



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



In the matter of:)
)
-----) ISCR Case No. 11-13620
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2013

Decision

Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists 14 debts totaling \$93,895. He is in the process of resolving his delinquent debts, using Chapter 7 of the Bankruptcy Code; however, more progress resolving the delinquent debts listed on his SOR is necessary. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 14, 2011, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On March 18, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to 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) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR further informed Applicant that DOD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the

national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted or denied. (HE 2)

On April 10, 2013, the Defense Hearings and the Appeals Office received Applicant's response to the SOR, and Applicant requested a hearing. (Tr. 18-19; HE 3) On May 21, 2013, Department Counsel was ready to proceed on Applicant's case. On May 23, 2013, the case was assigned to me. On June 4, 2013, DOHA issued a hearing notice, setting the hearing for June 13, 2013. (HE 1) Applicant's hearing was held as scheduled, using video teleconference.

Department Counsel offered five exhibits, and Applicant did not provide any documents at his hearing. (Tr. 22-25; GE 1-5) Applicant objected to the accuracy or incompleteness of some of the information in his credit reports. (Tr. 23-25) Applicant's objections went to the weight to be given to the exhibits and not their admissibility. Applicant's clarifying information was included in the findings of fact. There were no other objections, and I admitted GE 1-5 into evidence. (Tr. 25) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On June 21, 2013, I received the transcript. I held the record open until June 25, 2013, to permit Applicant to provide additional documentation. (Tr. 61) After the hearing, I received six exhibits from Applicant, which were admitted without objection. (AE A-F)

Findings of Fact¹

Applicant admitted the debts alleged in SOR ¶¶ 1.a to 1.e, 1.h to 1.l, and 1.n. (HE 3) He also provided some extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 46-year-old project manager employed by a defense contractor for the previous seven years. (Tr. 6, 29-30; GE 1) He was awarded a high school diploma in 1984, and he has not attended college. (Tr. 7; GE 1) Applicant served from 1986 to 1996 on active duty in the Navy. (Tr. 7; GE 1) His rate was aviation electronics technician, and he was discharged from active service as a petty officer second class. (Tr. 8) He married in April 1986, and he divorced in August 1986. (Tr. 9) He remarried in 1990, and he divorced in 2003. (Tr. 9) He married in 2005, and he divorced in 2010. (Tr. 9) His children are ages 10, 18, and 20. (Tr. 9) He held a security clearance while in the Navy, and he does not currently hold a security clearance. (Tr. 10) There is no evidence of security violations.

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Financial Considerations

Applicant began to have financial problems and fall behind on his debts in 2005. (Tr. 41) From 1999 to 2007, Applicant owned a business. (Tr. 33) At first his business was very profitable; however, his business opportunities declined dramatically after 2001. (Tr. 33) He was unemployed at times prior to 2007. (SOR response) He borrowed money and invested in two other businesses that eventually became bad investments. (Tr. 34; SOR response) He paid for his father's care, and his spouse spent excessively. (Tr. 48, 56) He said most of the SOR debts were beyond the statute of limitations. (SOR response)

Applicant disclosed his delinquent debts on his June 14, 2011 SF 86 and during his August 10, 2011 Office of Personnel Management (OPM) personal subject interview (PSI). (GE 4) Creditors repossessed his car and two motorcycles, and a mortgage company foreclosed his residence. (GE 1; OPM PSI)

In 2007, Applicant began working for the government contractor. His starting hourly wage was \$20, and his annual income was about \$40,000. (Tr. 31) His current hourly wage is \$26.75 or \$30. (Tr. 30-31, 44) In 2011, his annual income was \$74,000, and in 2012, his annual income was \$55,000. (Tr. 32) His income varies based on the location and type of project he is working on.

Applicant pays \$2,000 monthly in child support for his three children. (Tr. 36) The two oldest children are living with their mother and attending college. (Tr. 35-36) His child support debt is current. (Tr. 38) He needs to spend \$2,000 to repair his truck. (Tr. 45) He does not have any credit cards. (Tr. 45) His monthly expenses are about \$800 more than his monthly income. (Tr. 46) He is current on his taxes. (Tr. 47)

Applicant believed the debt in SOR ¶ 1.c for \$11,000 was erroneous because his account had a \$500 limit. (Tr. 52) He did not challenge the debt with the credit reporting company. (Tr. 53-54)

Applicant's largest SOR debt is his \$53,000 foreclosure in SOR ¶ 1.d. (Tr. 48) He had a tenant; the tenant failed to pay the rent; and the bank foreclosed in 2008. (Tr. 49) He did not receive any documentation from the creditor because the creditor was unable to locate Applicant. (Tr. 50) Some documentation was lost when his papers were thrown away and later his house was demolished. (Tr. 50)

Applicant said he paid the bank debt in SOR ¶ 1.g for \$566 (Tr. 39) and the city collection debt in SOR ¶ 1.m for \$70. (Tr. 40; SOR response) He did not have documentation showing proof of payment. (Tr. 39) He was unable to make greater progress due to his substantial child support responsibilities and limited income. (Tr. 42)

Applicant decided to file for bankruptcy under Chapter 7 of the Bankruptcy Code. (Tr. 43) Applicant said he planned to pay his attorney's fee with a \$1,200 cashier's check the day after his hearing. (Tr. 54-55, 60) On June 20, 2013, Applicant paid his

attorney \$1,200 with a cashier's check. (AE F) This fee may not include the bankruptcy filing fees. (Tr. 55)

Applicant made some progress in establishing his financial responsibility. He is current on his rent, child support, car insurance, cell phone bills, renter's insurance, utilities, and past repairs on his vehicles. (Tr. 56; SOR response) All of his recently generated debts are current. (Tr. 56)

Character Evidence

Applicant's friend of many years and a colleague, who has known Applicant since 2009, described him as diligent, committed to mission accomplishment, helpful, generous, loyal, honest, considerate, well-balanced, courteous, motivated, having integrity, and professional. (AE A, C) A project manager, who worked with Applicant on projects over a three-year period, commented that Applicant was professional, "maintained a stellar customer relationship," has a "can do" attitude towards problems and mission accomplishment, and provided effective leadership. (AE E) The president and vice president of the corporation employing Applicant said Applicant was highly professional, responsible, ethical, conscientious, respectful, and trustworthy. (AE B) He shows initiative, provides leadership, and makes contributions to accomplishing corporate goals. (AE A, B, C, D, E)

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 that, "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 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). 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 consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Nothing in this decision should be construed to suggest that I based this decision, in whole or in part, on any express or implied determination as to 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 [his or 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 relating to 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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” 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 SF 86, credit reports, OPM interview, SOR response, and statement at his hearing.

Most of Applicant's SOR debts became delinquent when he was unemployed prior to 2007. His SOR lists 14 delinquent debts totaling \$93,895. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), 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.

Applicant's conduct does not warrant full application of any mitigating conditions to all debts; however, he did provide some mitigating information. Three SOR debts are refuted or mitigated. Applicant believed the debt in SOR ¶ 1.c for \$11,000 was erroneous because his account had a \$500 limit. Applicant said he paid the bank debt in SOR ¶ 1.g for \$566, and the city collection debt in SOR ¶ 1.m for \$70.

Applicant made some progress in establishing his financial responsibility in relation to some non-SOR debts. He is current on his rent, child support, car insurance, cell phone bills, renter's insurance, utilities, and past repairs on his vehicles. All of his

recently generated expenses are current. AG ¶ 20(d) is partially applicable because Applicant admitted responsibility for his SOR debts.²

Applicant's financial problems were caused by circumstances largely beyond his control. He was unemployed at times prior to 2007. He borrowed money and invested in two other businesses that eventually became bad investments. His main business declined after 2001. He paid for his father's care, and his spouse spent excessively. He has a heavy child support burden of \$2,000 per month, and his divorce was costly. However, Applicant did not act responsibly under the circumstances. He has been consistently employed by his current employer for more than five years. He has only paid two SOR creditors. He did not provide documentary evidence that he established and maintained contact with his creditors.³ Most of his SOR debts are not resolved, and his finances are not under control. His budget shows a negative remainder. He did not provide documentary evidence disputing any debts.

Applicant did not provide sufficient evidence to establish his financial responsibility. It is likely that financial problems will continue. He is credited with beginning to resolve his debts under Chapter 7 of the Bankruptcy Code; however, more progress is necessary to fully mitigate financial considerations security concerns.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

²The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an 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 [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

³"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

(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.

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. My comments under Guideline F are incorporated into my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is a 46-year-old project manager employed by a defense contractor for the previous seven years. He is a high school graduate, who served honorably from 1986 to 1996 on active duty in the Navy. He has been married three times, and he has three children. He held a security clearance while in the Navy, and there is no evidence of security violations.

Applicant is current on all of his recently generated expenses, including his rent, child support, car insurance, cell phone bills, renter's insurance, utilities, taxes, and past repairs on his vehicles. Applicant's financial problems were caused by circumstances largely beyond his control, including unemployment, the recession, bad investments, his father's illness, his spouse's excessive spending, a heavy child support burden, and divorce. He is an intelligent person who knows what he must do to establish his financial responsibility. Applicant has a strong work ethic, is dedicated, and professional. He shows initiative at work and makes contributions to accomplishing corporate goals. I credit Applicant with mitigating security concerns for SOR ¶¶ 1.c, 1.g, and 1.m.

The evidence against approval of Applicant's clearance is more substantial at this time. Some of Applicant's SOR debts have been delinquent for more than five years. He has not made any payments to most of his SOR creditors, and he has only paid two SOR debts. He did not maintain contact with his SOR creditors. He did not act responsibly under the circumstances. He has been consistently employed by his current employer for more than five years. His SOR debts are not resolved, and his finances are not under control. He did not provide documentary evidence disputing any debts. He could have made greater progress resolving and documenting resolution of more of his SOR debts. His failure to establish his financial responsibility shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness and ability to protect classified information. See AG ¶ 15. He has begun the process of resolving his debts under Chapter 7 of the Bankruptcy Code. Once his debts are discharged, and he has avoided additional delinquent debt for several months, he will be a good candidate for a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude approval of Applicant's access to classified information is not clearly consistent with national security.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d to 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h to 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to approve Applicant's security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge