



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-11142
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2013

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 April 29, 2011. On January 14, 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 February 5, 2013; answered it on February 22, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 19, 2013, and the case was assigned to an administrative judge on March 28, 2013. Scheduling of the hearing was delayed by budget constraints and the unavailability of video teleconference equipment in the area

where Applicant lives and works. The case was reassigned to me on May 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 14, 2013, scheduling the hearing for June 3, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present any documentary evidence or witnesses. I kept the record open until June 17, 2013, to enable him to present documentary evidence. He timely submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. Department Counsel's comments regarding AX A through C are attached to the record as Hearing Exhibit I. DOHA received the electronic version of the transcript (Tr.) on June 15, 2013, and the hard copy on June 20, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations except SOR ¶ 1.y, which he neither denied nor admitted. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old machinist employed by a defense contractor. He graduated from high school in June 1999, and he began working for his current employer in September 1999. He received a security clearance in June 2000. He completed a four-year apprenticeship in January 2004.

Applicant married in December 2002. He and his wife have two children, ages 9, and 8. His wife has a son, age 13, from a previous relationship. Applicant has treated this child as his own from the beginning of their marriage. (GX 2 at 18.)

Applicant worked a night shift for seven years, and he accepted an opportunity to work the day shift in August 2012. He gave up the night-pay differential of about \$3,000 per year because the night shift was physically exhausting and interfered with his family life. (Tr. 27.)

The \$6,309 debt alleged in SOR ¶ 1.a was for martial arts lessons for Applicant's children. The creditor obtained a judgment against Applicant in September 2010. (GX 5 at 1.) Applicant testified that, in September 2012, he agreed to make payments of \$20 per two-week pay period for three months, and in December 2012 he increased his payments to \$30 per pay period. (GX 2 at 20; Tr. 40-44.) After the hearing, he submitted a spreadsheet listing this debt and a copy of a debit card account statement dated June 11, 2013, reflecting a \$53 payment to this creditor. (AX B; AX C.)

In his answer to the SOR and at the hearing, Applicant stated that the collection account for a \$59 bill for satellite television service alleged in SOR ¶ 1.d and a collection account for a \$58 bill for satellite television service alleged in SOR ¶ 1.i were the same debt. The debt was referred for collection in November 2008. (GX 5 at 2.) Applicant testified that he thought he paid the bill about seven years ago by using a debit card, but he was unable to produce any documentation of a payment. (Tr. 37-38.)

In his answer to the SOR and at the hearing, Applicant also claimed that the collection account for a \$415 cell phone bill alleged in SOR ¶ 1.t and a collection account for a \$1,446 cell phone bill from the same provider, alleged in SOR ¶ 1.dd, are the same debt. Even though the amounts are different, he believes that he had only one account with this cell phone service provider. The debt was referred for collection in April 2011. (GX 3 at 12.) Applicant testified that he contacted this creditor in June or July 2012 and received a settlement offer, but he had no further contact with the creditor after receiving the offer. (Tr. 38-40.)

The debt alleged in SOR ¶ 1.cc arose in 2003, when Applicant borrowed \$22,000 to purchase a vehicle. He was unable to make the payments, and the vehicle was repossessed in April 2004. The \$11,000 deficiency after the vehicle was sold was referred for collection in May 2004. (GX 2 at 33.) Applicant testified that, about two weeks before the hearing, the collection agency for the lender contacted him and offered to accept \$25 per pay period until he can afford to pay more. He also testified that the debt has risen to about \$19,000 because of accrued interest, but that the creditor agreed to settle the debt for \$10,000. Applicant was unable to produce documentation of the payment agreement by the time the record closed. (Tr. 45-47.) After the hearing, he submitted a bank statement reflecting two \$25 payments. (AX B.)

Thirteen of the 30 delinquent debts alleged in the SOR are medical debts (SOR ¶¶ 1.b, 1.e-1.h, 1.j-1.o, 1.w, and 1.z). The amounts range from \$29 to \$614. One debt (SOR ¶ 1.o) was referred for collection in 2006; three (SOR ¶¶ 1.b, 1.m, and 1.n) were referred for collection in 2007; three (SOR ¶¶ 1.e, 1.k, 1.h) were referred for collection in 2008; one (SOR ¶ 1.j) was referred for collection in 2009; and five (SOR ¶¶ 1.f, 1.g, 1.h, 1.w, and 1.z) were referred for collection in 2010. (GX 3; GX 4; GX 5.) Applicant testified that he has medical insurance, but the debts are for copayments, shots, and other items not covered by his insurance. (Tr. 30-32.) He testified that his wife had breast reduction surgery several years ago, but he did not know if any of the delinquent medical debts alleged in the SOR pertained to her surgery. (Tr. 34.) He testified that he obtained a copy of his credit report after he was interviewed by a security investigator in June 2011, but he did not do any significant investigation of the delinquent medical accounts listed in his credit report. (Tr. 35-37.)

Applicant testified that he talked with a credit counseling agency around 2005, but they could not help him because he had too much delinquent debt. (Tr. 52-53.) In his October 2012 response to financial interrogatories, he submitted a personal financial statement reflecting net monthly income of \$2,903, expenses of \$2,897, the biweekly payments to the martial arts school alleged in SOR ¶ 1.a, and a net remainder of \$6.68. (GX 2 at 26.) He received a federal income tax refund of about \$3,000 and a state tax refund of about \$100, which he used to pay current expenses, make a payment on the delinquent debt alleged in SOR ¶ 1.a, and pay some of his smaller delinquent debts. (Tr. 53-56.)

Applicant's wife worked as a teacher's assistant from 2000 until June 2012. Her net take-home pay was about \$1,100 per month. She stopped working outside the

home because their youngest child has attention-deficit hyperactivity disorder (ADHD) and was having behavioral problems at school. She is now home-schooling him. (Tr. 30-31.) Applicant's credit reports reflect that all the debts alleged in the SOR had been reduced to judgment or referred for collection at least a year before Applicant's wife was unable to continue working outside the home. (GX 3; GX 4; GX 5.)

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 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 contended and Department Counsel conceded that the same debt was alleged in SOR ¶¶ 1.d and 1.i. Applicant also contended that the same debt was alleged in SOR ¶¶ 1.t and 1.dd, and Department Counsel disagreed, pointing out that the amount alleged in SOR ¶ 1.t was \$415 but the amount alleged in SOR ¶ 1.dd was \$1,446. I found Applicant's testimony that he had only one account with this creditor plausible and credible, and I conclude that the smaller debt alleged in SOR ¶ 1.t is included in the larger debt alleged in SOR ¶ 1.dd. 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 will resolve SOR ¶¶ 1.d and 1.t in Applicant's favor.

Applicant's admissions, corroborated by his credit reports, establish two following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). 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. Applicant's pay reduction due to a transfer to the day shift was voluntary and not a condition beyond his control. His son's ADHD and the loss of his wife's income to meet their son's needs were conditions beyond his control. However, all the debts alleged in the SOR had become delinquent and were referred for collection or reduced to judgment at least a year before Applicant's wife left her job to take care of their son. Furthermore, Applicant has not acted responsibly. His first affirmative steps to resolve any of the delinquent debts in the SOR was in September 2012, when he negotiated a payment agreement with the martial arts school.

AG ¶ 20(c) is not established. Although Applicant may have consulted with a financial advisor or debt management service in the past, his financial problems are not under control.

AG ¶ 20(d) requires a showing of good faith. 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 person is not required, as a matter of law, 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). I conclude that this mitigating condition is established for the debt alleged in SOR ¶¶ 1.a, because Applicant presented documentary proof of his payment agreement and a track record of compliance with his payment agreement. It is not established for the debt alleged in SOR ¶ 1.cc, because his two recent \$25 payments on a \$10,000 delinquent debt are insufficient to show that he is likely to carry out his agreement. It is not established for the remaining debts in the SOR, because Applicant does not have a coherent plan for addressing these delinquent debts, nor has he taken significant steps to resolve them.

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR, except to point out that two debts were duplicates.

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 has worked for his current employer for almost 14 years and held a security clearance for most of that time. His son's ADHD has placed an additional burden on his financial situation. He is devoted to his family. However, he does not have a good grasp on his financial situation and no coherent plan for attaining financial stability.

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**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u-1.dd:	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