



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 12-08907
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves 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 on March 28, 2012. On June 16, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Exec. 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 the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on February 18, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 13, 2016, and the case was assigned to me on May 2, 2016. On May 12, 2016, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 7, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, but did not submit the testimony of any other witnesses or any documentary evidence. I kept the record open until July 11, 2016, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on June 15, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted all the allegations except SOR ¶ 1.f, which he denied.² His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 55-year-old quality control inspector employed by a defense contractor. He served on active duty in the U.S. Navy from June 1979 to June 1999, and retired as a petty officer second class (pay grade E-5), with an honorable discharge. He worked for a non-federal employer from August 1999 to August 2011, when he was laid off. He began working for his current employer in December 2011. He held a security clearance while in the Navy, and he has an active security clearance. (Tr. 19.)

Applicant married in June 1983 and divorced in December 1989. He married his current spouse in April 1992. He has three adult children.

When Applicant was laid off in August 2011, he was earning about \$63,000 per year. When he started working for his current employer, he earned about \$40,000 per year. He now earns about \$51,200 per year. (Answer to SOR.)

Applicant's wife is a home daycare provider, earning about \$50,000 per year. (Tr. 23-25, 40-41.) She manages the family finances. (Tr. 26.) Applicant estimates that they have a net monthly remainder, after paying all living expenses, of about \$300 or \$400. (Tr. 47.)

Applicant's credit bureau reports (CBRs) from April 2012 (GX 2), October 2014 (GX 3), and May 2015 (GX 4) reflect the ten delinquent debts alleged in the SOR, totaling about \$27,722. The status of the debts alleged in the SOR is summarized below.

SOR ¶ 1.a, collection account for \$5,039. In his answer to the SOR, Applicant stated that he sent a \$50 payment to this creditor in June 2014, but he lost contact with

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

² Applicant wrote "I admit" next to SOR ¶ 1.f on a copy of the SOR, but he denied it in his narrative answer.

the creditor, who sent all correspondence to his son, and his son ignored the correspondence. Applicant did not submit any documentary evidence of the \$50 payment. After the hearing, he submitted evidence that he had made a payment agreement providing for monthly \$50 payments and had made the agreed payments in March, April and May 2016. (AX B.)

SOR ¶ 1.b, collection account for \$2,750. In his answer to the SOR, Applicant stated that correspondence about this debt also was missent to his son, and that he had agreed to begin monthly payments in July 2015. He did not submit any evidence of payments with his answer or at the hearing. After the hearing, he submitted evidence that he had agreed to make monthly \$25 payments and had made the payments in March, April, and May 2016. (AX A.)

SOR ¶ 1.c, collection account for \$2,464. In his answer to the SOR, Applicant stated that the actual balance on this debt was \$1,267, and that he had arranged to have monthly payments deducted from his bank account starting in August 2015. He did not submit any documentary evidence of payments or a payment plan. At the hearing, Applicant testified that he knew nothing about this debt. (Tr. 32.)

SOR ¶ 1.d, charged-off debt to home improvement store for \$484. Applicant testified that he believed this debt was included in the debt alleged in SOR ¶ 1.c, but he submitted no documentary evidence to support his belief. (Tr. 33.)

SOR ¶ 1.e, charged-off credit card for \$1,737. In his answer to the SOR, Applicant stated that he had arranged to make automatic payments on the debt beginning in August 2015. He submitted no documentary evidence of payments or a payment plan. At the hearing, Applicant testified that he did not recognize this debt. (Tr. 34.)

SOR ¶ 1.f, charged-off department store account for \$737. In his answer to the SOR, Applicant denied this debt, stating that it was his wife's debt. However, his answer also included documentary evidence of monthly \$81 payments on this debt from May 2015 to March 2016. After the hearing, he submitted evidence of an agreement to pay \$50 per month beginning in June 2016. (AX C.) He did not explain the discrepancy between the two payment plans.

SOR ¶ 1.g, charged-off credit card for \$1,411. In his answer to the SOR, Applicant admitted this debt, but he stated that he could not identify who currently owned it. At the hearing, he testified that he had done nothing to track down the owner of this debt. (Tr. 36.)

SOR ¶ 1.h, charged-off electronics store account for \$2,400. After the hearing, Applicant submitted evidence that this debt is included in the debt alleged in SOR ¶ 1.a. (AX A.)

SOR ¶ 1.i, charged-off department store account for \$1,859. At the hearing, Applicant admitted that he had done nothing to resolve this debt. (Tr. 37-38.)

SOR ¶ 1.j, charged-off credit card for \$9,841. Applicant's answer to SOR included documentation that payments in an unknown amount are being made and the balance has been reduced to \$2,474. His documentation is mislabeled, erroneously indicating that it applies to SOR ¶ 1.i instead of this debt.

At the hearing, Applicant admitted that he and his wife owe about \$16,000 in federal income taxes. The debt arose because they have not had enough taxes withheld since 2010. (Tr. 45.) He testified that they are paying \$500 per month pursuant to a payment plan. (Tr. 46.) He submitted no documentation to support his testimony. The tax debt is not alleged in the SOR.³

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 § 2.

Eligibility for a security clearance is predicated upon the applicant 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.

³ The tax debt may not be an independent basis for an adverse decision regarding Applicant's security clearance, because it was not alleged in the SOR. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the evidence of Applicant's tax debt for these limited purposes.

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.” 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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).

The evidence shows that SOR ¶¶ 1.a and 1.h are the same debt. Applicant claimed that SOR ¶¶ 1.c and 1.d allege the same debt, but he did not submit evidence supporting his claim. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, SOR ¶ 1.h is resolved in Applicant's favor.

Applicant's admissions in his answer to the SOR, his testimony at the hearing, and CBRs 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"). The following mitigating conditions under this guideline are potentially applicable:

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;

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

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's short period of unemployment after being laid off from his previous job, his substantial pay reduction when he began his current job, and the misrouting of correspondence from his creditors were circumstances largely beyond his control. However, he has not acted responsibly. He was aware that his financial problems were a security concern when he submitted his

security clearance application in March 2012. Both he and his wife have been gainfully employed since he submitted his application, and their annual family income is more than \$100,000. Applicant began making payments on the debt alleged in SOR ¶ 1.f before he received the SOR. However, he took no significant actions to resolve the debts in SOR ¶¶ 1.a-1.e and 1.g-1.i until he received the SOR. He claimed that he made a \$50 payment on the debt in SOR ¶ 1.a in June 2014, before he received the SOR, but he submitted no documentation of the payment.

Applicant's testimony at the hearing demonstrated that he has been remarkably uninvolved in his financial affairs, relying on his wife to manage their money and resolve any problems. At the hearing, he could not explain the status of several debts, even though he commented on them in detail in his answer to the SOR, suggesting that his answer to the SOR was authored in large part by his wife.

AG ¶ 20(c) is not established. Applicant has not received financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.f and 1.j, but not for the debts alleged in SOR ¶¶ 1.a-1.e and 1.g-1.i. This mitigating condition requires a showing of a good-faith effort to resolve financial problems. "Good faith" means acting in a way that shows, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts motivated by the pressure of qualifying for a security clearance. Except for the debts in SOR ¶¶ 1.f and 1.j, Applicant took no significant actions to resolve his delinquent debts until he received the SOR, strongly suggesting that the actions that he took were motivated by concern for protecting his security clearance rather than a sense of duty or obligation. As of the date the record closed, Applicant had taken no actions to resolve the debts in SOR ¶¶ 1.g and 1.i. He claimed to have made payments on the debts alleged in SOR ¶¶ 1.c-1.e, but he submitted no documentation to support his claim.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Thus, Applicant's recent payments on the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.h (which is included in 1.a), which were made after he received the SOR and motivated by his concern for protecting his security clearance, are insufficient to mitigate the security concerns raised by them. Although Applicant's documentation does not reflect the amounts of payments on the debt alleged in SOR ¶ 1.j, the substantial reduction in the balance due indicates that the payments commenced before Applicant received the SOR.

AG ¶ 20(e) is not established. Applicant has not disputed any debts alleged in the SOR.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served honorably for 20 years in the Navy, and he has held a clearance for many years, apparently without incident. He was sincere and candid at the hearing. However, he was remarkably ignorant about his financial situation at the hearing, even after being put on notice that his security clearance was in jeopardy.

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 financial problems. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his 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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge