management program. (AX D.) He testified that this debt is included in the larger debt alleged in SOR ¶ 1.g (Tr. 57.)

SOR ¶ 1.d: delinquent student loans for \$17,741, referred for collection in September 2009. Applicant's February 2010 credit bureau report (CBR) reflected that his student loans were either in deferment or being paid as agreed. (GX 6 at 12-16.) However, his June 2011 CBR reflected that his student loans had been referred for

collection in September 2009. (GX 5 at 2.) Applicant began making reduced payments in October 2011 under a loan rehabilitation program, and the loans are now current. As of the date the record closed, he was waiting for his new lender to determine the amount of his new loan payments. (GX 3 at 8; AX A at Appendix B; AX C; Tr. 59-60.)

SOR ¶ 1.e: delinquent account with unidentified creditor for \$490, referred for collection in June 2007. Applicant testified that he does not know the identity of the original creditor. (Tr. 63.) However, this debt is included in his debt management plan. (AX D.)

SOR ¶¶ 1.f and 1.t: delinquent debts to unidentified creditors, referred for collection for \$95 and \$168 in July and August 2007. These debts are included in Applicant's debt management plan. (AX D.)

SOR ¶ 1.g: charged off for \$6,500 in June 2008. Applicant testified that this debt includes the debt alleged in SOR ¶ 1.c and the deficiency from an auto repossession alleged in SOR ¶ 1.h. (Tr. 57.) It is included in his debt management plan. (AX D.)

SOR 1.h: auto loan charged off for \$21,159. This account is listed on Applicant's credit bureau report as a closed or paid account with a zero balance. (GX 5 at 3.) The amount alleged in the SOR appears to be the original amount of the loan. Applicant testified that he owes this creditor \$4,000, the deficiency remaining after a repossession and sale of his auto. He testified that this debt is included in SOR ¶ 1.g. (Tr. 57.)

SOR ¶ 1.i: credit card account for \$617, referred for collection in March 2007. This debt is included in Applicant's debt management plan. (AX D; Tr.

SOR ¶¶ 1.j-1.p: delinquent medical bills in varying amounts from \$39 to \$605, referred for collection between July 2005 and July 2009. In Applicant's answer to the SOR, he denied all these debts and asserted that he had disputed them and they had been removed from his credit record. At the hearing, he testified that these debts, totaling about \$1,394, had been referred to one collection agency and are included in his debt management plan. (Tr. 66, 70-71; AX D.)

SOR ¶ 1.q: bad check for \$249, referred for collection in August 2005. In Applicant's answer to the SOR, he stated that this debt had been paid and removed from his credit report. It is listed on his June 2011 CBR as "checked," and it does not appear on his December 2012 CBR. (GX 4; GX 6.)

SOR ¶ 1.r: delinquent cell phone bill for \$1,142, referred for collection in January 2006. This debt is included in Applicant's debt management plan. (AX D.)

SOR ¶ 1.s: delinquent credit card account for \$1,571, referred for collection in January 2005. In Applicant's answer to the SOR, he denied this debt. He stated that

he disputed it and it was removed from his credit record. It does not appear on his January 2013 CBR. (AX A at Appendix A.)

SOR ¶ 1.u: delinquent credit card account for \$587, referred for collection in March 2005. In Applicant's answer to the SOR, he denied this debt and stated that it was disputed and removed from his credit record. He testified that the account was a corporate credit card that he had while employed by a former employer, and that he cleared that account before he changed jobs. (Tr. 76-77.) The debt does not appear on his December 2012 and January 2013 CBRs. (GX 4; AX A at Appendix A.)

SOR ¶¶ 1.v-1.z: bad checks uttered to a military exchange, in various amounts from \$80 to \$561 in 2007 and 2008. Applicant's June 2011 CBR reflects that these bad checks were redeemed shortly after they were reported to the credit reporting agencies. (GX 5.)

SOR ¶¶ 1.aa and 1.bb: health club membership fees for \$812 and \$248, referred for collection in October 2008. Applicant denied these debts in his answer to the SOR. He testified that he paid the debts in the 2002-2004 timeframe. He disputed the debts and they were removed from his credit record. (Tr. 78-79.) The debts are not reflected on his December 2012 and January 2013 CBRs. (GX 4; AX A at Appendix A.)

SOR ¶ 1.cc: cell phone account for \$454, referred for collection in July 2006. Applicant denied this debt in his answer to the SOR. He disputed the debt and it was removed from his credit record. It does not appear on his December 2012 and January 2013 CBRs. (GX 4; AX A at Appendix A.)

SOR ¶ 1.dd: cable account for \$412, referred for collection in December 2007. Applicant denied this debt in his answer to the SOR. He disputed the debt and it was removed from his credit record. It does not appear on his December 2012 and January 2013 CBRs. (GX 4; AX A at Appendix A.)

SOR ¶ 1.ee: auto insurance bill for \$118, referred for collection on an unknown date. Applicant denied this debt in his answer to the SOR. He testified that he paid it in 2007. (Tr. 83.) He disputed the debt and it was removed from his credit record. It does not appear on his December 2012 and January 2013 CBRs. (GX 4; AX A at Appendix A.)

Applicant's current monthly gross salary is about \$3,700. He lives in the house that he leased with his former fiancée. His current fiancée is living with him and sharing the rent. He estimates that his net monthly remainder is between \$400 and \$500 after paying all his living expenses. The monthly payments on his rehabilitated student loan have not yet been determined, and they will reduce his net monthly remainder. (Tr. 93-96.)

Three coworkers who have known Applicant for about four years submitted letters on his behalf, describing him as talented, dedicated, ambitious, responsible, and

a person of unwavering integrity. Another coworker who has known him for two years commented favorably on his outstanding work ethic, good judgment, and high integrity. (AX A at Appendices E and F.)

Policies

“[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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

The SOR alleges 31 delinquent debts. The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant testified that the debt alleged in SOR ¶ 1.g includes the delinquent personal loan alleged in SOR ¶ 1.c and the \$4,000 deficiency after a repossession to collect the debt alleged in SOR ¶ 1.h. The same creditor is alleged for all three debts. Applicant’s June 2011 CBR reflects that the account alleged in SOR ¶ 1.h is a paid or closed account with a zero balance, which is consistent with Applicant’s testimony that the amount due on the auto loan was combined with other debts owed to this creditor. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved SOR ¶¶ 1.c and 1.h in Applicant’s favor, and they will not be discussed further in the analysis below.

Applicant’s admissions, testimony at the hearing, and his CBRs establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, not yet resolved, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant encountered several conditions beyond his control, *i.e.*, his separation in November 2005, divorce in March 2007, and pay reduction in September 2011. His loss of a second family income in November 2005 preceded the delinquent debts in the SOR, but all the debts alleged in the SOR were delinquent before his pay reduction in September 2011. Furthermore, Applicant has not acted responsibly. Even after his pay reduction, he has a net monthly remainder of \$400-\$500, but he has not explained why he has not used all or part of that remainder to resolve his delinquent debts, especially the smaller ones. He did not start contacting his creditors until after the JPAS incident report in January 2010. He did not begin his student loan rehabilitation until October 2011. He did not begin working with a debt management agency until August 2012.

AG ¶ 20(c) is not fully established. Applicant is receiving counseling, but he has not yet included all his delinquent debts in his debt management plan, and insufficient time has passed for him to establish a track record of compliance with his plan.

AG ¶ 20(d) is not fully established. “Good faith” within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is not a debt-collection procedure. It is focused on evaluating an individual’s judgment, reliability, and trustworthiness. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

However, evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. The fundamental issue is not whether the debts are resolved, but whether an individual’s actions demonstrate reasonableness, prudence, honesty, and adherence to duty or obligation. The record reflects that Applicant promptly redeemed his bad checks written to a military exchange (SOR ¶¶ 1.v-1.z), but he did not begin contacting his other creditors until after his employer filed the JPAS incident report in January 2010. Although Applicant has a plan and has taken significant actions to implement it, the timing of his efforts to resolve his financial problems indicates that they were motivated by concern for his security clearance rather than a sense of duty or obligation. I conclude that AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.v-1.z, but not for the other debts alleged in the SOR.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.q, 1.s, 1.u, and 1.aa through 1.ee, which Applicant successfully disputed. It is not established for the other debts alleged in the SOR.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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.

Applicant served honorably in the U.S. Army and has worked for federal contractors for nine years. He has held a security clearance for all his federal service. He is devoted to his children. He has been generous with his siblings, to his own financial detriment. He has made considerable progress, albeit belated, in resolving his financial problems. On the other hand, he has a long track record of financial problems that began before his 1999 bankruptcy discharge, and he did not begin to seriously address his current financial problems until they triggered a JPAS incident report. He has not yet established a track record of compliance with his debt management plan.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial problems. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	Against Applicant
Subparagraphs 1.u-1.ee:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge