



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



In the matter of:)
)
) ISCR Case No. 10-08736
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro Se*

November 10, 2011

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated security concerns arising under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 6, 2010. On February 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On March 20, 2011, Applicant answered the SOR (Answer) and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated June 10, 2011, was provided to him by cover letter dated August 17, 2011. The FORM contained documents that were marked as Items 1 through 7.¹ Applicant received his copy of the FORM on August 19, 2011. He was given 30 days from the date he received the FORM to submit any objections, and information in mitigation or extenuation. On September 9, 2011, he submitted additional information that was marked as Item 8. Department Counsel had no objection to the additional information. The case was assigned to me on October 27, 2011. All of the documents submitted by Department Counsel and Applicant are admitted into the record.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor. He has worked for that defense contractor since July 2010. For approximately the past year, he has been working in Afghanistan. He graduated from high school in 1995 and earned an associate's degree in 1999. He married in May 2009 and has four children. He is seeking to obtain his first security clearance.²

The SOR listed seven delinquent debts, including a mortgage that was past due in the amount of \$22,000 and six other debts past due in the total amount of \$7,568. The total past-due amount of the alleged debts was \$29,568. In his Answer, Applicant admitted each of the alleged debts. His admissions are incorporated herein as findings of fact.³

The SOR also alleged Applicant falsified his July 2010 e-QIP when he failed to disclose debts that were either over 180 days delinquent in the last seven years or currently over 90 days delinquent. In his Answer, he admitted to providing incorrect

¹ The index of documents in the FORM listed Applicant's Answer twice. It was listed as both Items 3 and 4. A handwritten change has been made to the index of documents correcting this error and making it conform to the manner in which the documents were marked.

² Item 4. Applicant did not list his children in his e-QIP, but mentioned he had four children in his OPM interview and Answer. Record evidence revealed that he has provided varying dates for his employment. In his e-QIP, he stated he started working for his current employer in June 2010, but also indicated he was unemployed until July 2010. In his OPM interview, he stated he was laid off from his job in February 2010 and would start his current job on August 23, 2010.

³ Items 1, 3. Applicant's credit report dated July 27, 2010, indicated that he filed for bankruptcy in October 2008. During his Office of Personnel Management (OPM) interview dated August 20, 2010, he stated that he never filed for bankruptcy, but that his parents did file for bankruptcy in 2008 and his name is similar to his father's name. In the FORM, Department Counsel noted an inquiry revealed that the bankruptcy entry on Applicant's credit report was an error. See FORM n. 11; Items 5 (p. 7), 6 (p. 1).

answers to those questions, but indicated this omission was unintentional because he was “unaware that [his] accounts were in default that far behind.” His response to the falsification allegation constituted a denial.⁴

Applicant attributed his financial problems to a period of unemployment and to medical expenses incurred when his family did not have health care insurance. His e-QIP reflected that he was unemployed from January 2010 to July 2010 after being laid off from his previous job. During the OPM interview, he stated,

In January 2010, one month prior to being laid off, [Applicant’s] employer dropped the health insurance coverage for employees without notice to [him]. [His] fourth child was born in January of 2010. His wife experienced complications during the pregnancy and was hospitalized for two weeks prior to the birth. She had to have the baby by cesarean section which further added to the cost of the birth. [Applicant] estimates the total medical bill for the birth of his child is between \$30,000 and \$40,000. These debts are listed on [his] wife’s credit report.

* * *

He is current on his car and utilities. However, he is about four months behind on his mortgage. The creditor for the mortgage has agreed to hold off on the foreclosure sale on the house and is negotiating with [the assistance of a nonprofit organization] on the account.⁵

During the OPM interview, Applicant discussed each of his then-existing delinquent debts. Besides seeking the assistance of the nonprofit organization in resolving the foreclosure, he did not receive any other financial assistance or credit counseling. In addressing the nondisclosure of his delinquent debts on his e-QIP, he stated,

[Applicant] did not list the foreclosure on his security questionnaire because [a nonprofit organization] was able to stop the foreclosure process for him and it felt nothing was really official with regard to the foreclosure. He did not list the other accounts on his security questionnaire because he was rushed to fill out the document in a hurry and did not have those details with him. He has been making what payments he can on the accounts and did not realize so many of them were in collection status.⁶

⁴ Items 1, 3.

⁵ Items 3 (p. 1), 4 (p. 17-18), 5 (p. 8). A Google search confirmed the named organization was a nonprofit organization.

⁶ Item 5 (p. 7-9).

In the FORM, Department Counsel conceded that Applicant did not intentionally falsify his e-QIP.⁷

Each of the delinquent debts is addressed below.

SOR ¶ 1.a – collection medical account (# 3697129) in the amount of \$124. This debt was placed for collection in September 2010. In his Answer, Applicant indicated that he was unaware of this debt and was working to take care of bills arising from his wife's two surgeries. In responding to the FORM, he neither addressed this debt nor provided documentation showing its status. This debt is unresolved.⁸

SOR ¶ 1.b – collection account (# 601138101928) in the amount of \$617. This was a credit card account that Applicant opened in December 2008. According to his July 2010 credit report, the date of last activity on this debt was July 2009. In responding to the FORM, Applicant indicated the collection agency agreed to settle this debt for \$350, and he paid that amount on August 22, 2011. An email dated August 30, 2011, from the collection agency confirmed this debt is resolved.⁹

SOR ¶ 1.c – collection account (# 5213310201525958) in the amount of \$1,452. This was a credit card account that Applicant opened in December 2008. According to his July 2010 credit report, the date of last activity on this debt was June 2010. In responding to the FORM, Applicant provided bank records showing that he made ten payments of \$234 and a final payment of \$48 on this debt. When he submitted his response to the FORM, he was awaiting documentation from the collection agency showing that it was paid. This debt is resolved.¹⁰

SOR ¶ 1.d – past-due mortgage (# 5156800169934) in the amount of \$22,000. In August 2008, Applicant purchased a home for \$158,000. His July 2010 credit report reflected that his mortgage was then over 180 days past due and in a foreclosure status. At that time, he was eight months delinquent on his mortgage payments. His credit report dated February 3, 2011, indicated that the date of first delinquency/date of

⁷ In the FORM, Department Counsel stated:

In July 2010, it appears that Applicant's failure to list certain debts in his SCA [security clearance application] may have resulted from some uncertainty on his part as to the exact status of his debts and is possibly mitigated by his unfamiliarity with the application as well as a desire on his part to be responsive to his new employer's direction to complete the application as quickly as possible. Overall, the circumstances in this case do not appear to be a deliberate attempt by Applicant to falsify responses on his SCA.

⁸ Items 3 (p. 1), 7 (p. 1), 8.

⁹ Items 3 (p. 1), 5 (p. 7), 6 (p. 10), 7 (p. 1, 2); 8 (p.1, 18, 29).

¹⁰ Items 5 (p. 7), 6 (p. 10, 12), 7 (p. 2), 8 (p. 1, 3, 4, 5, 7, 9, 11, 13, 15, 16, 17, 19).

last activity was July 2009. During his OPM interview, he indicated that the creditor filed for foreclosure a couple of months earlier, but he did not recall the exact date. He also noted that he was working with a nonprofit organization to resolve the foreclosure issue. His Answer indicated that he had been making payments since November 2011 and had made arrangements to resolve this mortgage. In his response to the FORM, he provided bank records showing he made nine mortgage payments of \$1,627 or \$1,635 between November 2010 and August 2011. He entered into a Loan Modification Agreement with the creditor on July 22, 2011. Under that loan modification, the amount of mortgage principle and term of the mortgage were increased. Starting September 2011, his monthly mortgage payment was reduced to \$1,271. This delinquent debt has been resolved.¹¹

SOR ¶ 1.e – collection account (# 51278255852) in the amount of \$1,066. This was a credit card account that Applicant opened in June 2008. The date of last activity on this debt was August 2009. During the OPM interview, he stated that he made a payment on this debt in May 2010. His Answer indicated that he called the creditor from Afghanistan numerous times and has been placed on hold every time. In his response to the FORM, he indicated that he paid this debt. In bank records provided with his response to the FORM, he highlighted a check payment of \$1,271 made on August 24, 2011, that may pertain to this account. However, the payee of that check was not identified in the bank record. Sufficient information has not been provided to establish that this debt has been paid. This debt is unresolved.¹²

SOR ¶ 1.f – collection account (# 6011599103348004) in the amount of \$4,174. This was a credit card account that Applicant opened when he purchased his wife's engagement ring in March 2008. The date of first delinquency/date of last activity on this debt was March 2009. It was placed for collection in December 2009. During his OPM interview, Applicant stated that he made a payment on this debt in April 2010. His Answer indicated that he has been in contact with the creditor and was negotiating a final payment. In his response to the FORM, he indicated that he contacted the creditor in August 2011 and was informed that the creditor no longer issued this type of credit card and the account had been charged off. The creditor was determining whether the account was sold to a collection agency. He stated that he provided his contact information to the creditor and would continue to stay in contact with the company. This debt is unresolved.¹³

SOR ¶ 1.g – collection account (# 4091421) in the amount of \$135. This debt arose from a traffic ticket. It was placed for collection in April 2010. A letter from the

¹¹ Items 3 (p. 1), 5 (p. 7), 6 (p. 15), 7 (p. 2), 8 (p. 4, 6, 8, 10, 12, 14, 16, 17, 20-28).

¹² Items 3 (p. 1), 5 (p. 7), 6 (p. 11), 7 (p. 2), 8 (p. 2, 18). The highlighted check entry for \$1,271 does not appear to be associated with any of the other alleged debts.

¹³ Items 3 (p. 1), 5 (p. 8), 6 (p. 17), 7 (p. 2), 8 (p. 1, 2, 31).

collection agency confirmed that this debt was paid on August 31, 2011. This debt is resolved.¹⁴

During the OPM interview, Applicant indicated that he will be capable of meeting his financial obligations once he started his new job. In December 2010, he submitted a personal financial statement that indicated that his net monthly income was \$9,500, his net monthly expenses were \$1,090, and his net monthly debt payments were \$1,665, leaving a net monthly remainder of \$6,745.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

¹⁴ Items 3 (p. 1), 5 (p. 8), 6 (p. 17), 8 (p. 1, 30).

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts that he was unable or unwilling to pay for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Four financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Security clearance adjudications are not debt collection procedures, but rather procedures designed to evaluate judgment, reliability, and trustworthiness.¹⁵ An applicant is not required, as a matter of law, to establish that he or she has resolved every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debt alleged in the SOR be paid first.¹⁶

Shortly after Applicant's employer dropped his health insurance in late 2009 or early 2010, his wife experienced a complicated pregnancy that resulted in significant unpaid medical bills. In early 2010, Applicant was laid off from his job and was unemployed until about July or August 2010. His period of unemployment and his loss of health care insurance were conditions beyond his control that resulted in his financial problems. To obtain full credit under AG 20(b), however, an individual must act responsibly under the circumstances. Here, Applicant sought the assistance of a nonprofit organization in resolving the pending foreclosure of his home and negotiating a mortgage modification agreement. Since obtaining his current job, Applicant has worked hard while being assigned in Afghanistan to resolve his delinquent debts. He has resolved the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.g. He stated that he paid the debt in SOR ¶ 1.e, but failed to provide sufficient documentation to confirm that payment. He has indicated that he will continue to work on resolving the remaining debts. He has provided sufficient

¹⁵ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

¹⁶ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

evidence to establish that his financial problems are under control and are being resolved. Those financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) apply.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set forth in AG ¶ 15 as follows:

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.

Applicant submitted his first e-QIP in July 2010. He admitted that he answered incorrectly two financial questions (Section 26m and 26n) in that document, but stated he did not intentionally do so. During his OPM interview, he indicated that he did not list the foreclosure on the e-QIP because the nonprofit organization was able to stop that proceeding and “it felt that nothing was really official with regard to the foreclosure.” At about this time, the mortgage company also agreed to place the foreclosure proceedings on hold. In light of the nonprofit organization’s actions and comments, he apparently overlooked that he had to disclose his mortgage as a delinquent debt. As for the other debts, he was periodically making payments on some of them. Given the relatively short period of his unemployment, his claim that he was unaware his debts were “that far behind” is plausible. I find that Applicant did not intentionally falsify his e-QIP and that AG ¶ 16(a) does not apply. Personal Conduct security concerns are concluded in favor of Applicant.

Whole-Person Concept

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

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

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

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in the whole-person concept analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has been working with the military in Afghanistan for the past year. While over there, he has worked diligently to resolve his financial problems. He has provided sufficient evidence to show that his finances are now on the right track. Overall, the record evidence leaves me with no doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated the security concerns raised under the Financial Considerations and Personal Conduct guidelines.

Formal Findings

Formal findings 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: Subparagraphs 1.a – 1.g:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	FOR APPLICANT For Applicant

Decision

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

James F, Duffy
Administrative Judge