



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-03474

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

07/25/2014

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges five collection or charged-off accounts totaling \$61,816. Circumstances largely beyond his control caused his recent delinquent debt. He made substantial progress resolving his financial problems. He paid one SOR debt, and he successfully disputed another. The other three SOR debts are in established payment plans. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On December 7, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 4) On February 25, 2014, the Department of Defense Consolidated Adjudications Facility (DOD 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 April 14, 2014, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 2) A complete copy of the May 19, 2014 file of relevant material (FORM) was provided to him on May 30, 2014.¹ On June 25, 2014, Applicant responded to the FORM. On June 30, 2014, Department Counsel elected not to object to Applicant's SOR response. The case was assigned to me on July 21, 2014.

Findings of Fact²

In Applicant's response to the SOR, he admitted knowledge of or responsibility for the five SOR debts. (Item 2) He disputed the debt in SOR ¶ 1.a, said the debts in SOR ¶¶ 1.b-1.d were in negotiation or payment plans, and explained the debt in SOR ¶ 1.e was paid. (Item 2) His admissions are accepted as findings of fact.

Applicant is a 54-year-old engineer, who has worked for the same defense contractor since 2001.³ (Items 4, 5) He previously worked for another defense contractor for 16 years. (FORM response) He has held a security clearance for 25 years. (FORM response) In 2006, he was awarded a bachelor of science degree in information technology, and in 2008, he was awarded a master's degree in information systems. (Items 4, 5) He has not served in the military. (Item 4) He married in 1985, and he was divorced in 1990. (Items 4, 5; FORM response) His son was born in 1985. (Item 5)

Applicant disclosed on his SF 86 that in April 2011, his house with a mortgage of about \$100,000 was foreclosed. (Item 4) He also disclosed a credit card debt for about \$10,000 became delinquent in 2010, and he was working with the creditor to pay off the debt. (Item 4)

Financial considerations

Applicant's history of delinquent debt is documented in his credit reports, Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and FORM response. His SOR alleges five delinquent debts totaling \$61,816 as follows: (1)

¹The DOHA transmittal letter is dated May 21, 2014, and Applicant's receipt is dated May 30, 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.

³Applicant's December 7, 2011 SF 86 is the basis for most of the facts in this paragraph. (Item 4)

medical collection debt in ¶ 1.a (\$1,217); (2) and (3) two bank collection debts in ¶ 1.b (\$16,620) and ¶ 1.c (\$19,777) owed to the same creditor; (4) charged-off bank debt in ¶ 1.d (\$24,078), and credit debt in ¶ 1.e (\$124).

Applicant's said the medical collection debt in SOR ¶ 1.a (\$1,217) was not his debt. (Item 2) He disputed it, and on March 21, 2014, the creditor agreed with him that it was not his debt. (Item 2) The creditor promised to assist in having it removed from Applicant's credit reports. (Item 2)

The two bank collection debts in SOR ¶ 1.b (\$16,620) and ¶ 1.c (\$19,777) are owed to the same creditor. Applicant and the creditor agreed to a payment plan, wherein Applicant promised to pay \$125 monthly to address each debt. (Item 2) On April 10, 2014, he owed \$8,959 and \$18,659, respectively, to the creditor for the two accounts. (Item 2) He has consistently made \$125 monthly payments from July 2013 to present on both accounts. (Item 2; FORM response)

The bank collection debt in SOR ¶ 1.d (\$24,078) is being collected by a law firm. (Item 2) On April 18, 2014, Applicant and the law firm agreed that Applicant would pay \$125 monthly to address the \$25,678 debt. (FORM response) Applicant has been making \$125 monthly payments in accordance with his payment plan. (FORM response—bank statements) Applicant recently paid off his vehicle loan, and he promised to apply some of the newly available funds to expedite payment of this debt. (FORM response)

On March 14, 2014, Applicant paid the medical debt in SOR ¶ 1.e (\$124). (Item 2) The \$124 payment is documented in his credit card statement. (Item 2)

Applicant generated a budget or personal financial statement. His monthly gross salary is \$8,382; his monthly net income is \$4,502; his monthly expenses and his monthly debt payments are \$3,755; and his monthly net remainder is \$747. (Item 5; FORM response)

Applicant had extensive medical debts from his son's treatment. (Items 2, 5, FORM response) Before his son's medical problems, he had excellent credit. He has paid numerous non-SOR debts in the last two years. He promised to continue to fulfil his financial obligations, and his delinquent debts would not recur. (Item 2)

Character Evidence

Applicant has received numerous awards from the Air Force and National Aeronautics and Space Administration (NASA). (FORM response) He has received promotions over the years, and for the last four years, he has been the lead engineer in a large laboratory. (FORM response)

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 for financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides 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, OPM PSI, SOR response, and FORM response. His SOR alleges five charged-off or collection accounts totaling \$61,816. One credit card debt became delinquent in 2010. 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;⁴ 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.

The Appeal Board concisely explained the 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).

⁴The 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, punctuation, 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)).

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) and 20(b). His delinquent debts were caused by his son's medical expenses. His financial problems were adversely affected by circumstances largely beyond his control.

Applicant paid one SOR debt and successfully disputed one SOR debt. The remaining three SOR debts are in established payment plans.⁵

Partial application of AG ¶ 20(c) is warranted. Applicant received some financial knowledge in the process of resolving his debts, and he generated a budget. He is a trained engineer with a master's degree. Although there is limited evidence of record that he established and maintained contact with his creditors,⁶ his financial problem is being resolved and is under control.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable actions to resolve his SOR debts, establishing some good faith. He paid one SOR debt. AG ¶ 20(e) is applicable to the debt in SOR ¶ 1.a because he disputed it, and the creditor agreed his dispute was valid. The creditor agreed to support removal of that debt from his credit report.

In sum, Applicant fell behind on his debts because of the costs for his son's medical problems, which is a circumstance beyond his control. He paid one SOR debt; he successfully disputed one SOR debt; and three SOR debts are in established payment plans. He has established his financial responsibility, and it is unlikely that financial problems will recur. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

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):

⁵ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

⁶ "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.

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 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.

Applicant is a 54-year-old engineer, who has worked for defense contractors and held a security clearance for 25 years. There are no allegations of security violations. He received a master's degree in information systems in 2008. He has received numerous awards from the Air Force and NASA and promotions over the last 25 years, and for the last four years, he has been the lead engineer in a large laboratory.

Applicant has a lengthy history of financial problems. His SOR alleges five charged-off or collection accounts totaling \$61,816. One credit card became delinquent in 2010, and his home was foreclosed. His son's medical problems contributed to Applicant's financial woes and constituted financial circumstances largely beyond his control. He had excellent credit before his son had medical problems. He made substantial progress resolving his financial problems over the last two years. He paid one SOR debt; he successfully disputed another SOR debt; the other three SOR debts are in established payment plans; and he paid or made payments to numerous non-SOR creditors. He acted responsibly to repair his finances. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his [or her] outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a

time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what he needs to do to establish and maintain his financial responsibility. He has established a “meaningful track record” of debt repayment. I am confident he will keep his promise to pay his remaining SOR debt and avoid future delinquent debt.⁷

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 financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

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: FOR APPLICANT

Subparagraphs 1.a to 1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge

⁷Of course, the Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.”). This footnote does not imply that this Applicant’s clearance is conditional.