



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 11-14645
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/02/2014

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate financial considerations and personal conduct security concerns. Clearance is denied.

Statement of the Case

On August 23, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 29, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). The action was taken 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), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 23, 2013. Department Counsel was prepared to proceed on November 13, 2013. The case was assigned to me on December 11, 2013. DOHA issued a notice of hearing on December 18, 2013,

scheduling the hearing by video teleconference on January 23, 2014. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant did not call any witnesses, but did testify on his own behalf. He did not offer any exhibits. DOHA received the hearing transcript (Tr.) on January 29, 2014.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.h, 1.k through 1.m, 1.o through 1.r, 1.t through 1.u, and 1.w. He denied the remaining allegations, SOR ¶¶ 1.i, 1.j, 1.n, 1.s, 1.v, and 2.a. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 51-year-old fuels technician, who has been employed by a defense contractor since October 1997. He is required to retain his secret security clearance, which he has held since being employed by his company, as a requirement of his continued employment. (GE 1, Tr. 16, 20-21.)

Applicant graduated from high school in June 1980. (Tr. 19, GE 1.) He served in the U.S. Air Force from February 1983 to October 1995, and was medically discharged with a 70% disability rating. He was a staff sergeant (pay grade E-5) with an Air Force Specialty Code of fuels technician at the time he separated from the Air Force. (Tr. 16-19, GE 1.) Applicant received a two-year degree in instructional technology from the Community College of the Air Force in "88." He married in July 1980, and has three adult daughters. Applicant has been separated from his wife since October 2011 with a divorce pending. His wife is employed full-time as a first grade teacher. (Tr. 18-19, 28, 71, GE 1.)

Financial Considerations

The SOR alleges 23 delinquent debts exceeding \$42,000. The debts include medical bills, credit card and consumer debts, a vehicle repossession, and a mortgage in foreclosure. (SOR ¶¶ 1.a – 1.w.)

Applicant attributes his financial problems to two strokes he had in December 2011 and February 2012, and a pipeline embolization device surgical procedure following an aneurysm in April 2013. He was unable to work for approximately nine months from 2011 to 2012, and for approximately two months in 2013. He has been back to work since October 2013. Applicant testified that he had "no idea" regarding the extent of his debts until November 2013 as a result of these proceedings. Applicant further advised that his mother died in 2013 and he contributed an unspecified amount of money for her funeral expenses. Before Applicant and his wife separated, his wife

was primarily responsible for paying the family bills. However, he stated that he was not blaming her for failure to pay his just debts. (Tr. 22-30.)

During cross-examination, it became clear that Applicant has taken little or no action to contact his creditors, attempt to settle or dispute his debts, or otherwise resolve his debts. A number of debts were brought to Applicant's attention as early as September 2011 when he was interviewed by an Office of Personnel Management (OPM) investigator. Applicant advised the investigator that he was unaware that he had any financial issues as his wife handled all the family finances. He further told the investigator at that time that he would immediately look into his debts and if he owed money on any or all of his debts, he would promptly resolve them. Additionally, Applicant received notice of his debts when he received his March 2013 SOR and also when he received a copy of his September 2011 and January 2013 credit reports forwarded to him by Department Counsel before his hearing. (Tr. 29-63, GE 3, GE 5.) He has not sought financial counseling. (Tr. 68, 76-77.) As noted, Applicant did not submit any exhibits.

Applicant testified that his net monthly income is \$3,400 and he also receives \$1,505 in VA disability. He estimates his net remainder to be "[p]robably \$1,200." His March 2013 personal financial statement does not reflect that he is paying any of his SOR creditors. (Tr. 52-63, GE 4.) Applicant was having financial problems as early as 2008. (Tr. 73-74, GE 3.)

Personal Conduct

Applicant failed to list any of his delinquent accounts or list any adverse financial information when he completed his August 2011 e-QIP. Applicant claimed that he was unaware of any of his outstanding debts at the time he completed his e-QIP. He maintained throughout cross-examination that he answered the e-QIP questions regarding his finances to the best of his ability. Given the number of long-standing debts Applicant has, I do not find his explanation to be credible. (Tr. 64-68, GE 1.)

Character Evidence

Applicant did not submit any character evidence.

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

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 credit reports, e-QIP, OPM interview, and SOR response.

Five financial considerations 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.

None of the mitigating conditions are established. Applicant's delinquent debts are numerous, recent, and not the result of circumstances making them unlikely to recur. Despite having been put on notice of the Government's concerns regarding his finances, he has done nothing to address those concerns. He appeared at his hearing poorly prepared and gave all appearances of having disengaged from the process. His medical problems discussed *supra* were circumstances beyond his control, but he has not acted reasonably. As noted, Applicant has made no effort to address his debts even after they were brought to his attention.¹

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case in regard to the allegation Applicant provided a false answer on his security clearance application:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

The SOR alleges that Applicant deliberately provided false information or omitted required information on his August 2011 security clearance application. As noted, I do

¹"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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

not find Applicant's explanations to be credible. Having had the opportunity to listen to Applicant's testimony and observe his demeanor, I do not accept his explanation that he was unaware of his debts and answered the questions on his e-QIP regarding his financial status to the best of his ability.²

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):

- (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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guidelines F and E is incorporated in this whole-person section. However, further comments are warranted.

Applicant's military service in the Air Force from 1983 to 1995 and employment as a Government contractor from 1997 to present weigh in his favor. He is a law-abiding citizen and contributes to the national defense. Apart from his SOR debts, there is no evidence to suggest that he is not current on his day-to-day expenses.

A security clearance adjudication is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. June 21, 2010.) An applicant is not required, as a matter of law, to

²The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

However, Applicant's failure to address his debts in any meaningful manner since they were brought to his attention as early as 2011 during his OPM interview precludes a favorable decision. Given his background, his failure to recognize the importance of regaining an acceptable level of financial responsibility is disappointing. Additionally, I do not accept Applicant's explanation regarding the falsification of his security clearance application allegation. His lack of candor undermines the security clearance process. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has not mitigated financial considerations or personal conduct security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. For the reasons stated, I conclude he is not eligible for access to classified information.

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.w:	Against Applicant
Paragraphs 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

Robert J. Tuidor
Administrative Judge