



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 14-06495
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2017

Decision

MARINE, Gina L., 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 (e-QIP) on July 20, 2012. On November 10, 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 Executive Order (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 DOD on September 1, 2006.

Applicant answered the SOR on December 14, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 30, 2016, and sent a complete copy of the file of relevant material (FORM) to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on April 12, 2016, and did not respond. The case was assigned to me on February 6, 2017.

Findings of Fact¹

Applicant is 42 years old and has been married for 16 years. He has three children, one of whom has passed away.² He received his G.E.D. in 1998 and completed professional training at a community college in 2008.

Applicant was employed full time as a plumber from November 2003 through March 2012, when he was laid off. From March 2012 through at least August 2012, Applicant was financially supported by unemployment compensation.³ In July 2012, a federal contractor hired Applicant to work full time as a pipefitter, but as of August 2012, he was waiting on a start date. There is no information in the record as to his official start date or as to whether he has held any other employment. His wife has earned income from employment, but the record is silent as to how much or for what period.⁴ Applicant attributes his financial difficulties to a lack of employment and income stemming from his March 2012 layoff and to the death of his child. The record does not contain any details about Applicant's or his wife's income and expenses during the period 2012 through present, nor any specifics concerning the financial impact that those circumstances had on his ability to repay his debt.

In his answer, Applicant admitted to each of the 11 SOR allegations. However, he owes only nine delinquent debts totaling \$9,844, of which \$9,502 is credit card debt (including \$7,583 owed to one creditor),⁵ \$198 is medical debt,⁶ and \$144 is an electric bill.⁷ His recent credit report shows additional delinquent debt that was not alleged in the SOR: two utility accounts sent to collections by the same creditor in the total amount of \$3,684.⁸ Both of those accounts became delinquent in 2014.

¹ These facts are extracted from Applicant's SOR answer (Item 2), his e-QIP (Item 3), and the summary of his personal subject interview (Item 7). I considered that Item 7 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 7. Applicant was also informed that he was entitled to object to consideration of Item 7 on the ground that it was not authenticated. His failure to respond to the FORM constitutes a waiver of any objection to Item 7. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although pro se applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

² Applicant's middle child was born in 2009 and passed away on a date not specified in the record.

³ The record does not contain the amount of unemployment compensation that Applicant received.

⁴ Applicant relied on income from his spouse's employment during a brief period of unemployment in 2003. Item 7 at p. 1.

⁵ SOR ¶¶ 1.b, 1.c, 1.d, 1.f, and 1.k

⁶ SOR ¶¶ 1.h through 1.j

⁷ SOR ¶ 1.g

⁸ Item 4 at p. 1-2. 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

Based on the information contained in the credit reports,⁹ I find that the creditor alleged in SOR ¶ 1.a sought a judgment (SOR ¶ 1.k) for the same credit card that it previously charged off. I will consider them together as one debt totaling the amount of the judgment, which is \$7,583 not \$7,753 as alleged (presumably an inadvertent typo). I also find that the creditor alleged in SOR ¶ 1.f transferred or sold the credit account that it previously charged off to a collection company (SOR ¶ 1.e). According to the most recent credit report, the collection company no longer holds the account. I will consider the debt as alleged in SOR ¶ 1.f, which is \$227. The total debt alleged in SOR ¶¶ 1.b through 1.d and 1.f through 1.k is \$9,844. Thus, I resolve SOR ¶¶ 1.a and 1.e in favor of Applicant.¹⁰

Although not alleged in the SOR,¹¹ Applicant defaulted on a home-mortgage loan. Applicant financed the purchase of his \$190,800 home with a conventional mortgage in September 2007.¹² In July 2012, he was 180 days or more past due in the amount of \$24,662 with a balance of \$187,258.¹³ As of November 2014, the lender had foreclosed on the home.¹⁴ There is no evidence of any deficiency balance owed. Without providing any details, he attributes this default to a “lack of income.”¹⁵

Applicant has received financial counseling. Applicant planned “to get caught up and stay caught up on all [of] his debts.” However, there is no evidence in the record that he has done so. In September 2015, Applicant financed a \$14,985 automobile via a 60-month installment loan with monthly payments of \$327.¹⁶

In the FORM, Department Counsel advised Applicant that he bears the burden of persuasion to explain that he acted reasonably and responsibly to address his delinquent debt in light of any circumstances deemed beyond his control. Department Counsel also identified for Applicant certain information missing from the record and advised him of the opportunity, in his FORM response, to provide that missing

rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). Therefore, I will consider these debts accordingly.

⁹ Items 4 through 6

¹⁰ 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 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

¹¹ See Footnote 8 above concerning conduct not alleged in the SOR.

¹² Item 6 at p. 9

¹³ Item 6 at p. 9

¹⁴ Item 5 at p. 1; Item 4 at p. 4

¹⁵ Item 3 at pp. 31-32. There is no detailed discussion of the default during his personal subject interview. Applicant simply acknowledges the debt generally.

¹⁶ Item 4 at p. 3

information and any other documentation in support of his case. Applicant did not respond to the FORM.

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.

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).

Applicant's admissions, corroborated by his credit bureau reports, 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 security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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.

AG ¶ 20(a) is not established. Applicant's delinquent SOR debt remains unresolved, and he incurred new delinquent debt in 2014.

AG ¶ 20(b) is not fully established. I extend my sincerest condolences to Applicant and his wife for the unimaginable loss of their child. Such loss together with his 2012 layoff were circumstances beyond Applicant's control. Regrettably, because Applicant did not respond to the FORM, the record contains insufficient detail and documentation about his ability to repay his debt and the reasons that it has persisted. Therefore, I am unable to determine whether Applicant acted responsibly in light of those circumstances.

AG ¶ 20(c) is not fully established. Applicant has received financial counseling, but there are no clear indications that Applicant's financial problems are either being resolved or are under control.

AG ¶ 20(d) is not established. I credit Applicant with seeking assistance from a financial counselor to find employment and to pay off some debt. However, that effort falls short of establishing AG ¶ 20(d), and without more, does not suffice to overcome the Government's concerns.

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 I have considered the factors AG ¶ 2(a). 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 indebtedness. Accordingly, I conclude that 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

Subparagraph 1.a: For Applicant

Subparagraphs 1.b – 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraphs 1.a – 1.k.: Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge