



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 11-12617
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On June 10, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 10, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and referred his case to an

administrative judge for a determination whether his clearance should be granted or denied.

Applicant answered the SOR on August 6, 2014, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated February 18, 2015, was provided to him by letter dated February 25, 2015. Applicant received the FORM on March 6, 2015. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the time period of 30 days after receipt of copy of the FORM. On March 27, 2015, the case was assigned to me.

Findings of Fact

In his answer to the SOR, Applicant admitted all of the SOR allegations except SOR ¶ 1.b, which he denied. Applicant's answer is incorporated in my findings of fact.

Background Information

Applicant is a 48-year-old truck driver, who has been employed by a defense contractor since March 2008. He seeks a security clearance in conjunction with his current employment. (Items 4, 5)

Applicant attended high school from September 1980 to January 1983 and earned a GED in "about 1986 or 1987." (Item 5) He did not serve in the armed forces. (Item 4)

Applicant was previously married from January 1989 to March 1991. That marriage ended by divorce. He has four adult children. (Items 4, 5)

Financial Considerations

Applicant's SOR alleges 10 debts totaling \$21,973 – 9 collection accounts ranging from a low of \$125 to a high of \$3,916, and an approximate \$15,000 debt to the Internal Revenue Service (IRS). There is also an allegation that Applicant failed to file his federal income tax returns for the tax years 2002 to 2005, and two allegations of Chapter 7 bankruptcies filed in June 2003 and January 2014. Applicant was granted a discharge in September 2003 for his first bankruptcy, and as of this date, a discharge for his January 2014 bankruptcy seeking discharge of liabilities in the amount of \$395,471 was pending.

In her FORM, Department Counsel specifically addressed the deficiencies in Applicant's SOR answer. Department Counsel's FORM left little or no doubt concerning the areas Applicant needed to address with additional evidence or documentation. Summarized, those deficiencies are:

SOR ¶ 1.a – judgment for medical bill in the amount of \$579 filed in December 2008. Applicant admitted the debt and it is included on his Schedule F for his pending bankruptcy. (Item 4 at 28, Item 5 at 9 and 24, Item 7 at C1, Item 8 at A3)

SOR ¶ 1.b – collection account for automobile loan in the amount of \$3,916. Applicant denied the debt, claiming the creditor owes him money. He provided no proof and contradicts his previous admission that he owes the debt (Item 4 at 29, Item 5 at 10 and 22, Item 8 at A8)

SOR ¶ 1.c – collection account for cell phone in the amount of \$187. Applicant admitted the debt, claimed it was paid, but provided no proof, and it is included on his Schedule F for his pending bankruptcy. (Item 3 at 2 and 3, Item 5 at 23, Item 10)

SOR ¶ 1.d – collection account for cable bill in the amount of \$333. Applicant admitted the debt, claimed it was paid, but provided no proof, and it is included on his Schedule F for his pending bankruptcy. (Item 3 at 2 and 3, Item 5 at 23, Item 10)

SOR ¶ 1.e – collection account in the amount of \$1,220. Applicant admitted the debt, claimed it was paid, but provided no proof. (Item 3 at 2 and 3, Item 5 at 23)

SOR ¶ 1.f – collection account for medical bill in the amount of \$132. Applicant admitted the debt, claimed it was paid, but provided no proof. (Item 3 at 2 and 3, Item 4 at 29, Item 5 at 9, Item 8 at A3)

SOR ¶ 1.g - collection account for medical bill in the amount of \$296. Applicant admitted the debt, claimed it was paid, but provided no proof. (Item 3 at 2 and 3, Item 4 at 29, Item 5 at 9, Item 8 at A3)

SOR ¶ 1.h – collection account for medical bill in the amount of \$185. Applicant admitted the debt, claimed it was paid, but provided no proof. (Item 5 at 11, Item 8 at A8)

SOR ¶ 1.i – collection account for insurance bill in the amount of \$125. Applicant admitted the debt, claimed it was paid, but provided no proof. (Item 5 at 11, Item 8 at A8)

SOR ¶ 1.j – debt of approximately \$15,000 owed to the IRS for taxes owed for 2002 through 2005. Applicant admitted the debt, claimed payments made until January 2014 per a payment plan, plans to resume payments, but provided no proof. (Item 4 at 31, Item 5 at 10, Item 10)

As noted, Applicant failed to file his federal income tax returns for the tax years 2002 to 2005. Applicant has delinquent debts that remain unresolved, and there is no evidence that his tax returns have been filed.

Applicant attributes his financial problems to having cancer which affected his ability to work. (Item 3 at 1 and 3, Item 4 at 30-31) He was treated for cancer from about

2000 to 2005, when he went into remission. (Item 5 at 10) Applicant stated that he “was struggling to work while going through surgeries and treatments,” however, according to his e-QIP response, he has been steadily employed fulltime since 1988. (Item 5 at 10, Item 4 at 10-12)

Applicant claims that he tried to file his 2004 and 2005 federal income tax returns in 2009, but the IRS told him that it was too late. (Item 4 at 9-12) He did not file his 2002 and 2003 federal income tax returns because he would have to pay the estimates. (Item 4 at 9-12) As of June 2011, Applicant had not set up a payment plan with the IRS for taxes owed for 2002 through 2005. (Item 5 at 10) However, in August 2014, he claims he was on a payment plan. (Item 3 at 3)

Applicant has not provided any evidence regarding the details of his illness such as length and type of treatment, uncovered medical costs, and how his illness affected his ability to work and for how long, and what, if anything, he did to maintain contact with his creditors. Furthermore, Applicant has not explained why he has failed to file his income tax returns from 2005 to the present or in resolving his IRS debt. Even if Applicant attempted to file at least two of his federal tax returns in 2009, as he claims, there is no evidence to support the notion that his delay from 2005 to 2009 was reasonable. There is no record evidence of financial counseling.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 adjudicative guidelines. These guidelines 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 overarching 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 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 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 “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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” “(c) a history of not meeting financial obligations;” and “(g) failure to file annual Federal, state or local income tax returns as required” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports.

The evidence establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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.

Considering the record evidence as a whole,¹ I conclude none of the five financial considerations mitigating conditions above are applicable or partially applicable to explain, extenuate, or mitigate the security concern. The available information shows that Applicant has taken little affirmative action to resolve his delinquent debts.

¹ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.² Rather the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.³

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on a limited explanation without sufficient corroborating evidence, financial considerations security concerns remain.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this decision should be considered to suggest that I have based this decision, in whole or in part, on any express or implied decision as to an applicant's loyalty or patriotism.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,⁴ I conclude Applicant did not present

² ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

³ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

⁴ AG ¶ 2(a) (1)-(9).

sufficient evidence to explain, extenuate, and mitigate the Guideline F security concern. Accordingly, Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a-1.m:	Against Applicant
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Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge