



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 12-06112
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Benjamin A. Currence, Esq.

10/31/2016

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances beyond his control, but mitigated the concern by acting responsibly. He did not intentionally falsify his security clearance application. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on November 18, 2011. On May 19, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F and E. The DOD acted under Executive Order 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 submitted his initial Answer to the SOR on September 10, 2015, and requested a hearing before an administrative judge. However, the Answer was incomplete. On October 9, 2015, a DOD adjudicator e-mailed Applicant and requested

that he provide a complete Answer. On that same day, he complied with this request via e-mail. Department Counsel was ready to proceed on November 3, 2015, and the case was assigned to an administrative judge on December 1, 2015.

The case was transferred to a second administrative judge on February 19, 2016, who scheduled it for a video teleconference (VTC) hearing on February 23, 2016. On February 19, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 23, 2016. The administrative judge convened the hearing as scheduled, wherein Applicant requested a continuance so he could be represented by an attorney. The administrative judge granted the continuance.

After conferring with the parties, the administrative judge rescheduled the VTC hearing for April 19, 2016, and it was convened as scheduled. Applicant appeared with counsel, who entered his appearance and requested a continuance. Based on Applicant's counsel's representations and without objection from Department Counsel, the administrative judge granted the request.

The VTC hearing was ultimately rescheduled for July 12, 2016. The case was transferred to me on June 22, 2016, and I convened the VTC hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A and B. AX A was admitted without objection. Department Counsel objected to AX B, which I subsequently admitted. I kept the record open until July 26, 2016, to enable Applicant to submit additional documentary evidence. He timely submitted AX C through F, which I have admitted without objection. DOHA received the transcript (Tr.) on July 22, 2016.

Findings of Fact

Under Guideline F, the SOR alleges 13 delinquent debts totaling approximately \$26,543. These delinquent debts include credit-card accounts and medical bills. In his Answer, Applicant admits each of the allegations. Under Guideline E, the SOR alleges that Applicant intentionally falsified his e-QIP by failing to disclose his financial delinquencies as required. Applicant admitted this allegation, however, he qualifies that admission by stating that he must have misread the question and that he does not understand why he answered "No" when "a simple credit report could dispute my answer." I find Applicant's qualified admission to this allegation to be a denial. His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from October 2014, December 2012, May 2016, and July 2016. (GX 3; GX 4; AX B; AX F.)

Applicant is a 57-year-old network manager employed by a defense contractor since 1991. He has held a clearance since August 1993. He served honorably in the U.S. Navy from March 1978 until March 1982 as an avionics technician and held a security clearance during that time. He also held a clearance while employed by two other defense contractors. He and his first wife married in 1994 and divorced in 2008.

He and his second wife married in 2008 and divorced in 2014. He married his current wife in November 2015. He has a daughter who was born in 2008 for whom he pays monthly child support as well as educational and other expenses. (GX 1; Tr. 38-39.)

Following Applicant's divorce in 2008, he remained responsible for much of the marital debt, which includes the credit-card debts alleged in the SOR. (Tr. 26-27; GX 2; GX 3; GX 4.) The house he and his wife owned lost substantial value and Applicant did not profit as much from its sale as he had anticipated. He was also required to pay his wife's expenses as part of the divorce settlement. (Tr. 26-27.) Between 2007 and 2011, Applicant provided approximately \$800 a month for his mother's care and expenses following her surgeries. (Tr. 27-30; AX E.) He incurred additional expenses between 2007 and 2012, when his sister and two nieces lived with him. (Tr. 28.) Also between 2007 and 2011, Applicant provided funds for the repair and maintenance of his family home, and financial assistance for the upkeep of his brother's house. (AX G.) In 2011, he provided nine loans to a friend that totaled approximately \$23,000. The friend agreed to repay the loans in the amount of \$250 a month beginning in September 2016. (Tr. 43; AX D.) Applicant also helped support his goddaughter who was orphaned at a young age. (Tr. 62-63.) He currently helps support both of his parents financially, and also assists his father by providing meals and transportation for him. (Tr. 29-30.)

Applicant paid the debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, and 1.j. These debts total \$5,985. The status of the remaining debts is discussed below.

SOR ¶ 1.a – \$8,594 - credit-card account charged off in 2009. Applicant has made repayment arrangements of \$250 a month.

SOR ¶ 1.b – \$4,487 - credit-card account charged off in 2008. Applicant has made repayment arrangements of \$125 a month.

SOR ¶ 1.g – \$1,043 – credit-card account charged off in 2008. Applicant is in negotiations with the collection agency. This debt is unresolved.

SOR ¶ 1.h – \$5,511 – credit-card account charged off in 2005. Applicant has made repayment arrangements of \$150 a month.

SOR ¶ 1.i - \$625 – medical account placed for collection in 2009. Applicant has been unable to locate this creditor. This debt is unresolved.

SOR ¶¶ 1.k and 1.l – \$124 and \$124 - medical accounts placed for collection in 2010. Applicant has been unable to locate this creditor. These debts are unresolved.

SOR ¶ 1.m - \$50 – medical account placed for collection in 2011. Applicant has been unable to locate this creditor. This debt is unresolved.

At the time of Applicant's personal subject interview (PSI) in July 2012, he was actively making monthly payments on each of the previously delinquent accounts of which he was aware. There were several medical debts that he did not recognize, but thought they are for his daughter. He explained to the investigator that he had been unable to maintain his accounts following his separation and later divorce from his wife,

and his family-related expenses. (GX 2.) At some unspecified point, Applicant stopped paying the accounts he discussed with the investigator, and the debts remained delinquent and unresolved. Applicant prioritized his responsibilities to his family members over his own financial obligations, to his detriment. "I have made some dumb decisions as far as helping people, and, and taking on a lot of responsibility that probably I shouldn't have." (Tr. 63.) "You know, things happen, and you just ... you deal with them, and I think that when you have family crises after another ... you tend to deal with them." (Tr. 64.)

Applicant is familiar with the security clearance screening process. He testified that he is fully aware that the Government had access to his credit bureau report as part of his background investigation, and that he did not intentionally falsify his e-QIP. Applicant explained that he believed he had answered the financial delinquency questions on the e-QIP accurately, and verified that his responses were correct when queried by the investigator. He stated that he did not think he had to disclose the debts because he was not "prosecuted" for any of them, and was repaying them. (GX 2; Tr. 31-32; Tr. 60-62.)

Applicant is respected by his co-workers and receives excellent performance evaluations. (AX D; Tr. 65.) He lives within his means and has not incurred any significant delinquent debt since 2009. (Tr. 60; GX 2; GX 3.) 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. 65.)

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 2008, he was left responsible for the marital debt, which is the majority of the debt alleged in the SOR. The other SOR debts are medical debts incurred for his daughter's medical care. He has not incurred any significant delinquent debt since 2009. He has now paid more than 22% of his delinquent debt, and is in repayment plans for over 90% of the remaining debt.

Applicant acted in good faith by paying five of his debts and entering repayment agreements with three others. He is also in negotiations with another creditor, and he has attempted to locate the creditors for the outstanding medical 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).

It is evident from Applicant's actions, or lack thereof, that he did not fully appreciate the security clearance significance of his delinquent debts. Applicant had ample notice of the Government's concerns about his finances, yet he failed to address his delinquent debts until mere days before the hearing. However, it is also evident from Applicant's testimony and demeanor at the hearing that he now understands the Government's concerns and he has enacted a reasonable plan to resolve his delinquent debts within his means. The circumstances which 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(a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.")

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

I found Applicant's explanation of his omissions on his e-QIP to be credible and consistent with the record evidence, and his demeanor to be honest, forthcoming, and candid. Therefore, I conclude that he did not intentionally falsify his e-QIP.

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 that guideline, but I have also considered the following:

Applicant served honorably in the military. He has held a security clearance for almost 40 years. He is respected by his co-workers. He lives within his means, and provides assistance 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 omissions on his e-QIP. 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 F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.m:

For Applicant

Paragraph 2, Guideline E (Personal Conduct):

FOR APPLICANT

Subparagraph 2.a:

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