



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-07591
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2013

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

Applicant submitted a security clearance application on March 15, 2011. On February 15, 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 March 1, 2013; answered it on March 29, 2013; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 17, 2013. On April 17, 2013, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or

mitigate the Government's evidence. He received the FORM on April 29, 2013, and did not respond. The case was assigned to me on October 17, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a, 1.g, 1.l-1.n, 1.p-1.t, 1.y, 1.cc, 1.ee, 1.hh, and 1.jj-1.ll. He admitted being reprimanded, as alleged in SOR ¶ 1.uu, and obtaining a Chapter 7 bankruptcy in September 1998, as alleged in SOR ¶¶ 1.vv. He stated that the debts alleged in SOR ¶¶ 1.b-1.f, 1.h-1.k, 1.o, 1.w, 1.z-1.bb, 1.dd, 1.ff, 1.gg, 1.ii, 1.mm-1.rr, and 1.tt had been paid, and that he was making payments on the debt alleged in SOR ¶ 1.v. He neither admitted nor denied the debts alleged in SOR ¶¶ 1.u, 1.x, and 1.ss, stating that he would investigate them. His admissions in his answer are incorporated in my findings of fact.

Applicant is a 50-year-old information technology team leader employed by a defense contractor since August 1999. He served on active duty in the U.S. Navy from October 1981 to October 1993 and was honorably discharged. He held a security clearance while on active duty in the Navy, and he received a security clearance shortly after being hired by his current employer.

Applicant married in June 1985 and divorced in September 1994. He and his wife had two children, now ages 27 and 22. He married his current spouse in July 1995.

Applicant filed a Chapter 7 bankruptcy petition in June 1998. His petition listed \$13,274 in assets and \$42,066 in liabilities. He received a discharge in September 1998. In an affidavit executed in July 1999, he attributed his financial problems to low-paying jobs, some of them less than full time, and the child-support obligations he incurred after his divorce. (Item 7.)

In a personal subject interview (PSI) in April 2011, Applicant stated that he encountered financial hardship in March 2007 due to his limited income and expenses incurred in caring for his mother-in-law and sister-in-law, who passed away within six months of each other. (Item 5.) The record does not contain any documentation of Applicant's income during this period or the expenses incurred in caring for his in-laws.

Applicant was reprimanded by his employer in March 2011 for using a company credit card for personal expenses. In his PSI, he explained that he used the company card because his own funds had been depleted by bank fraud. The record does not contain any documentary evidence of bank fraud. In his answer to the SOR, he stated that he was making biweekly \$350 payments on the amounts he improperly charged to the credit card, alleged in SOR ¶ 1.v. He provided no documentation of the payments in his answer to the SOR or response to the FORM.

The debts alleged in SOR ¶¶ 1.a-1.x are reflected on Applicant's December 2012 credit bureau report (CBR). (Item 12.) The debts alleged in SOR ¶¶ 1.y and 1.z are

reflected on his June 2012 CBR. (Item 11.) The debts alleged in SOR ¶¶ 1.aa-1.oo are reflected on his March 2011 CBR. (Item 10.) The judgment alleged in SOR ¶¶ 1.rr is reflected as satisfied on his March 2011 CBR (Item 10 at 6.)

The judgments alleged in SOR ¶¶ 1.pp, 1.qq, 1.ss, and 1.tt are not reflected on Applicant's CBRs. In response to DOHA interrogatories in August 2012, he admitted them but asserted that they were satisfied. However, he stated that he had no documentation reflecting that they were resolved. (Item 6.)

During his PSI and in his response to the SOR, Applicant asserted that the tax lien alleged in SOR ¶ 1.aa was actually a child-support arrearage that had been satisfied. However, his March 2011 CBR reflects two separate entries, one for child support with a zero balance and the other for the unsatisfied tax lien. (Item 10 at 5, 11.)

The judgment in SOR ¶ 1.pp was filed in 2001 and the judgments in SOR ¶¶ 1.qq and 1.tt were filed in 2003, more than seven years preceding the dates of Applicant's CBRs. They ordinarily would no longer be reflected on his CBRs, pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

In response to DOHA interrogatories in August 2012, Applicant submitted a two-page list of involuntary payments to creditors by garnishment of his wages. His list includes the creditors alleged in SOR ¶¶ 1.f, 1.w, 1.bb, 1.pp, and 1.rr. He also submitted 11 pages of his employer's records of garnishment actions, but none of them list the creditors. (Item 6.) None of the garnishment records reflect that any of the debts were paid in full.

Applicant did not submit any additional documentation in his answer to the SOR. Even after he received the FORM, including Department Counsel's comments about his failure to submit adequate documentation, he submitted no additional evidence. The record does not contain a personal financial statement or any other documentation of Applicant's current income and expenses. He has not submitted disputes to the credit reporting agencies regarding any of the delinquent debts reflected in his CBRs.

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

Guideline F, Financial Considerations

The SOR alleges 46 delinquent debts, including 11 unsatisfied judgments and a state tax lien (SOR ¶¶ 1.a-1.tt). It also alleges that Applicant was reprimanded by his employer for using a company credit card for personal expenses (SOR ¶ 1.uu). The debt incurred by improper use of the company credit card is alleged in SOR ¶ 1.v. Finally, the SOR alleges that Applicant received a Chapter 7 bankruptcy discharge in September 1998 (SOR ¶ 1.vv).

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's admissions 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"); AG ¶ 19(d) ("deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust"); and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same"). The following mitigating conditions are potentially relevant:

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 debts are ongoing, numerous, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Bank fraud and unexpected illness of a family member would be circumstances beyond Applicant's control, but he provided no documentation of either circumstance. See ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012) (Actual fraud, established by substantial evidence, could provide mitigation in appropriate circumstances.). Furthermore, he has not acted responsibly. He has been continuously employed since August 1999. He claims to have paid some of the delinquent debts, but he provided no documentary evidence of payment. He admitted the debts alleged in SOR 1.a, 1.g, 1.l-1.n, 1.p-1.t, 1.y, 1.cc, 1.ee, 1.hh, and 1.jj-1.ll, but he has offered no credible, plausible explanation for not resolving them.

AG ¶ 20(c) is not established. Applicant probably received court-ordered counseling in connection with his Chapter 7 bankruptcy, but he presented no evidence that he has sought or received counseling since his bankruptcy, and his financial problems are not under control.

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). Applicant presented evidence that some of his debts were being paid by involuntary garnishment. However, payment by involuntary garnishment, "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009). His March 2011 CBR reflects that he satisfied the judgment alleged in SOR ¶ 1.rr, but he presented no documentary evidence of good-faith efforts to resolve the other debts alleged in the SOR. I conclude that AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.rr, but not for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. In his response to the SOR, Applicant stated that he would investigate the validity of the debts alleged in SOR ¶ 1.u, 1.x, and 1.ss, but he

presented no documentary evidence of a basis for disputing any of the debts alleged in the SOR and no evidence that he had filed any disputes with the original creditors, the collection agencies, or the credit reporting agencies.

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. I have also considered that Applicant has worked for his employer and held a security clearance since 1999 and that he served honorably in the U.S. Navy for 12 years. However, 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 based on financial considerations. 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. qq:	Against Applicant
Subparagraph 1. rr:	For Applicant
Subparagraphs 1. ss-1. vv:	Against 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