



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



In the matter of:

)
)
)
)
)

ISCR Case No. 14-02222

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

03/07/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges, and the record establishes, ten delinquent debts totaling \$181,159, including state and federal tax debts of \$173,462. He did not provide documentation showing resolution of any SOR debts. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 6, 2013, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3) On December 30, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Item 1) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On March 11, 2016, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 2) On May 25, 2016, Department Counsel completed the File of Relevant Material (FORM). On June 8, 2016, Applicant received the FORM. Applicant provided an undated response to the FORM. On March 1, 2017, the case was assigned to me. The case file consisted of five exhibits. (Items 1-5) Applicant did not object to any of the Government exhibits.

Findings of Fact¹

In Applicant's SOR response, he admitted the debts in SOR ¶¶ 1.a through 1.e, 1.g, and 1.j. (Item 3) He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 54 years old, and he has been employed as a dispatcher for a trucking company for 36 years, since he was 18 years old.² (FORM response) In 1980, he received a General Educational Development (GED) certificate. (Office of Personnel Management (OPM) personal subject interview (PSI)) He has not served in the U.S. Armed Forces. In 1983, he married, and in 2006, he divorced. His children were born in 1988, 1991, and 1997. There is no evidence that he violated security rules, committed any crimes, abused alcohol, or used illegal drugs. There is no evidence of employer performance evaluations.

Financial Considerations

Applicant's history of delinquent debt is documented in his credit reports, SCA, OPM PSI, and SOR response. The status of his ten delinquent SOR debts is as follows.³

SOR ¶ 1.a alleges a March 2008 federal tax lien for tax years 2004 and 2005 for \$80,961. Applicant said, "I admit. Taxes owed—in part owed—by my ex-wife." He continued, "And seeking consultation in regards to amount owed."

SOR ¶ 1.b alleges an April 2008 federal tax lien for tax year 2006 for \$25,445. Applicant said, "I admit. In process of seeking relief on taxes owed."

SOR ¶ 1.c alleges a 2012 federal tax lien for tax year 2007 for \$11,778. Applicant said, "I admit. In process of seeking relief on taxes owed."

SOR ¶ 1.d alleges a federal tax debt for \$29,107 for tax year 2010. Applicant said, "I admit. In process of seeking relief on taxes owed."

¹Some details have been excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

²Unless stated otherwise, the source of the information in this paragraph is Applicant's November 6, 2013 Electronic Questionnaire for National Security Positions (e-QIP) (SF 86) or security clearance application (SCA). (Item 3)

³Unless stated otherwise, the source for the information about the status of his SOR debts is Applicant's response to the statement of reasons.

SOR ¶ 1.e alleges a 2012 state tax lien for \$26,161. Applicant said, “I admit. In process of seeking relief on taxes owed.”

SOR ¶¶ 1.f through 1.i allege four 2012 judgments obtained by the same creditor for \$725, \$1,095, \$1,542, and \$2,190, and relate to Applicant’s residence in an apartment complex. (OPM PSI) Applicant said he was working with the creditor to remove the \$725 and \$2,190 debts. He has a payment plan for the \$1,095 debt, and it will be paid in June 2016. He said he paid the \$1,542 debt in September 2015. He did not provide a copy of the payment plan for the \$1,095 debt or proof that he paid the \$1,542 debt.

SOR ¶ 1.j alleges a charged-off debt for \$2,145. Applicant said, “I admit. Balance owed—is result of ex-wife—and trying to negotiate pay-off.”

Applicant said he failed to pay his federal income taxes when due for several years because he could not afford to pay his taxes. (OPM PSI) His annual pay is documented on an Internal Revenue Service (IRS) Form 1099, and he failed to withhold or make sufficient quarterly payments to the IRS. (FORM response) At the end of the year, he did not have the funds to pay his taxes. He used his salary to support his spouse and children. His spouse and one child had medical problems and required funds for rehabilitation. (FORM response) He did not describe any contacts or resolution of his tax debts after 2012. (OPM PSI)

Applicant does not have access to classified documents or materials as part of his employment.⁴ He dispatches trucks containing classified materials. He does not have access to the contents of the trucks. The only area under the AGs of security concerns is his finances. His record establishes that he is reliable, trustworthy, and responsible under all of the other AGs except finances. He said the four judgments in SOR ¶¶ 1.f through 1.i were now satisfied.

Aside from Applicant’s uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the delinquent SOR accounts. He did not describe financial counseling or present a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM “in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely” on the evidence set forth in this FORM. (FORM at 3)

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,

⁴The source for the information in this paragraph is Applicant’s FORM response. He did not include any supporting documentation to support the assertions in his FORM response.

“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. Thus, nothing in this decision should be construed to suggest that it is based, 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 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

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.” Applicant’s history of delinquent debt is documented in his credit reports, OPM PSI, and SOR response. 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,⁵ 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;

⁵A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

(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;⁶ 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 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).

⁶The 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 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 described divorce and medical problems. These circumstances beyond his control adversely affected his finances.

The record establishes Applicant has ten delinquent SOR debts totaling \$181,159, including state and federal tax debts of \$173,462. Applicant did not provide enough details about what he did to address his SOR debts over the last four years. He did not provide documentation relating to any of his SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;⁷ (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

There is insufficient evidence about why Applicant was unable to make greater progress resolving his SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

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):

- (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.

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

⁷"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.

consideration of the guidelines and the whole-person concept. 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 is 54 years old, and he has been employed as a dispatcher for a trucking company for 36 years. In 1983, he married, and in 2006, he divorced. His children were born in 1988, 1991, and 1997. There is no evidence that he violated security rules, committed any crimes, abused alcohol, or used illegal drugs.

Applicant's finances were adversely affected by divorce and medical problems of his spouse and one of his children. Applicant did not provide details about how these circumstances beyond his control negatively affected his finances.

Applicant did not provide documented resolution of ten delinquent SOR debts totaling \$181,159, including state and federal tax debts of \$173,462. Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for his SOR debts. He did not provide a detailed plan about how he intended to resolve his delinquent SOR debts. His actions show lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not mitigated.

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:

AGAINST APPLICANT

Subparagraphs 1.a through 1.i:

Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge