



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-01052
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha L. Manns, Esq., Department Counsel and
Christopher N. Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 17, 2013. On November 3, 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 8, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 16, 2016, and the case was assigned to me on February 2, 2017. On February 9, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 7, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 6 were admitted into evidence without objection. Government's exhibit list was appended to the record as Hearing Exhibit (HE) I. I also appended to the record a letter and an email that Government sent to Applicant as HE II and HE III, respectively. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. At Applicant's request, I left the record open to March 22, 2017. Applicant timely provided additional documents that I admitted as AE C through E without objection.¹ DOHA received the transcript (Tr.) on March 20, 2017.

SOR Amendment

After the hearing, I amended the SOR to correct an administrative error with respect to the case number. The case number appearing on the SOR was 15-02052 when it should have been 15-01052. The case number is correct elsewhere throughout the record.

Findings of Fact²

Applicant, age 35, has never been married. He has three children, ages 15, 13, and 9. He received his high school diploma in 1999 and later took some college classes and attended barber school. He honorably served in the U.S. Marine Corps from 1999 through 2003.

Applicant has been employed full time by federal contractors since February 2008. Before that, he had been steadily employed full time since August 2004. He has also worked part time since 2011 except for a period of ten months between 2015 and 2016.³ Applicant has maintained a security clearance since 2010.

In his SOR answer, Applicant admitted all but one of the seven SOR allegations which included delinquent debts totaling \$10,783. The record reflects additional delinquent debts totaling \$25,522 that were not alleged in the SOR,⁴ including a \$8,435 charged-off automobile loan account,⁵ two federal student-loan collection accounts

¹ By email dated March 24, 2017, I requested that Applicant resubmit the last page of AE D which is barely legible. By email dated March 30, 2017, Applicant sent another barely legible copy stating that it was the best copy that he had. I have considered those parts that are legible.

² Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer, his SCA (GE 1), and the summary of his personal subject interview (GE 2). I considered that GE 2 was not authenticated as required by Directive ¶ E3.1.20. However, at hearing, Applicant confirmed that he had reviewed the entire fifteen-page document and that he did not find any information contained therein to be an inaccurate summary of the facts that he discussed with the OPM investigator during his interview.

³ See *also* Tr. at p. 50-52.

⁴ As to the unalleged debts, I have considered them only for the purpose of evaluating mitigation.

⁵ GE 5 at 3, GE 6 at 2.

totaling \$6,361,⁶ a \$3,256 state tax lien entered in May 2016,⁷ a \$4,028 judgment for unpaid rent entered in November 2013,⁸ a \$2,500 Internal Revenue Service (IRS) debt,⁹ and two medical and one credit card debts totaling \$942.¹⁰

Applicant owes State A approximately \$6,802 for unpaid taxes from tax years 2011, 2013, and 2014 (tax years 2013 and 2014 not alleged).¹¹ In October 2012, State A entered a \$6,443 tax lien against Applicant (SOR ¶ 1.a).¹² In 2013, State A garnished \$1,900 from his tax year 2013 federal tax refund. In 2014, he had an agreement with State A to pay \$175 per month to repay this debt but he stopped making payments after seven months when he could no longer afford them.¹³ In 2016, State A entered another \$3,256 tax lien against Applicant (not alleged).¹⁴ After the hearing, Applicant established an agreement with State A to repay this debt in monthly installments of \$142 beginning in April 2017.¹⁵ This debt is in the process of being resolved.

The SOR alleges that Applicant failed to timely file his income tax returns for State A in tax year 2010 (SOR ¶ 1.b) and for the IRS in tax year 2011 (SOR ¶ 1.c). At hearing, Applicant credibly testified that the only tax year that he filed his federal and state income tax returns late was for tax year 2011 due to his tax preparer's error. He filed those returns the following year.¹⁶ I find SOR ¶ 1.b and 1.c in favor of the Applicant.

Applicant was not aware that he had been charged \$98 for failing to timely return his cable box (SOR ¶ 1.d). Once made aware, he paid it.¹⁷ This debt has been resolved.

Applicant's medical creditor charged him \$404 (SOR ¶ 1.e) for a 2012 emergency room visit that was not reimbursed by his health insurance due to his failure to timely submit paperwork.¹⁸ Once he finally submitted his paperwork, his insurance company paid the bill.¹⁹ This debt has been resolved.

⁶ GE 5 at 4.

⁷ GE 6 at 1.

⁸ GE 5 at 1, GE 6 at 1, GE 2 at p. 10.

⁹ GE 2 at p. 6.

¹¹ See *a/s/o* AE C.

¹² See *a/s/o* GE 3 through 6.

¹³ Tr. at 65-66.

¹⁴ Tr. at p. 43, GE 6.

¹⁵ AE C.

¹⁶ Tr. at 24-28, 67.

¹⁷ Tr. at p. 29, AE C.

¹⁸ Tr. at 30-32, 68-70.

Applicant's owes a fee of \$492 (SOR ¶ 1.f) for the remaining balance of the cost of his cell phone, which he incurred after he terminated service with his cell phone service provider. Based on his credible testimony, I find that Applicant has a reasonable plan to repay this debt within the near future.²⁰ This debt is in the process of being resolved.

Applicant's car was totaled when an uninsured driver hit him from behind. Because he did not have gap insurance, his own insurance company paid a claim in the amount of only the value of the vehicle leaving a balance due of \$3,346 (SOR ¶ 1.g) on his automobile loan. While Applicant has not taken any action on his own to pursue the uninsured driver and has not been in contact with his automobile loan lender since the accident happened, he remains in constant contact with his own insurance company who is working to recover this balance from the uninsured driver.²¹ This debt is in the process of being resolved.

After his car accident, Applicant leased another car which ended up being a lemon. There was a hole in the motor and the chain belt snapped which rendered it undrivable so he voluntarily surrendered it back to the dealer. The dealer sold the car parts and then charged him the remaining balance owed in the amount of \$8,435 (not alleged).²² After the hearing, Applicant reached out to his creditor to set up a recurring monthly payment of \$50 beginning April 2017 to repay this debt until he can come up with additional funds to reach a final settlement.²³ This debt is in the process of being resolved.

Applicant defaulted on his federal student loan in the approximate amount of \$7,948 (not alleged).²⁴ In 2016, his lender garnished his wages \$280 per pay period to recover the balance.²⁵ After six months, Applicant took action to stop the garnishment which took his federal student loan out of default status in January 2017.²⁶ This debt has been resolved.

¹⁹ AE D.

²⁰ Tr. at 32-33, AE C.

²¹ Tr. at 33-36, 70-71.

²² Tr. at 36-38. I considered Applicant's post-hearing testimony that Applicant submitted to another voluntary repossession for a different vehicle (AE E). However, given the lack of details on the record, I am unable to conclude that any debt remains outstanding for this other vehicle.

²³ AE C.

²⁴ Tr. at 39-40, AE B.

²⁵ Tr. at 40-41, 71-72.

²⁶ Tr. at 41, AE C, AE D.

Applicant owes the IRS approximately \$7,935 for unpaid taxes from tax years 2014 and 2015 (not alleged).²⁷ In July 2016, Applicant agreed to repay this debt in monthly installments of \$200 beginning in August 2016.²⁸ Those payments are being automatically withdrawn from his account each month and he has never missed a payment.²⁹ This debt is in the process of being resolved.

Applicant did not pay his rent for a month after his landlord did not honor his request to terminate his lease in 2010. In 2013, his landlord obtained a judgment for that unpaid rent in the amount of \$4,028 to include attorney's fees and other charges (not alleged).³⁰ In 2014, his landlord garnished Applicant's wages which fully satisfied the judgment.³¹ This debt has been resolved.

Two medical accounts were sent to collection in the amounts of \$148 and \$473.³² At hearing, Applicant denied knowledge of either account.³³ After the hearing, he has been unsuccessful in his attempts to locate the creditors associated with these accounts.³⁴ These debts are unresolved. However, in light of the record as a whole, the amount of this debt is not security significant and, therefore, I find in favor of Applicant as to mitigation.

A credit card that Applicant opened in May 2014 was charged off in the amount of \$515.³⁵ He made some payments to repay this debt prior to the hearing,³⁶ and then after the hearing, he settled the account.³⁷ This debt has been resolved.

Except for one six-month period, Applicant's 15-year-old son has resided primarily with him since he was in elementary school.³⁸ On an informal basis, he

²⁷ See *also* AE-C. I considered Applicant's testimony that he may also owe the IRS for unpaid taxes of an unknown amount from tax year 2011 (Tr. at 62). However, there is no record evidence of the amount of IRS debt for tax year 2011. This debt was not alleged in the SOR.

²⁸ AE A; Tr. at 27-28 and 60.

²⁹ Tr. at 28 and 61.

³⁰ GE 6 at 1, GE 2 a p. 10.

³¹ Tr. at 38-39, GE 6, AE C, and AE D.

³² GE 5 at 2, GE 6 at 2.

³³ Tr. at 77, 79, and 80.

³⁴ AE C.

³⁵ GE 5 at 4, GE 6 at 3, Tr. at 79.

³⁶ GE 5 at 4, GE 6 at 3, Tr. at 79.

³⁷ AE C and D.

³⁸ Tr. at 54.

receives monthly child support of \$200 from his son's mother, who pays when she can.³⁹ In February 2017, Applicant filed paperwork with his local department of child support requesting a more formal arrangement, which has yet to be determined.⁴⁰ He has scheduled visitation with his other two children, ages 9 and 13, who reside primarily with their respective mothers.⁴¹ By court order, Applicant pays \$350 per month child support for his 13-year-old, and by an informal agreement, he pays \$300 per month child support for his 9-year-old plus a share of her child care expenses in the amount of \$60 every two weeks.⁴² He also pays on a voluntary basis, and not by court order, 100% of the costs associated with two of his children's participation in extracurricular activities, and a share of the costs associated with his other child's participation.⁴³

Applicant attributes his financial problems to prioritizing the needs of others over his own financial obligations, including a three-year period between approximately 2012 and 2015 when he was providing financial support to his live-in fiancée and her three children. During this time, she underwent triple-bypass heart surgery and was unable to return to work. While waiting for her disability benefits, Applicant had primary responsibility for their household expenses which exceeded the child support that she was receiving for two of her children. He also missed work to accompany her to her doctor's appointments.⁴⁴

Applicant earns \$32 per hour from his full-time job and \$9.50 per hour from his part-time job, which results in take-home pay totaling approximately \$1,780 every two weeks.⁴⁵ He has not had any formal financial counseling, but he worked with his father about a year ago to develop a worksheet to assist him with his budgeting, which he has continued to use.⁴⁶ Applicant has, on average, about \$77 dollars left over each month after paying his expenses and some of his delinquent debts.⁴⁷ His plan for repaying his delinquent debts is to tackle them one at a time, waiting to pay off one debt before moving on to another.⁴⁸

³⁹ Tr. at 55, AE E.

⁴⁰ Tr. at 55.

⁴¹ Tr. at 56.

⁴² See *also* Tr. at 57-58.

⁴³ AE E.

⁴⁴ See *also* Tr. at p. 42-43, 46-49, 58-60, and AE E.

⁴⁵ Tr. at 50-52.

⁴⁶ Tr. at 73-74, AE E.

⁴⁷ AE E. I also considered Applicant's hearing testimony on this issue (Tr. at 74-75, 82).

⁴⁸ Tr. at 82-83.

Applicant volunteers at a variety of events at his local church, where he is known to be reliable and of sound character and judgment. The mothers of each of his children describe him as an active parent and a good provider. His current supervisor and a coworker, who have known him for over a year, have formed a very positive opinion of him, his leadership abilities, and his honesty. His friends describe him as a dedicated father who is trustworthy and reliable. He received a monetary award in August 2016 and a merit salary increase in March 2017 from his current employer, who also issued several certificates commending his work performance in June 2016 and August 2016.⁴⁹

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.

⁴⁹ AE E. I considered each of the letters and awards therein.

“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”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(g) (“failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same”).

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 established. Applicant has made significant strides in tackling the delinquent debts that he incurred under circumstances not likely to recur. While he is not currently debt-free, given Applicant's actions both before and after the hearing, his finances do not cast doubt on his current reliability, trustworthiness, or good judgment.⁵⁰

AG ¶ 20(b) is established. Applicant's fiancée's medical condition and her loss of income, his car accident, and his defective car are circumstances that were unexpected and beyond his control. Since then, he has acted responsibly to address his delinquent debts.

AG ¶ 20(c) is established. While he has not received formal financial counseling, he has successfully used a budget spreadsheet to manage his finances and has developed a reasonable plan to repay his delinquent debts. He still has outstanding delinquent debts, but given the circumstances under which he incurred them and the reasonable steps that he has taken over the past several years to pay or otherwise resolve them, I conclude that his financial problems are now under control. Applicant's credible testimony and his actions both before and after his hearing demonstrate that he will follow through with his debt repayment plan.

AG ¶ 20(d) is established. Applicant has made a good-faith effort to resolve not only his SOR debt but also his non-SOR debt. I credit him with the payments and payment arrangements that he has made to repay his state (SOR ¶ 1.a) and federal tax debts, with filing his delinquent tax returns (SOR ¶¶ 1.b. and 1.c); with resolving his delinquent student-loan accounts, his delinquent credit-card account, his \$4,028 judgment for unpaid rent, and the delinquent debts alleged in SOR ¶¶ 1.d and 1.e; and with establishing a reasonable plan to repay in the near future the delinquent debt alleged in SOR ¶ 1.f and his \$8,435 charged-off automobile loan account. I considered

⁵⁰ ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

that a portion of the debt alleged in SOR ¶1.a and his \$4,028 judgment for unpaid rent were resolved by garnishment.⁵¹

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 that Applicant has mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant 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

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

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

Subparagraphs 1.a – 1.g: For Applicant

⁵¹ ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006) (Payment by garnishment does not bar mitigation of financial concerns.)

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge