



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



In the matter of:)
)
) ISCR Case No. 12-02313
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 17, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On March 4, 2014, Applicant

answered the SOR and requested a hearing. This case was initially assigned to another administrative judge on April 29, 2014, and was reassigned to me on May 19, 2014. On June 4, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for June 24, 2014. The hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, while Applicant testified and offered Applicant Exhibits (AE) A and B. Prehearing guidance sent to Applicant was marked as Hearing Exhibit (HE) 1. The record of the proceeding was left open until July 8, 2014, to provide Applicant an opportunity to present additional matters. He submitted no additional matters. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on July 7, 2014.

Findings of Fact

Applicant is a 53-year-old aircraft mechanic who works for a defense contractor. He has been working in his current job since December 1999. He graduated from high school in 1979 and served on active duty in the U.S. Marine Corps from 1979 to 1983. He has been married for the past 18 years. He has three children, ages 13, 17, and 25, and one stepchild who is 37 years old. His two youngest children live with him and his wife. He has held a security clearance without incident since about 2000.¹

The SOR alleged that Applicant had 17 delinquent debts totaling \$32,546 (SOR ¶¶ 1.a – 1.q). In his Answer to the SOR, Applicant admitted the debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.o and indicated those debts were a duplicate of SOR ¶ 1.h. He did not specifically admit or deny the remaining debts and his comments regarding those debts are considered denials. His admissions are incorporated as findings of fact. Each of the alleged debts is reflected in a credit report that was admitted into evidence.²

Applicant attributed his financial problems to his wife losing her job twice. In early 2007, she was working as a respiratory therapist and earning about \$55,000 annually. In 2007, she was laid off from her job and was unemployed for a couple of weeks. In her next job, she also worked as a respiratory therapist; but earned about \$20,000 less a year. She again lost her job in February 2013 and remained unemployed until about three months before the hearing. She is now employed part time and earns about half of what she received before her latest layoff. Applicant was not sure whether his wife would have the opportunity to return to full-time employment in her current job. He also testified that his wife had medical problems that resulted in some of the medical debts discussed below.³

¹ Tr. 6, 28-31, 50-51; GE 1, 2. Applicant has been working in the same job for the past 21 years, including 8 years working for a subcontractor and the last 13 years as a direct-hire employee.

² GE 3, 4; Applicant's Answer to the SOR.

³ Tr. 26-27, 31-34, 65; GE 2.

SOR ¶ 1.a – judgment filed in August 2011 for \$3,383. In his Answer to the SOR, Applicant indicated that he was unaware of the nature of this debt. At the hearing, he testified that he received a notice in the mail that he was being sued, but did not appear in court. He acknowledged this was a default judgment and stated that he has not paid this judgment. He also indicated that he has not gone to the courthouse in an attempt to identify the original creditor of this debt.⁴

SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.h, and 1.o – medical debts placed for collection for \$250, \$1,065, \$123, \$50, \$1,425, and \$100, respectively. At the beginning of the hearing, Department Counsel noted that the medical debt in SOR ¶ 1.h (\$1,425) was a duplicate and consolidation of the medical debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.o. Consequently, I find in favor of Applicant on the medical debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.o. Applicant testified that these medical debts were probably copays or other amounts not covered by his medical insurance. These debts were placed for collection between January 2009 and December 2011. He indicated that he and his wife tried to set up a payment plan for the debt in SOR ¶ 1.h in December 2013, but a representative of the creditor said they would not accept any payment less than \$380 per month, which Applicant could not afford to pay. At the time of the hearing, he had not made any payments on that debt, but indicated that he had been making payments on other medical bills.⁵

SOR ¶ 1.f – collection account for \$1,296. This was a cell phone account. It was placed for collection in January 2013. In his Answer to the SOR, Applicant indicated that he contacted the creditor and was told that he does not owe anything on this bill. He testified that he previously had a cell phone account with the alleged creditor that was terminated about two or three years ago. He also indicated that he has an Internet service account with the alleged creditor and that account was current. He provided no documentation corroborating his testimony or showing that he disputed this debt.⁶

SOR ¶ 1.g – medical debt placed for collection for \$159. This debt was placed for collection in April 2011. In his Answer to the SOR, Applicant indicated that he did not know whether he owed this debt and that he was unsuccessful in his attempts to find information about it. No document was presented to show this debt was resolved or disputed.⁷

SOR ¶ 1.i – collection account for \$804. This was another cell phone account. It was placed for collection in June 2009. In his Answer to the SOR, Applicant stated that this debt had been paid. He indicated that he was made payments of \$25 per month to

⁴ Tr. 43-45; GE 2-4.

⁵ Tr. 12-13, 45-51, 54, 61; GE 2, 4.

⁶ Tr. 51-54; GE 4.

⁷ GE 2, 4.

resolve it. At the hearing, Department Counsel asked him if he could provide documentation showing it was paid, and Applicant stated he could submit that documentation. However, no documentation was provided.⁸

SOR ¶ 1.j – collection account for \$3,435. This was a credit card account that had a date of last activity of October 2011. In his Answer to the SOR, Applicant claimed that this debt was a duplicate of the debts in SOR ¶¶ 1.k and 1.p. Sufficient evidence, however, was not presented to conclude that those debts were duplicates. He testified that he had not paid this debt.⁹

SOR ¶ 1.k – collection account for \$4,399. This was a credit card account that had a date of first delinquency/date of last activity of November 2007. No evidence was presented to show this debt was resolved.¹⁰

SOR ¶ 1.l – collection account for \$1,706. This is a credit card account that had a date of first delinquency/date of last activity of August 2009. In his Answer to the SOR, Applicant indicated that he tried to find information about the collection agency and this debt, but was not able to find anything. He indicated that he could not confirm that he owed this debt.¹¹

SOR ¶ 1.m – home mortgage loan 30 day past due for \$4,231. Applicant acquired this home for about \$133,000 in August 2001. He first put down about \$10,000 in cash to purchase the land before building the home. In 2006, he refinanced the home and added about \$60,000 in improvements. This refinancing raised the mortgage loan to \$212,000. The term of the refinanced mortgage was 20 years, but Applicant began making regular bimonthly payments of \$1,150 in an attempt to pay it off in 17 years. After his wife was laid off in February 2013, he defaulted on the mortgage payments. At the time of the hearing, he had not made any mortgage payments since March 2013, was behind about \$28,000 on those payments, and was facing a foreclosure action. On June 4, 2014, the mortgage servicer offered Applicant a Trial Modification Plan in which he would be required to make three payments of \$1,668 in July, August, and September 2014 to forbear the foreclosure proceeding and convert the trial plan into a permanent mortgage modification. No documentation was presented to show that Applicant made the first payment under the trial plan.¹²

⁸ Tr. 54-55; GE 2, 4.

⁹ Tr. 13-14, 29-31, 55-60; GE 1-4. Record evidence established the debts in SOR ¶¶ 1.j and 1.p were from different creditors.

¹⁰ Tr. 55-60; GE 2-4.

¹¹ Tr. 60; GE 4.

¹² Tr. 35-43, 60; GE 4; AE A.

SOR ¶ 1.n – repossessed automobile account past due for \$5,607. According to a credit report dated November 2011, this vehicle loan was opened in August 2005 and had a last reported delinquency in September 2011. In his Answer to the SOR, Applicant stated that he paid this debt and provided a copy of the vehicle's title indicating the lien was released on January 2012. He used a tax refund to recover the repossessed vehicle and pay off the loan. This debt has been resolved.¹³

SOR ¶ 1.p – charged-off account for \$2,819. This was a credit card account that had a date of last activity of November 2007. In his Answer to the SOR, Applicant indicated that this account was charged off and closed with a zero balance. He testified that he had not made any payments on this debt.¹⁴

SOR ¶ 1.q – collection account for \$1,694. This was a credit card account that was placed for collection in February 2011. In his Answer to the SOR, Applicant provided documentation showing this was charged off and closed with a zero balance. He testified this debt remained unresolved.¹⁵

Applicant's annual salary, including overtime, totals about \$74,000. In responding to interrogatories in July 2013, Applicant submitted a Personal Financial Statement (PFS) that indicated his net monthly income was \$5,378, his total monthly expenses were \$4,735, and his total debt payments were \$2,200, which left him a net monthly remainder of \$643. The total debt payments listed only his monthly mortgage payment and did not include payments toward the alleged debts. Applicant testified that he has not obtained financial counseling. At the time of the hearing, Applicant indicated he had about \$2,000 to \$2,500 in his bank account. He also stated that he has twice withdrawn money totaling about \$30,000 from his 401(k) account and is paying back those loans. He failed to file his 2008 and 2009 federal income tax returns on time because he believed he would only receive a couple of hundred dollars as refunds. He filed those late income tax returns in about 2011.¹⁶

Applicant completed his entire enlistment in the Marine Corps and received an honorable discharge. In the military, he received a Good Conduct Medal and an Overseas Service Ribbon.¹⁷

¹³ Tr. 60-61; GE 2, 3; AE B; Applicant's Answer to the SOR.

¹⁴ Tr. 61; GE 2, 3; Applicant's Answer to the SOR.

¹⁵ Tr. 62; GE 2, 3; Applicant's Answer to the SOR.

¹⁶ Tr. 28-31, 68-74; GE 2. Applicant's failure to file his federal income tax returns as required was not alleged in the SOR and will not be considered in applying the disqualifying conditions. Such non-alleged conduct, however, 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 the whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006).

¹⁷ Tr. 34-35.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense 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. 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).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 unfavourable, to reach his decision.

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 of 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), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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 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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that he was unwilling or unable to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying 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 wife was laid off twice. Shortly after the first layoff in 2007, she obtained a new job earning about \$20,000 less per year. She was laid off again in early 2013 and recently obtained only part-time employment. She has also encountered medical problems. His wife's unemployment, underemployment, and medical problems were conditions beyond Applicant's control that contributed to his financial problems. Nonetheless, Applicant failed to show that he acted responsibly under the circumstances in addressing his delinquent debts. Some of his debts have been delinquent for years. He only presented proof that he paid one debt (SOR ¶ 1.n). From the evidence presented, I cannot find that Applicant's financial problems are under control, are being resolved, or are unlikely to recur. On the contrary, his delinquent debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), and 20(c) do not apply. AG ¶ 20(d) applies to the debt he paid. AG 20(e) applies to the duplicate debts.

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 relevant 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).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 served in the Marine Corps and received an honorable discharge. He has held a security clearance without incident for a number of years. However, he provided little evidence to mitigate the financial concerns raised in the SOR. He has paid one debt, but has not taken any meaningful action to resolve the other debts. His financial problems remain a security concern.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has failed to mitigate the financial considerations security concerns.

Formal Findings

Formal findings 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.e:	For Applicant
Subparagraphs 1.f – 1.m:	Against Applicant
Subparagraphs 1.n – 1.o:	For Applicant
Subparagraphs 1.p – 1.q:	Against Applicant

Decision

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 access to classified information is denied.

James F. Duffy
Administrative Judge