



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-03463
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

05/16/2014

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) describes 16 delinquent, collection, or charged-off debts, totaling \$91,518. Three debts were paid, and four debts were duplications. Nine unresolved delinquent debts total \$52,042. He failed to provide sufficient documentation of progress resolving his financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 17, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 5) On November 27, 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) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD could not make the preliminary affirmative

finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On January 13, 2014, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated March 6, 2014, was provided to him on March 20, 2014.¹ Applicant did not respond to the FORM. The case was assigned to me on May 12, 2014.

Findings of Fact²

In Applicant's January 13, 2014 SOR response, he said he paid the debts in SOR ¶¶ 1.a, 1.c, and 1.m, and he admitted the debts in SOR ¶ 1.b, 1.d, 1.f, 1.g, 1.i, 1.j, 1.n, and 1.p. (Item 4) He did not address, or he was unsure about his responsibility for the debts alleged in SOR ¶¶ 1.e, 1.h, 1.k, 1.l, and 1.o. (Item 4) Applicant's admissions are accepted as findings of fact.

Applicant is 63-year-old manufacturing specialist, who has worked for the same defense contractor from 1973 to the present.³ In 1983, he married, and in 1984, he was divorced. In 1986, he married his spouse. His stepchildren were born in 1965, 1966, 1967, and 1974. He graduated from high school in 1969. He has not received any college degrees or diplomas.

From February 1971 to May 1973, Applicant served on active duty in the Army, and he received an honorable discharge. There is no evidence of security violations, unemployment, criminal conduct, use of illegal drugs, or alcohol abuse.

Financial Considerations

When Applicant completed his November 17, 2011 SF 86, he disclosed that he had consolidated six debts into a payment plan. Applicant was making payments to the creditor for the bank debt in SOR ¶ 1.c (\$8,594). The creditor had obtained a judgment and filed a lien against Applicant's residence. However, he indicated that he owed a debt in SOR ¶ 1.g to the same creditor for \$7,135, and he plans to pay it. (Item 4)

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated March 11, 2014, and Applicant's receipt is dated March 20, 2014. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Unless stated otherwise, Applicant's November 17, 2011 SF 86 and/or his January 5, 2012 Office of Personnel Management (OPM) personal subject interview (PSI) are the primary sources for the facts in the Statement of Facts. (Items 5, 6)

³The facts in this paragraph and the next two paragraphs are from Applicant's November 17, 2011 SF 86. (Item 5)

Applicant provided a list of eight debts being addressed by his debt consolidation plan (DCP).⁴ On January 5, 2012, he told an Office of Personnel Management (OPM) investigator that he paid \$500 monthly into the DCP for about 18 months, and then he paid \$378 for six months. (Item 6) DCP paid off several of his debts. (Item 6) He noted on his DCP list that the debts in SOR ¶¶ 1.a and 1.c were paid. The six debts listed on his DCP were in SOR ¶¶ 1.f (\$2,300), 1.h (\$4,401), 1.j (\$3,337), 1.k (\$6,673),⁵ 1.n (\$8,160), and 1.p (\$8,996).

The debts in SOR ¶ 1.a (\$9,938) and 1.g (\$7,135) are listed as owed to the same creditor. His June 25, 2013 Experian credit report shows a charge-off amount of \$9,860 and a current balance of \$7,135. (Item 8 at 3) His June 25, 2013 Equifax credit report showed the same debt. (Item 8 at 13) Applicant's March 3, 2014 credit report shows a judgment on April 3, 2013 owed to the same creditor for \$9,938. (Item 9) Applicant's July 13, 2013 personal financial statement (PFS) shows \$1,000 monthly payments for the debt in SOR ¶ 1.a and the balance owed is \$2,000.

Applicant's SOR ¶¶ 1.b (\$5,130), 1.c (\$8,594), 1.h (\$4,401), and 1.l (\$6,674) show four debts originating from the same bank creditor. His November 26, 2011 and June 25, 2013 credit reports show judgments owed to this creditor filed in April 2011 for \$5,130 and March 2011 for \$8,594. (Item 7 at 5, Item 8 at 1) Applicant said he intends to pay the debt in SOR ¶ 1.b; the debt in SOR ¶ 1.c is paid; and he is unsure about his responsibility for the debt in SOR ¶ 1.h. (Item 4) He is credited with mitigating the debt in SOR ¶ 1.c as paid and the debts in SOR ¶¶ 1.h and 1.l as duplications.

On July 16, 2013, Applicant responded to DOHA interrogatories.⁶ He said he was making payments on the debts in SOR ¶¶ 1.a and 1.c, and he was taking no action on the debts in SOR ¶¶ 1.b-1.f, 1.h-1.m, 1.o and 1.p. DOHA asked him to provide documentation to support his answers including correspondence from creditors and collection agencies, bank statements or cancelled checks, a statement of payment history for any consumer credit counseling service, payroll statement showing wage garnishments and year-to-date payments, credit reports showing debts paid, and court records showing any judgments have been paid or satisfied. Applicant provided May and June 2013 bank statements showing \$1,000 payments on May 20, 2013 and June 18, 2013 to the creditor in SOR ¶ 1.a. His May 2013 pay statement for two weeks shows a \$407 garnishment and his June 2013 pay statement for two weeks shows a \$506 garnishment for a total year-to-date garnishment of \$2,983.

⁴ Unless indicated otherwise, the source for the information in this paragraph is Applicant's SOR response. (Item 4)

⁵On January 5, 2012, he told an OPM investigator that the retail store selling construction materials for \$5,816 that was listed on his DCP was being collected by the collection agent in SOR ¶ 1.k. (Item 6)

⁶The source for the information in this paragraph and the next paragraph is Applicant's July 16, 2013 response to DOHA interrogatories. (Item 6)

The debts in SOR ¶¶ 1.d (\$8,985) and 1.n (\$8,160) had the same creditor listed. On January 5, 2012, Applicant told an OPM investigator that the two debts were duplications of each other. (Item 6) He is credited with mitigating the debt in SOR ¶ 1.n as a duplication.

Applicant accepted responsibility for the debt in SOR ¶ 1.f (\$2,300) and he disputed his responsibility for the debt in SOR ¶ 1.o in his SOR response (\$1,684). On January 5, 2012, he told an OPM investigator that he had a debt owed to the creditor in both of these SOR allegations for purchase of a computer. (Item 6) He is credited with mitigating the debt in SOR ¶ 1.o as a duplication.

Applicant said he paid the \$64 medical debt in SOR ¶ 1.m. (Item 4) He also said he has had medical insurance for many years. (Item 6) He is credited with resolving the debt in SOR ¶ 1.m.

Applicant's July 13, 2013 PFS shows the following monthly amounts: \$5,094 gross salary; \$4,075 net salary (\$856 each month is garnished from his gross salary to pay the debt in SOR ¶ 1.c); \$1,554 expenses; \$2,455 debt payments; and \$66 net remainder. He is making \$1,000 payments on a balance owed of \$2,000 for SOR ¶ 1.a; and he showed payments on three other non-SOR debts. He has \$200,000 in a 401K account. Applicant did not receive financial counseling.

Applicant's FORM noted the absence of corroborating documentation and other mitigating information and explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." (FORM at 14) He did not respond to the FORM.

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 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] he 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, OPM personal subject interview (PSI), responses to DOHA interrogatories, and SOR response. Applicant’s SOR alleges 16 delinquent, collection, or charged-off debts, totaling \$91,518. After crediting Applicant with mitigating seven SOR debts either because they are paid or because they are duplications of other unpaid delinquent debts, nine delinquent debts totaling \$52,042 remain unresolved. Several debts have been delinquent for more than two years. 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;⁷ and

⁷The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts; however, he provided some mitigating information. He is credited with paying the three debts he said he paid in his SOR response: ¶ 1.a (\$9,938); ¶ 1.c (\$8,594); and ¶ 1.m (\$64). He has also been credited with the debts that are duplicated elsewhere in the SOR: ¶ 1.h (\$4,401); ¶ 1.l (\$6,674); 1.n (\$8,160); and 1.o (\$1,645).

Applicant did not act responsibly under the circumstances. Applicant responded to DOHA interrogatories on July 16, 2013, and indicated on his July 13, 2013 PFS that he only owed \$2,000 on the debt in SOR ¶ 1.a, and he was paying \$1,000 monthly to the creditor. By October 1, 2013, he had \$1,000 available monthly to pay his creditors. Additionally, in his January 13, 2014 SOR response he said the debt in SOR ¶ 1.c was paid through garnishment of about \$900 monthly from his pay.⁸ On March 20, 2014, he

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)).

⁸Of course, Applicant loses some mitigating credit because some debt payments were made through garnishment of his salary even though his opportunity to establish a payment plan was limited

received the FORM, and he had an opportunity to show what SOR debts were paid with the \$6,000 made available by resolution of the debt in SOR ¶ 1.a and the funds made available whenever the debt in SOR ¶ 1.c was paid. He failed to provide documentation such as settlement offers or agreements to corroborate his assertions that he was planning to continue to address his delinquent debts after the first two large debts were paid.

Applicant did not provide sufficient information about his finances to establish his inability to pay his creditors and provide documentation of such efforts to DOHA. Applicant did not receive financial counseling, and he did not establish that there are clear indications that the problem is being resolved or is under control.

In sum, Applicant did not provide any documentation, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to any of the nine unresolved delinquent debts, which total \$52,042. There is no financial documentation relating to these nine SOR creditors as follows: maintenance of contact with creditors;⁹ correspondence to or from these nine creditors; credible debt disputes; attempts to negotiate payment plans; or other evidence of progress or resolution of these nine SOR debts. There is insufficient evidence that his financial problems are being resolved, are under control, and will not occur in the future.

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

because of his other financial commitments. Payment of a debt "though garnishment rather than a voluntary effort diminishes its mitigating force." *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns).

⁹Even 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 he maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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

There is some evidence supporting approval of Applicant's clearance. Applicant is 63-year-old manufacturing specialist, who has worked for the same defense contractor from 1973 to the present. From February 1971 to May 1973, Applicant served on active duty in the Army, and he received an honorable discharge. There is no evidence that Applicant abused alcohol or used illegal drugs. He contributes to his company and the DOD. There is no evidence of security violations, criminal offenses, disloyalty, or that he would intentionally violate national security.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Several debts on his SOR became delinquent more than two years ago. He was well aware of his financial problems, as he disclosed them on his November 17, 2011 SF 86 and during his January 5, 2012 OPM PSI. He did not provide correspondence written to or received from the creditors showing that he attempted to settle or make any payments to resolve any of his nine unresolved delinquent debts totaling \$52,042. He could have made greater progress documenting resolution these nine debts. His failure to provide more corroborating documentation shows lack of financial responsibility and lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented financial progress is necessary to mitigate security concerns.

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. Financial considerations concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information at this time.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant
Subparagraphs 1.l-1.o:	For Applicant
Subparagraph 1.p:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge