



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-08679
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/20/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 12, 2010. On July 5, 2012, 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 July 15, 2012; answered it on July 25, 2012; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 29, 2012, and the case was assigned to me on December 4, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2012, scheduling it for January 15, 2013. I convened the hearing as

scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Department Counsel's exhibit list and a demonstrative exhibit summarizing his evidence were attached to the record as Hearing Exhibits (HX) I and II. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until February 1, 2013, to enable both parties to submit additional documentary evidence. Department Counsel timely submitted GX 8, 9, and 10, and Applicant timely submitted AX C. All post-hearing submissions were admitted without objection. Department Counsel's comments regarding GX 8, GX 9, GX 10, and AX C are attached to the record as HX III and IV. DOHA received the transcript (Tr.) on January 23, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.i,¹ 1.l, and 1.m. He denied SOR ¶¶ 1.b, 1.c, 1.g, 1.h, 1.k, 1.n, 1.o, and 1.p. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old aircraft sheet metal mechanic employed by a defense contractor since July 2008. He received a clearance from another government agency in May 2000 and a favorable trustworthiness determination from DOD in March 2008. (GX 1 at 85; GX 2 at 6.)

Applicant married in February 1994 and divorced in February 2001. He married his current spouse in May 2003. He has two children, ages 17 and 19, from his first marriage and two stepchildren, ages 18 and 22.

Applicant began working in the aviation maintenance field in 1993. He was hired by a major airline in January 1998. He was transferred to a new location and bought a home around October 2001. After about a year, he was laid off. He was unemployed from November 2002 to September 2003. (Tr. 36; GX 1 at 56.) In October 2003, he started working world-wide for various contractors. (Tr. 32-33.)

Applicant filed a Chapter 13 bankruptcy petition in August 2006. He testified that he was between contracting jobs, fell behind on his obligations, and needed help to organize and resolve his debts. (Tr. 37.) His SCA does not reflect any periods of unemployment in 2006. However, it does reflect several "on call" jobs and employment by more than one employer at the same time. He testified that he made all the required payments to the trustee until the bankruptcy was dismissed in November 2008. He testified that he began working overseas in November 2008, making more money, and was able to start paying his debts himself. (Tr. 37-38; GX 3 at 181.²) However, his belief that all debts in this bankruptcy were resolved is undercut by the fact that the debt in SOR ¶ 1.p, which predated the bankruptcy, is still unresolved.

¹ He admitted this debt, but he mislabeled it as SOR ¶ 1.j in his answer.

² The pagination of GX 3 begins with page 171.

Applicant worked in Iraq in 2007 and 2008 and in Afghanistan from 2009 to 2011. (AX C.) He received a certificate of appreciation for his Afghanistan service from April 2009 to February 2010. (Attachment to Answer to SOR.) In June 2010, he began working as a field engineer, holding an interim clearance and earning about \$167,000 per year. In July 2011, his interim clearance was revoked, and he was demoted, reducing his pay to about \$60,000. (Tr. Tr. 35-36.)

Applicant filed another Chapter 13 bankruptcy petition on December 31, 2012. He and his wife have completed the financial counseling required by the bankruptcy court. The confirmation hearing is scheduled for March 25, 2013. (AX A; AX B; GX 8.)

Applicant's wife was unemployed from January 2009 to November 2012. Her monthly take-home pay is now about \$2,800. Applicant's monthly take-home pay is about \$4,800. (Tr. 53-54.) His family is living in a rental home in another state and paying rent of \$2,100. He is renting lodging at his current job site for \$500 per month. (Tr. 54-56.) In his May 10, 2012 response to DOHA interrogatories, Applicant submitted a personal financial statement (PFS) reflecting net monthly income of \$5,528, expenses of \$2,310, debt payments of \$3,774, and net remainder of \$1,754. (GX 3 at 187.) In his December 2012 bankruptcy petition, he reported net monthly income of about \$4,184, expenses (including debt payments) of \$2,834, and a remainder of about \$1,350. (GX 10 at 18.) The bankruptcy plan provides for bi-weekly payments of \$311.54. (AX A.)

Applicant denied the medical debts alleged in SOR ¶¶ 1.b and 1.c because he believes that his medical insurance should have covered them. (Tr. 39-40.) These two debts are included in his Chapter 13 bankruptcy petition. (GX 10 at 13.)

Applicant admitted the medical debts alleged in SOR ¶¶ 1.d-1.f, and testified that they had been paid. He was unable to produce documents showing that they were paid. (Tr. 41-42; AX C.) These debts do not appear to be included in his bankruptcy petition. Although numerous collection agencies are listed in the bankruptcy petition, Applicant could not connect them to the debts alleged in the SOR.

Applicant denied the four state tax liens alleged in SOR ¶¶ 1.g, 1.h, 1.j, and 1.k. He testified that he believed the liens were for income taxes in a state where he no longer lives. He contacted the state but has not taken any action to have them removed from his credit record. They are still reflected on his credit bureau report (CBR) dated January 14, 2013. (GX 7 at 2.) They are not listed in his bankruptcy petition.

The debt alleged in SOR ¶ 1.i is for delinquent payments on a home mortgage. It is included in the bankruptcy. (GX 10 at 8.) Applicant testified he moved out of this home in February 2009 and has been trying to rent it out, with limited success. (Tr. 55.)

The debt alleged in SOR ¶ 1.l was a debt to a homeowners' association that was reduced to judgment. Applicant admitted this debt and testified that the judgment was satisfied, but he was unable to provide documentation of payment. (Tr. 47-48.) He testified that the judgment was included in his bankruptcy. The homeowners'

association is not listed in his bankruptcy petition, but a collection attorney seeking about the same amount of money is listed. (GX 10 at 13.)

Applicant admitted the debt alleged in SOR ¶ 1.m, but claimed that he had paid it. (Tr. 49-50.) He was unable to submit documentation of payment.

Applicant denied the debt alleged in SOR ¶ 1.n. He has not contacted the creditor or challenged the debt with the credit bureaus. (Tr. 50.)

Applicant denied the debt alleged in SOR ¶ 1.o. He testified that he does not know why it is listed on his credit report, but he has not contacted the creditor or challenged the debt with the credit bureaus. (Tr. 50.)

Applicant denied the debt alleged in SOR ¶ 1.p, which is a deficiency after a voluntary car repossession. He testified that he thought the debt was included and paid in his 2006 bankruptcy, but he found out later that a balance was still due. He testified that the debt is included in his 2012 bankruptcy. However, the creditor is not listed in the petition and there are no collection attorneys or agencies with claims for the amount alleged. (Tr. 51; GX 10.)

Applicant testified that he has disputed entries on his credit reports in the past. However, he has not disputed many of the entries on his current CBRs because the current on-line process is too complicated and too time consuming. (Tr. 63-64.)

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 that Applicant filed a Chapter 13 bankruptcy petition in August 2006, which was dismissed in November 2008 (SOR ¶ 1.a). It also alleges 15 delinquent debts totaling about \$38,000 (SOR ¶¶ 1.b-1.p).

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 the documentary evidence presented by Department Counsel are sufficient to 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 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 delinquent debts are numerous, ongoing, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is partially established. Applicant encountered conditions beyond his control: his divorce in February 2002, his unemployment from November 2002 to September 2003, his wife's unemployment from January 2009 to November 2012, and his demotion and substantial pay reduction in July 2011. However, he has not acted responsibly. He filed a bankruptcy petition in August 2006 after almost three years of steady employment. His only explanation for this bankruptcy was that he was falling behind on his bills and was between contracts. His current financial predicament was triggered when he lost his interim clearance and was demoted in July 2011. However, he demonstrated at the hearing that he does not have a good grasp of his financial situation. He has no documentation for the bills he claims to have paid, and he has not bothered to file disputes of bills that he thinks are questionable because he considers the process too complicated and time consuming. I conclude that this mitigating condition is not fully established.

AG ¶ 20(c) also is partially established. Applicant has received financial counseling in connection with both of his bankruptcy petitions, but his financial situation is not yet under control. His most recent bankruptcy petition was filed only recently, his payment plan has not been confirmed, and insufficient time has passed for him to establish a track record of compliance with the payment plan.

AG ¶ 20(d) is not established. Good faith 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]n applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of this [mitigating condition.]" ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006). While Chapter 13 bankruptcy is a legally permissible, and sometimes prudent, means of resolving debts, I must consider the facts and circumstances surrounding Applicant's conduct in incurring and failing to satisfy his debts in order to determine his suitability for a security clearance. See ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). He claimed to have resolved several debts, but he was unable to provide documentation to support his claims. He apparently filed his bankruptcy petition as a substitute for evaluating his situation and devising a plan to resolve his debts. His bankruptcy plan is not yet confirmed. At the hearing, he was unable to show that all his debts are included in the plan. His financial track record does not inspire confidence that he will comply with his bankruptcy plan even if it is confirmed.

AG ¶ 20(e) is not established. Applicant articulated a plausible basis for disputing some of the debts alleged in the SOR, e.g., the state tax liens, but he failed to provide documented proof to substantiate the basis for his dispute and he provided no evidence of actions to resolve the disputes.

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 was candid and sincere at the hearing, but not well prepared. He was unable to produce documentation of his financial situation even though he was given additional time to do so. Although he intended to include all the debts alleged in the SOR in his most recent bankruptcy petition, it is not clear that he has done so. He has worked at his trade for many years and served U.S. military forces under combat conditions. He is dedicated to his family. However, because of his inadequate efforts to resolve his financial situation, he has been unable to carry his burden of refuting, explaining, extenuating, or mitigating the security concerns raised by his financial problems.

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.p:

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