



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



In the matter of:)
)
 1) ISCR Case No. 11-06892
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2012

Decision

Duffy, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, Financial Considerations. Eligibility for access to classified information is granted.

Statement of the Case

On December 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken 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.

¹ The caption of the Statement of Reason incorrectly placed "Sr." immediately after Applicant's last name.

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. Applicant answered the SOR on January 4, 2012, and requested a hearing on February 21, 2012. The case was originally assigned to another administrative judge and was reassigned to me on May 2, 2012. DOHA issued the Notice of Hearing on May, 24, 2012. The hearing was held as scheduled on June 6, 2012. At the hearing, Department Counsel offered exhibits (GE) 1 through 7 that were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through D that were admitted into evidence without objection. The record was left open until July 2, 2012, for the Applicant to submit additional matters. Applicant timely submitted AE E through U that were admitted into evidence without objection. Department Counsel's memorandum indicating he had no objection to Applicant's post-hearing submissions was marked as HE 1. The transcript (Tr.) of the hearing was received on June 21, 2012.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for that contractor since February 2011. He served honorably in the U.S. Navy from 1986 to 2006 and retired in the grade of petty officer first class (E-6). He has earned two associate's degrees, one in 1986 and the other in 2005. He is about four credits short of earning a bachelor's degree. He is married and has a son and a stepson, ages 22 and 24, respectively. He also has adopted his three-year-old granddaughter. He held a security clearance in the Navy without incident.²

The SOR asserted that Applicant filed Chapter 7 bankruptcy in 2004, which was later dismissed, and that he had 11 delinquent debts totaling \$23,010. In his Answer to the SOR, Applicant admitted the bankruptcy allegation (SOR ¶ 1.a) and three of the alleged debts (SOR ¶¶ 1.b, 1.d, and 1.l) totaling \$17,132. He denied the remaining allegations. His admissions are incorporated as findings as fact.³

Applicant attributed his financial problems to two automobile accidents, two periods of unemployment, and identity theft. While serving in the Navy in 2000, Applicant was seriously injured in an automobile accident with a truck. He underwent five back surgeries. Although selected for promotion to the grade of chief warrant officer in the Navy, he was determined to be physically unable to serve in that role. In 2006, he was medically retired from the Navy with a 40% disability. In April 2007, he was involved in another vehicle accident in which he was struck by a hit-and-run drunk driver. As a result of this later accident, he was hospitalized for a week and was unemployed from April to August 2007. He was also unemployed from July 2010 to February 2011 when he was laid off from a shipyard job due to a large oil spill that negatively impacted the

² Tr. 4-8, 19-20, 31-32, 57-58; GE 1, 3; AE C, F.

³ Applicant's Answer to the SOR; GE 4, 5.

shipyard. Additionally, Applicant stated that he was the victim of identity theft. As discussed in more detail below, he disputed a number of the debts and most of those debts have been deleted from his credit report. Each SOR allegation is addressed separately below.⁴

SOR ¶ 1.a – Chapter 7 bankruptcy dismissed in 2004. Applicant's credit reports reflect that he filed Chapter 7 bankruptcy in August 2004, and that proceeding was dismissed in November 2004. Applicant testified that he never intended to file bankruptcy. From 2003 to 2005, he underwent surgeries for back injuries resulting from a vehicle accident. He described this as a difficult period for him. Around that time, he hired a credit counseling company to perform debt consolidation services for him and began making regular payments to that company. He later learned no payments were being made to the creditors. When he contacted the credit counseling company, he was surprised to learn that it filed bankruptcy for him. In informing the company that he never intended to file bankruptcy, he stated the company's representative indicated that it might have made a mistake. When he later attempted to contact the credit counseling company following a surgery, he initially could not locate it and later learned that it moved locations. When he finally contacted the company, he was advised that it had no record of him. At that point, he stopped dealing with the credit counseling company. He believes that company is now out of business.⁵

SOR ¶ 1.b – charged-off account for \$6,875. This was a \$5,000 loan that Applicant obtained for car repairs. When he acquired this loan in 2010, he also obtained insurance that would cover payments if he was injured or laid off. He made about three payments of \$324 on this loan before he was laid off in July 2010. He submitted claims to the insurance company that included Veterans Affairs documents concerning his disability, but the insurance company wanted a letter from a doctor. He obtained a letter from his doctor and submitted it. The doctor's letter, however, was not on letterhead. The insurance company then requested that he resubmit the letter on letterhead. At the time of the hearing, he was attempting to obtain another letter on letterhead. After starting his new job in 2011, he made payments towards this debt in November and December of that year. However, based on the advice of his attorney, he stopped making payments in January 2012 so that his attorney could negotiate a resolution of the debt. At the time of the hearing, his attorney was still attempting to reach a settlement agreement for this debt.⁶

SOR ¶ 1.c – collection account for \$1,710. This was a telephone services account. The date of last activity on the account was September 2003. Applicant

⁴ Tr. 7-8, 19-31, 49, 52-56, 76; Applicant's Answer to the SOR; GE 1, 3, 4.

⁵ Tr. 21-24, 26, 48, 81- ; Applicant's Answer to the SOR; GE 4-7.

⁶ Tr. 31, 39-42, 48-49, 58-61; Applicant's Answer to the SOR; GE 2, 4, 7; HE 1, AE A, B, N, P, R, and S.

claimed he never had an account with this telephone company. He disputed this debt, and it was deleted from his credit report.⁷

SOR ¶ 1.d – collection account for \$10,000. This was a vehicle loan that was placed for collection in August 2010. The vehicle was purchased for \$24,000 in 2002. After his wife stopped working to assist him following a surgery, they could no longer afford to make the monthly vehicle payments. The vehicle was voluntarily repossessed in 2004. The vehicle was later sold and he was informed he owed a deficiency on the loan of \$3,780. Following that sale, he made a payment arrangement with the creditor and began making payments of about \$300 per month. The account was then transferred to a collection agency. He continued to make payments to the collection agency, but later learned the account was transferred back to the creditor. He was told that the payments he was making to the collection agency were being sent to the creditor, but he became concerned about who was receiving the money. At that point, he stopped making payments and hired an attorney to assist him. In his Answer to the SOR, he indicated that he and his attorney were working on a new payment arrangement for this debt.⁸

SOR ¶ 1.e – collection account for \$957. This was a telephone services account. The date of last activity on the account was February 2007. Applicant claimed that this account was paid. He disputed this debt, and it was deleted from his credit report.⁹

SOR ¶ 1.f – collection account for \$666. This was a telephone services account. It was placed for collection in January 2010. Applicant stated that this was his wife's account, and she paid it. He disputed this debt, and it was deleted from his credit report.¹⁰

SOR ¶ 1.g – collection account for \$426. This was a credit card account that was placed for collection in February 2011. Applicant disputed this debt claiming it was paid. On September 29, 2011, the collection agency sent Applicant a letter advising him that collection on this account had ceased due to his dispute and requested the credit reporting agencies delete this debt from his credit file.¹¹

⁷ Tr. 29-30, 61-65; Applicant's Answer to the SOR; GE 4, 7; AE A, P.

⁸ Tr. 20-21, 25-26, 30, 65-69, 86-91; Applicant's Answer to the SOR; AE P.

⁹ Tr. 69-70, 76; Applicant's Answer to the SOR; GE 4, 7; AE P.

¹⁰ Tr. 30, 70-71, 76; Applicant's Answer to the SOR; GE 4, 7; AE P.

¹¹ Tr. 71-72, 76; Applicant's Answer to the SOR; GE 2, 7; AE P. Interestingly, Applicant apparently wrote on the letter from the collection agency that this was not his debt. See GE 2.

SOR ¶ 1.h – state tax lien for \$627. This lien was filed in May 2002. A state assessed Applicant income taxes in the amount of \$262 for tax year 1993 and \$609 for tax year 1999. Applicant provided documentation to the state showing that he was not domiciled there during those tax years. The state rescinded the assessments. His most recent credit report indicates this lien has been released.¹²

SOR ¶ 1.i – collection account for \$877. The date of last activity on this account was December 2010. Applicant stated that this debt was for a payday loan. He indicated that he never obtained a payday loan. He disputed this debt with the credit reporting agencies; however, it still remains listed on his most recent credit report.¹³

SOR ¶ 1.j – collection account for \$405. This debt also was a payday loan. It was placed for collection in January 2009. He disputed this debt, and it is not listed on his most recent credit report.¹⁴

SOR ¶ 1.k – collection account for \$210. This account was placed for collection in March 2010. Applicant had no knowledge of this account. He disputed this debt, and it was deleted from his credit report.¹⁵

SOR ¶ 1.l – unpaid federal taxes of \$257. These taxes were for tax year 2008. In his Answer to the SOR, Applicant indicated that he made a payment arrangement for this debt and paid it. However, he provided no proof of payment.¹⁶

Applicant signed up for prepaid legal services after his negative experience with the credit counseling company. The prepaid legal services determined that he was the victim of identity theft and filed a fraud alert with the credit reporting agencies. In this regard, Applicant testified that an ex-sailor at some point purchased a house using Applicant's social security number, although that debt is not listed in the SOR. In February 2011, he hired a law firm specializing in credit repair to assist him in resolving his debts. As discussed above, this law firm has successfully disputed many of his debts. This law firm also provides credit counseling. He continues to pay the law firm monthly fees and they are assisting him in resolving his remaining debts.¹⁷

¹² Tr. 26-27, 72-73; Applicant's Answer to the SOR; GE 2, 4, 7; AE A.

¹³ Tr. 73-75; Applicant's Answer to the SOR; GE 7; AE A, P.

¹⁴ Tr. 75; Applicant's Answer to the SOR; GE 7; AE A.

¹⁵ Tr. 75-76; Applicant's Answer to the SOR; GE 7; AE A, P.

¹⁶ Tr. 73, 76-77; Applicant's Answer to the SOR; GE 4. Of note, however, there is no evidence in the record tending to show he did not pay this debt. It was not listed on any of the credit reports in evidence. Given the small amount of this debt, it has limited security significance. At the hearing, Applicant also testified that he owed \$79 to the Internal Revenue Service for last year's income taxes and he paid that amount.

¹⁷ Tr. 23-24, 74, 81-91, GE 2, 4.

At the hearing, Applicant was open and forthcoming about his financial problems. He is meeting his current monthly financial obligations. His wife has been working part time since about August 2007. He and his wife are still supporting their adult children. In October 2011, Applicant submitted a personal financial statement that reflected his net monthly income was \$7,159, that his net monthly expenses were \$2,900, that his total monthly debt payments were \$675, which left him a net monthly remainder of about \$3,500. At the hearing, he estimated that his and his wife's combined gross income was about \$100,000 and that they had about \$1,800 per month in discretionary income. While in the Navy, Applicant was awarded the Navy Commendation Medal, two Navy Achievement Medals, six Good Conduct Medals and various unit medals and ribbons.¹⁸

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 unfavourable, 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

¹⁸ Tr. 50-58, 77-91; GE 3, 4; AE C, N.

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 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 delinquent debts totaling over \$17,000 that he was unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Five 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;

(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.

Security clearance adjudications are not a debt collection procedure. These proceedings are designed to evaluate an applicant's judgment, reliability, and trustworthiness.¹⁹ 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.²⁰

About eight to ten years ago, Applicant sought the services of a credit counseling company. He thought that he hired the company to perform debt consolidation services for him. He was making regular payments to the company, but later learned the company filed Chapter 7 bankruptcy for him. He never intended to file bankruptcy. The bankruptcy

¹⁹ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁰ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

filing was a mistake. This happened under circumstances that are unlikely to recur and that do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies to SOR ¶ 1.a.

In 2000, Applicant was involved in a vehicle accident in which he incurred serious injuries. As a result of that accident, he underwent five surgeries and was medically retired from the Navy. In 2007, he had another vehicle accident that resulted in him missing about five months of work. As a result of this latter accident, his wife quit her job so that she could care for him during his recovery. In 2010, Applicant was laid off of his job and was unemployed for about eight months due to an oil spill. His vehicle accidents and periods of unemployment were conditions beyond his control that contributed to his financial problems. Applicant further contended that he was the victim of identity theft. Since obtaining his current job in February 2011, he has systematically taken steps to resolve the alleged debts. He hired a law firm specializing in credit repair. With that law firm's assistance, he disputed many of the debts. As a result of those disputes, seven of the alleged debts have been deleted from his credit report. Only two debts that he has admitted (SOR ¶¶ 1.b and 1.d) remain listed on his credit report. The law firm is taking action to resolve those remaining debts. By his action, Applicant has shown that he is committed to resolving all of the alleged debts. His financial problems are being resolved and are under control. AG ¶¶ 20(b) and 20(c) apply. AG ¶ 20(e) applies to SOR ¶¶ 1.c and 1.e through 1.k. AG ¶ 20(d) does not apply.

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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 honorably served in the Navy for 20 years. He was selected for promotion to the grade of chief warrant officer, but was unable to assume that grade because of physical injuries incurred in a vehicle accident. While in the Navy, he was awarded the Navy Commendation Medal, two Navy Achievement Medals, and six Good Conduct Medals. He held a security clearance in the past without incident. He was candid, sincere, and credible at the hearing. He and his wife are still supporting their adult children, and they adopted their granddaughter. By all accounts, Applicant is a responsible law-abiding citizen. He is current on his day-to-day living expenses, lives within his means, and is working with a law firm to resolve his remaining debts. He is on the right track to resolve his financial problems. Both the applicable mitigating conditions and the whole-person concept analysis support a favorable clearance decision. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under Guideline F.

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: FOR APPLICANT

Subparagraphs 1.a – 1.l: 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge