



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 12-06995
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

09/12/2016

Decision

HESS, Stephanie C., Administrative Judge:

Applicant failed to meet his burden to mitigate the security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 17, 2012. On May 2, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. 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 August 13, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on November 3, 2015. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 6, was sent to Applicant on November 5, 2015. He was given an opportunity to file objections and submit material to

refute, extenuate, or mitigate the Government's evidence. He received the FORM on February 13, 2016, and did not respond.¹ The case was assigned to me on June 2, 2016.

Findings of Fact

The SOR alleges that Applicant owes five delinquent debts totaling approximately \$59,858. In his Answer, Applicant admitted four of the allegations. He stated that the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.e, totaling \$12,235, were charged off. He admitted the \$47,517 debt alleged in SOR ¶ 1.d, and denied the \$106 debt alleged in SOR ¶ 1.b. Applicant's admissions in his Answer are incorporated in my findings of fact.

Applicant is a 54-year-old employee of a defense contractor since April 2010. He graduated from high school in May 1980. He served honorably in the U.S. Navy from July 1980 until he retired in January 2006. He held a secret security clearance for an unspecified period of time while on active duty. He and his wife married in November 1980. (GX 3.)

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) from October 2014 and February 2012. (GX 5; GX 6.) He discussed his financial status, including his then-existing debts during his verified personal subject interview (PSI) on April 19, 2012, and in his responses to interrogatories in October 2014. (GX 4.)

The \$72 debt alleged in SOR ¶ 1.a is for a delinquent cellular account that is in collection. It remains unpaid, and there is no indication that this account has been charged off, as Applicant stated in his Answer. (GX 5.) The \$106 debt alleged in SOR ¶ 1.b is a collection account. The original creditor was a county district court. (GX 6.) Applicant denied any knowledge of owing this debt to the collection agency during his PSI, but he was not asked about owing a debt to the original creditor. (GX 4.) He denies this debt in his Answer, and it does not appear on the 2014 CBR. However, there is no evidence that Applicant paid or otherwise resolved this debt. Applicant states that the \$5,937 credit-card debt alleged in SOR ¶ 1.c was charged off. The 2012 CBR shows this debt as charged off and the 2014 CBR shows it as paid with a \$0 balance. (GX 5; GX 6.) The \$47,517 debt alleged in SOR ¶ 1.d is for the balance owed on a recreational vehicle that was voluntarily repossessed. In his 2012 PSI, Applicant stated that he had been making monthly payments of \$180 for an unstated number of months. However, the balance at the time of the PSI, and on the 2012 and 2014 CBRs, is the same as the balance that was alleged in the SOR. The 2014 CBR shows this debt as charged off. Applicant did not provide any documentation that shows any payments. The \$6,226 credit-card debt alleged in SOR 1.e has been charged off. (GX 5.)

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated November 5, 2015, and Applicant's receipt is dated February 16, 2016. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit 1.

Applicant does not offer any explanation for his debts in his Answer. In his PSI, he explained that he returned the recreational vehicle to the dealer because he could not afford the monthly payments, but he does not explain his overall financial circumstances. In his responses to interrogatories, Applicant stated that he and his wife sold their house in a short sale in July 2013; that they were renting a house to save money and pay off their debts; that they had paid their smaller credit-card debts; and, that they were working on paying their car loans and debt consolidation loans. The delinquent debt for the recreational vehicle was incurred in 2005. The other debts alleged in the SOR were incurred between 2009 and 2010.

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 admissions, corroborated by the record evidence, establish 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”).

Applicant asserted that \$12,235 of his delinquent debt was charged off. However, “reliance upon the non-collectibility of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive.” ISCR Case No. 07-06841 at 4

(App. Bd. Dec. 19, 2008). See also, ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016).

Applicant clearly experienced financial difficulties. However, there is no evidence that explains why he incurred delinquent debts. He stated that he has paid off some debts and is working on paying off others, but there is no record evidence that corroborates these assertions, nor is there any evidence about his current financial status is. While the debts alleged in the SOR were incurred between 2005 and 2010, there is no indication that he has resolved them, or that he intends to do so. Nor is there any record evidence that shows that Applicant acted responsibly in light of his financial circumstances. None of the mitigating conditions apply.

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 Guideline F in my whole-person analysis and have considered the factors in AG ¶ 2(a). I specifically considered Applicant's 26-year record of honorable military service. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has not 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

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.e:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge