



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-11621
)	
Applicant for Security Clearance)	

Appearances

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

08/23/2013

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 7, 2011. On March 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; DOD 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 April 2, 2013; answered it on April 16, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 10, 2013, and the case was assigned to me on May 16, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 15, 2013, scheduling the hearing for June 6, 2013. I convened the hearing as scheduled.

Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified, but he did not present any witnesses or documents. I kept the record open until June 14, 2013, to enable him to present documentary evidence. He timely presented 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 transcript (Tr.) on June 20, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d, 1.h, and 1.i. He denied the allegations in SOR ¶¶ 1.e-1.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 36-year old electronic technician employed by a defense contractor since December 2010. He served on active duty in the U.S. Navy from June 1996 to April 2008. He was separated from the Navy under other than honorable conditions because of a civilian conviction for driving under the influence (DUI). He was unemployed from May to September 2008. He worked for a private employer from September 2008 until he began working for his current employer. He was a part-time student at a community college from June to December 2010 but did not receive a degree. He received a security clearance in June 1997, while he was on active duty in the Navy, but it was administratively terminated when he left the Navy and no longer needed it. (Tr. 10-12.)

Applicant had three arrests for DUI. The first, in April 2004, was reduced to a speeding violation, for which he paid a \$2,000 fine. The second, in June 2006, resulted in a \$500 fine and mandatory participation in an alcohol safety action program (ASAP). His third arrest, in March 2007, resulted in 30-day jail sentence that he served on weekends, a \$1,500 fine, and mandatory ASAP. (GX 5 at 28.) He was charged \$400 in fees for each of the ASAP programs. (GX 5 at 23-25.) The third arrest and conviction triggered his discharge from the Navy. None of Applicant's DUI arrests are alleged in the SOR.¹

Applicant married in April 1998 and divorced in June 2001. He married his current spouse in October 2008. He has a 14-year-old son from his first marriage and a 12-year-old daughter from an out-of-wedlock relationship. He pays child support for both children. He and his current spouse have a six-year-old son.

Applicant testified that, while working for a private employer from September 2008 to December 2010, he was in a low-paying job. Child support for his 14-year-old

¹ Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered Applicant's DUI arrests for these limited purposes.

and 12-year-old children was deducted from his pay, leaving a weekly take-home pay of about \$143. Even after he received a promotion, his take-home pay was only about \$230 per week. (Tr. 28-30.)

Applicant's wife was employed by a defense contractor until August 2010, when she was laid off. In September 2012, she found a part-time job as a home care provider, but she worked only 15 hours per week. (GX 5 at 18.)

The SOR alleges two unsatisfied judgments and seven charged-off debts. The evidence concerning the debts alleged in the SOR is set out below.

SOR ¶ 1.a: Judgment for \$2,616, entered in April 2009. This debt is reflected in Applicant's credit bureau report (CBR) dated February 27, 2013. (GX 2 at 1.) In his post-hearing submission, Applicant submitted evidence that he had disputed the credit report entry reflecting the judgment and that the entry was determined to be correct. (AX B.) The creditor obtained a garnishment summons against Applicant in February 2013 to collect the \$2,616 judgment plus interest and fees, a total of \$4,445. (GX 6.) At the conclusion of the hearing, Department Counsel conceded that it was likely that the two debts alleged in SOR ¶¶ 1.e and 1.f were included in the judgment alleged in SOR ¶ 1.a. Department Counsel moved to amend SOR ¶ 1.a to allege that the total amount due on the judgment alleged in SOR ¶ 1.a was \$4,445. Without objection from Applicant, I granted the motion to amend. (Tr. 91-95.) The judgment is unsatisfied.

SOR ¶ 1.b: Medical debt for \$173, referred for collection in October 2008. This debt is reflected in Applicant's February 2013 CBR (GX 2 at 1.) The debt is unpaid.

SOR ¶ 1.c: Internet service bill for \$1,459, charged off in April 2010. This debt is reflected in Applicant's February 2013 CBR (GX 2 at 2.) It is unpaid.

SOR ¶ 1.d: Debt to United States Government for \$5,195, charged off in October 2008. This debt is reflected in Applicant's 2013 CBR (GX 2 at 2.) Applicant believes that this debt arose when the Government attempted to recoup a portion of his reenlistment bonus after he was administratively separated before completing his enlistment. (Tr. 54-55.) The debt is unresolved.

SOR ¶¶ 1.e and 1.f: Delinquent charge accounts, both with the same furniture dealer; the first for \$3,256, referred for collection in March 2009; and the second for \$2,779, referred for collection in February 2009. These debts are reflected in Applicant's February 2013 CBR (GX 2 at 2.) They are included in the judgment alleged in SOR ¶ 1.a. Applicant's April 2011 CBR reflected four accounts with this creditor: an account opened in May 2006, with a balance of \$3,907, which was current; an account opened in May 2007, with a zero balance; and two accounts opened in September 2008 (when Applicant began working at his previous job), which are alleged in SOR ¶¶ 1.e and f. (GX 3 at 8-9.)

SOR ¶ 1.g: Judgment for \$300, filed against Applicant in October 2009. This debt is reflected in Applicant's April 2011 CBR and local court records dated May 13, 2013. (GX 3 at 6; GX 4.) He testified that the judgment was obtained by an attorney who represented him in connection with a DUI arrest and conviction, that he paid the debt in full, and that, when he contacted the attorney's office, he was informed that they had no record of the debt. (Tr. 61-63.) In December 2012, Applicant retained another attorney to assist him in resolving his delinquent debts. He is paying the attorney \$30 per month. A letter from the attorney states that he has been retained "to legally approach the credit bureaus to demand investigation into specific accounts that are presently report[ed] on the credit report of [Applicant] that are allegedly inaccurate, misleading, unverifiable or present due to past identity theft issues." (GX 5 at 3.) Applicant did not mention identity theft as an issue during a personal subject interview (PSI) in April 2011, his response to the SOR, or at the hearing. Applicant submitted a list of all the delinquent debts reported on Applicant's CBRs, apparently prepared by his attorney, listing every debt as "inaccurate." (Tr. 49; GX 5 at 3-4.) In his post-hearing submission, he presented a "credit road map" from his attorney, informing him that the judgment alleged in SOR ¶ 1.g had been deleted from his credit record. (AX C.) His February 2013 CBR does not reflect the judgment. (GX 2.) The "credit road map" from his attorney and the absence of the judgment on his February 2013 CBR corroborate his testimony that he paid the debt. I conclude that the debt is resolved.

SOR ¶ 1.h: Delinquent auto loan for \$10,275, charged off in March 2008. In 2005, Applicant borrowed \$16,000 to purchase a three-year-old luxury car. During his April 2011 PSI, he told an investigator that he was able to make the \$433 monthly payments until May 2008, when he was discharged from the Navy. (GX 5 at 31.) However, his CBRs reflect that the debt was charged off in March 2008. (GX 2 at 2; GX 3 at 7.) He also told the investigator that, in lieu of repossession, his mother had purchased the car from the lender, that he had contacted the lender in November 2010, was paying \$180 per month, and had reduced the balance due to about \$6,000. (GX 5 at 31.) He produced no documentary evidence of any payments. His statement to the investigator regarding the amount of the debt is contradicted by his February 2013 CBR, which reflects a balance of \$10,275. (GX 2 at 2.) At the hearing, he testified that he did not contact the lender when he fell behind on his payments, but he believed his mother had contacted the lender and had registered the car in her name. However, he was uncertain whether his mother had made any payments on the debt. (Tr. 65-70.) He admitted that he had not made any payments on this debt since he retained the attorney in December 2012. (Tr. 81.) The debt is unresolved.

SOR ¶ 1.i: Cell phone bill for \$360, charged off in March 2011. This debt is reflected in Applicant's April 2011 CBR. (GX 3 at 9.) His February 2013 CBR reflected that he was making payments on this debt pursuant to a payment agreement. (GX 2 at 2.) However, he testified that he had not made any payments on this debt after he retained an attorney in December 2012. (Tr. 81.)

Applicant submitted a personal financial statement (PFS) in February 2013, reflecting net monthly income of \$2,262 (including his wife's income of about \$516),

expenses of \$3,393, debt payments of \$322, and a monthly shortfall of \$1,453. (GX 5 at 16.) At the hearing, he testified that the PFS was inaccurate, and that he and his wife usually have a net remainder of about \$260. He has no savings, but he has about \$5,800 in his retirement account. (Tr. 87-89).

After his PSI in April 2011, Applicant began contacting the creditors listed in his CBRs. (Tr. 49-50.) He sought credit counseling and was referred to an attorney. Although he has hired an attorney to assist him, he has only a vague understanding of what his attorney is doing about his debts. He testified that his attorney is involved only in disputing his debts, but that after the disputes are resolved he will be referred to a debt consolidator, who will attempt to negotiate settlements of the debts that were not successfully disputed. (Tr. 72-83, 97.)

As of the date of the hearing, only the judgment alleged in SOR ¶ 1.g had been resolved. Since December 2012, Applicant has not made any payments to any of the other creditors alleged in the SOR. (Tr. 81.)

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).

The evidence reflects that the debts alleged in SOR ¶¶ 1.e and 1.f are included in the judgment alleged in SOR ¶ 1.a. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in the applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Thus, I have resolved SOR ¶¶ 1.e and 1.f for Applicant.

Applicant's CBRs, admissions in his response to the SOR, and his testimony at the hearing establish the unsatisfied judgment alleged in SOR ¶ 1.a and the unpaid delinquent debts in SOR ¶¶ 1.b-1.d, 1.h, and 1.i. The evidence raises two 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 applicable:

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 not the result of circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's financial problems were not the result of conditions beyond his control. His divorce in June 2001 occurred long before his financial problems began. His delinquent auto loan was charged off in March 2008, before his discharge from the Navy. His unemployment and underemployment after his discharge from the Navy, his indebtedness to the United States for the reenlistment bonus, and his inability to pay his debts were the result of his DUI conviction, not a condition beyond his control. His financial situation was aggravated by the fines, legal

fees, and ASAP fees related to his DUI conviction. He opened the two furniture store accounts alleged in SOR ¶¶ 1.e and 1.f in September 2008, after he found a job, but bought more than he could afford. His wife's loss of employment was a circumstance beyond his control, but he was already in financial distress when she was laid off. The second prong of this mitigating condition (responsible conduct) also is not fully established. He has been gainfully employed since December 2010. He has not offered a credible explanation for not making any payments on the unsatisfied judgment alleged in SOR ¶ 1.a and the delinquent debts alleged in SOR ¶¶ 1.b-1.d. His claim in his PSI that he contacted the creditor alleged in SOR ¶ 1.g in November 2010, made several payments, and reduced the balance to \$6,000 is unsupported by any documentary evidence and contradicted by his February 2013 CBR and his testimony at the hearing. He did not contact any of his creditors until he was confronted with his debts by a security investigator in April 2011, and he has made no payments on any debts since December 2012.

AG ¶ 20(c) is not fully established. Applicant obtained credit counseling and retained an attorney to assist him, but most of his delinquent debts are unresolved. This mitigating condition is established for the judgment alleged in SOR ¶ 1.g, but it is not established for the debts alleged in SOR ¶¶ 1.a-1.d, 1.h, and 1.i.

AG ¶ 20(d) is not fully established. Although he asserted during his April 2011 PSI that he began making payments on the delinquent car loan alleged in SOR ¶ 1.h in November 2010, he presented no documentary evidence of payments, and he later testified at the hearing that he had no contact with the creditor until he was confronted with his delinquent debts during his April 2011 PSI. However, he has resolved the unsatisfied judgment alleged in SOR ¶ 1.g. I conclude that this mitigating condition is established for the judgment alleged in SOR ¶ 1.g, but it is not established for the other debts alleged in the SOR.

AG ¶ 20(e) is established for the unsatisfied judgment alleged in SOR ¶ 1.g, which he successfully disputed. It is not established for the other debts alleged in the SOR.

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's financial problems are largely the result of his misconduct. He apparently made some effort to resolve his debts after his April 2011 PSI, but he has made no payments since hiring an attorney in December 2012, even though he is not sure what his attorney is doing and he admits that several of the debts are valid. He does not have a good grasp of his financial situation and no clear, credible plan to resolve his delinquent debts.

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 grant him 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.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge