



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 12-04710
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/09/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances beyond his control, but mitigated the concern by acting responsibly. His one-time misuse of an employer-issued credit card for personal use in 2011 was minor and is mitigated by time. He did not repeatedly falsify to his employer the circumstances surrounding the misuse of his credit card. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on November 15, 2015. On December 29, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations) and Guideline E (Personal Conduct). The DOD acted under Executive Order (Ex. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on February 2, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 14, 2016, and the case was assigned to me on May 27, 2016. On June 30, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 26, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on August 3, 2016.

Findings of Fact

Under Guideline F, the SOR alleges 12 delinquent debts totaling approximately \$37,802. These delinquent debts include credit-card accounts and medical bills. In his Answer, Applicant admits 11 of the allegations. He denies SOR ¶ 2.j, stating it is paid. Under Guideline E, the SOR alleges that in 2011, Applicant misused his employer-issued credit card and repeatedly made false statements to his employer regarding the use of and status of the credit card. Applicant admitted this allegation, however, he qualified that admission by stating that he did not make any false statements. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from July 2016, November 2015, and July 2011. (AX A; GX 3; GX 4.)

Applicant is a 28-year-old senior field technician II currently employed by a defense contractor since 2013. He was first employed as a federal contractor in 2006 after graduating from high school. He held a clearance from November 2007 until about February 2014, when his clearance was administratively terminated following his being laid off from his job. He and his first wife married in 2008 and divorced in 2010. He married his current wife in August 2014, and they have a three-year-old daughter. (GX 1.)

Applicant's wife left him and they divorced in 2010. He remained responsible for all of the marital debt, which includes the credit-card debts alleged in the SOR. Applicant and his ex-wife used the credit cards to purchase home furnishings and lawn care equipment. (Tr. 48.) He also gave his ex-wife half of the money in his bank account as part of the divorce settlement. (GX 1; Tr. 24.) From 2010 until 2014, Applicant lived with his parents to reduce his expenses and prevent incurring of additional debt. (GX 1; Tr. 50.)

Applicant paid the \$2,231 owed for the credit-card debt alleged in SOR ¶ 2.j. (AX A; Tr. 27.) He is making monthly payments on the \$10,434 credit-card debt alleged in SOR ¶ 2.b. (Tr. 26.) He consulted with a credit-consolidation company in 2011, but determined that company's fees were too high for him to afford. He intends to repay the creditors directly and will contact the remaining creditors to arrange for repayment of his debts. (GX 6; Tr. 38-39; Tr. 49.) He was scheduled to move in August 2016, and his monthly rent payment will be \$200 less. He will use this money to pay his creditors. (Tr. 49.) He will also use his tax refund to pay off several of the smaller SOR debts. (Tr. 28.) He opened two credit cards, one with a \$500 limit and one with a \$1,500 limit, to help

reestablish his credit. Last year, he used his tax refund to pay off the balances on these cards. (Tr. 27.)

Beginning in July 2011, Applicant underwent a periodic reinvestigation. Before the investigation was completed, he was laid off from his job in December 2013. He was not notified that his clearance processing was terminated, and continued to seek employment that required him to have a clearance. He accepted a job offer and was informed by the potential employer that his clearance was no longer active. (GX 1.) Between 2013 and 2015, when he began working for his current employer, he did not earn enough money to address his delinquent debts. Additionally, his daughter was born in 2013, and his living expenses were necessarily higher. (Tr. 50-52.)

In 2015, Applicant moved from his home state to his current state for his current job. His employment processing took about six weeks, during which time Applicant had no income, but did have his regular expenses. He exhausted the small amount of savings he had. (Tr. 52.) He works approximately 20 hours overtime monthly. (Tr. 45.) He is a full-time student studying for an associate's degree with an anticipated graduation date of June 2017, and currently maintains a high grade point average. He intends to continue his education to obtain a bachelor's degree, which would increase his earning potential with his current employer. (Tr. 74-75.) Applicant's wife does not currently work outside the home. She is a pharmaceutical technician, but she and Applicant cannot afford the cost of licensing since they moved to a different state. (Tr. 29; Tr. 52.) She worked for a period of time, but did not earn enough to offset the cost of daycare. (Tr. 52-53.) She will go back to school for nursing once Applicant completes his studies. (Tr. 29.)

Applicant had an employer-issued credit card from 2008 until 2011, which he used for travel-related expenses. The creditor required that the balance be paid in full each month. However, Applicant's employer did not timely reimburse Applicant for his travel expenses, he could not afford to pay the balance, and the card accrued late fees. In April 2011, Applicant canceled the card. In May 2011, Applicant received a written warning letter for using his employer-issued credit card for personal expenses. The letter also alleged that he was dishonest about the status of the card and the nature of the personal charges. The letter states that Applicant told his supervisor that he voluntarily canceled the card, but that the card was actually canceled by the creditor because it was delinquent. It also states that Applicant lied about the nature of the personal charges, but does not explain what the alleged discrepancy was. (GX 2.) Applicant stated on his e-QIP and in his testimony that the personal charges were for buying groceries at a large retail store. He also stated that he voluntarily canceled the card. He testified that he knew the letter was not accurate, but that he was required to sign the letter or be terminated. He paid the balance due on the card in April 2011. (Tr. 56-62.) He has had an employer-issued credit card since 2015. (Tr. 70.)

Applicant lives within his means and has not incurred any delinquent debt since 2011. (Tr. 47; GX 2; GX 3.) He now has health insurance through his employer and is making contributions to his 401(k). (Tr. 28.) He disclosed the delinquent credit-card debts on his e-QIP. (GX 1.) He was contrite, candid, and straight-forward while

testifying. He accepts responsibility for his delinquent debts and vows to complete the repayment of them. (Tr. 26-27.)

Policies

“[N]o 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 applicants 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’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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. Thus, a decision to deny a security clearance 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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 concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

However, a person can mitigate concerns about his ability to handle and safeguard classified information raised by his financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties arose from circumstances largely beyond his control. As a result of his divorce in 2010, he was left responsible for the marital debt, which is the majority of the debt alleged in the SOR. He also paid his ex-wife half of the monies he had in his account. Between 2013 and 2015, he was underemployed. He has additional expenses since the birth of his daughter in 2013. It is currently impractical for Applicant's wife to work outside the home. He acted responsibly by living with his parents from 2010 until 2014 to reduce expenses and not incur greater debt. He met with a credit consolidating company, but did not contract with them because their fees were too high. Despite being the sole earner for his family, he lives within his means and has not incurred any delinquent debt since 2011.

Applicant has paid one of the SOR debts, is making payments on a large credit-card debt, and will pay some of the smaller debts with his 2016 tax refund. He has two low-balance credit cards that are current and he is using them appropriately to reestablish his credit. He is a full-time student with a good grade point average who views his education as an investment in his future. He has acted in good faith by paying off a debt, making payments on another, and accepting responsibility for his debts. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Although Applicant's financial record is not perfect, he has enacted a reasonable plan to resolve his delinquent debts within his means. The circumstances that led to his indebtedness are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(d) apply.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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.

The relevant disqualifying condition in this case is AG ¶ 16(f): "violation of a written or recorded commitment made by the individual to the employer as a condition of employment."

The mitigating condition listed at AG ¶ 17(c): "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," is relevant.

Applicant's one-time misuse of his employer-issued credit card for personal charges happened over five years ago. He fully repaid the creditor in 2011. The allegations in the warning letter that Applicant had repeatedly lied to his employer about the nature of his purchases and the status of the card were unclear and inconclusive. I found Applicant's explanation of the circumstances to be credible and consistent with the record evidence, and his demeanor to be honest, forthcoming, and candid. Therefore, I conclude that he has mitigated the Guideline E concern.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but I have also considered the following:

Applicant has worked as a federal contractor since he graduated from high school in 2006, with the exception of a brief lay off. He held a security clearance for almost eight years. He lives within his means, and provides for his family. I am confident that Applicant will continue his good-faith efforts to resolve his remaining delinquent debts.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his delinquent debts and his misuse of a company credit card. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 2.a – 2.i: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge