



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-01968
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

09/07/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 11, 2014. On September 24, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 the DOD on September 1, 2006.¹

¹ Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on June 3, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 27, 2017, and the case was assigned to me on April 10, 2017. On May 11, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 8, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on June 16, 2017.

At Applicant's request, I kept the record open until July 10, 2017, to enable him to submit documentary evidence. He timely submitted AX A and AX B, and requested additional time to obtain and submit evidence. I extended the deadline until August 11, 2017. He submitted AX C and requested another extension of time. I extended the deadline until September 5, 2017. He did not submit anything further. AX A through C were admitted without objection.

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.g and denied the allegation in SOR ¶ 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 45-year-old logistics management specialist employed by a defense contractor. He worked for a defense contractor from March 2011 until May 2011, was laid off for three months, and was then rehired by the same employer. (Tr. 41-42.) He married in February 1991 and has three daughters, ages 27, 24, and 21, and a 16-year-old son. (Tr. 19.) He did not list his children in his SCA because it "slipped his mind." (Tr. 39.)

Applicant served on active duty in the U.S. Army from February 1991 to March 2011 and retired as a sergeant first class (pay grade E-7). His Army service included a year in Iraq during which he lost three soldiers under his supervision. (Tr. 35.) He received a security clearance in 2004, while on active duty, and he has retained it as an employee of a defense contractor. (Tr. 14.)

When Applicant submitted his SCA in August 2014, he answered "No" to the questions whether, during the last seven years, he had any property repossessed or foreclosed; had a bill or debt turned over to a collection agency; had an account or credit card suspended, charged off, or cancelled for failure to pay as agreed; or been over 120 days delinquent on any debts. He also answered "No" to a question whether he was currently over 120 days delinquent on any debt. In his response to the SOR, he stated that he did not mean to answer in the negative but was medicated for post-

² Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

traumatic stress disorder (PTSD) and anxiety when he answered the questions. He takes medication daily for PTSD and anxiety. (Tr. 34-35.)

Applicant testified that he was diagnosed with Crohn's disease in 2010, and needs an injection of medication every five weeks, which causes him to miss work. His supervisors are lenient about adjusting his work schedule so that he can take care of his health problems as well as continue to work. (Tr. 16-17.) After the hearing, he presented documentation reflecting a 50% service-connected disability for PTSD, previously evaluated as primary insomnia and anxiety disorder, a 30% disability for Crohn's disease, and lesser percentages of disability for several other service-connected injuries. His combined disability rating is 100%. (AX A.)

Applicant testified that he and his wife were victims of identity theft, resulting in money being withdrawn from his checking account. (Tr. 15.) He submitted a copy of his bank statement reflecting fraudulent transactions in December 2016. He testified that the bank resolved the fraudulent transactions and restored the funds to his account. (AX B; Tr. 24.)

Applicant's credit bureau report dated August 21, 2014, reflected the delinquent debts alleged in SOR ¶¶ 1.a-1.f. (GX 3.) His CBR dated September 3, 2015, reflected the delinquent debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.g. (GX 2.) In his answer to the SOR, he stated that he was working with a debt-consolidation service to resolve the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.e and was looking for a debt-consolidation service to assist him with the debts alleged in SOR ¶ 1.a and 1.d. He presented no documentary evidence that he had contacted a debt-consolidation service, negotiated any payment plans, or made any payments. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: charge account placed for collection of \$14,340 in March 2011. In his answer to the SOR, Applicant stated that this debt was incurred for improvements to his home. (Tr. 20.) It is not resolved.

SOR ¶ 1.b: charge account placed for collection of \$2,600 in September 2011. At the hearing, Applicant could not provide any information about this debt. (Tr. 21.) It is unresolved.

SOR ¶ 1.c: unsecured loan past due for \$2,602, opened in June 2010, with a balance of \$2,727. The September CBR reflects that the last payment on this loan was in January 2012. (GX 2 at 3.) Applicant provided no information about this debt at the hearing. (Tr. 22.) It is not resolved.

SOR ¶ 1.d: home mortgage loan of \$173,655 in foreclosure as of August 2011. Applicant purchased a home with a loan guaranteed by the Department of Veterans Affairs, with no down payment required. When he was laid off for three months, he was unable to make the payments on the loan. (Tr. 51.) The debt is not resolved.

SOR ¶ 1.e: electronics store debt referred for collection of \$828 in December 2010. At the hearing, Applicant testified that he was trying to contact the collection agency for this debt. (Tr. 22.) The debt is not resolved.

SOR ¶ 1.f: telecommunications debt referred for collection of \$199 in February 2011. Applicant denied opening this account, testifying that this debt was the result of identity theft. He testified that he intended to dispute this debt, but he provided no documentation of a dispute. (Tr. 23-26.)

SOR ¶ 1.g: medical bill referred for collection of \$69 in July 2014. In his answer to the SOR, Applicant stated that he would contact the creditor and pay this debt. At the hearing, he testified that TRICARE covers his medical bills, but he had not investigated this debt to determine whether it is valid. (Tr. 27.) The debt is not resolved.

Applicant's take-home pay from his job is about \$4,600 per month. He receives military retired pay of \$1,600 and disability pay of \$3,000, for a total of about \$9,200. His monthly rent is \$1,200, his car payment is \$496, his electric bill is about \$300, and his telephone bill is about \$300 for four cell phones. These expenses total about \$2,300. (Tr. 31-33.) He did not provide any information about other living expenses. He believes that he is financially stable, provided that his employer does not lose its government contract, for which his employer will compete in September 2017. (Tr. 31-33.)

On August 8, 2017, Applicant signed a retainer contract with a law firm hired to file a Chapter 13 bankruptcy petition, and paid he \$100 toward the attorney's fees, leaving a balance of \$590. (AX C.) The balance was due on September 1, 2017. As of the date the record closed, Applicant had provided no evidence that he had paid the balance of the attorney's fee or that a petition for bankruptcy had been filed.

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 adjudicative guidelines. 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.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 in his response to the SOR and at the hearing, corroborated by his CBRs, establish three following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to 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 delinquent debts are numerous, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's three-month period of unemployment in 2011 and the fraudulent withdrawals from his bank account in 2016 were conditions beyond his control. If the telecommunications debt alleged in SOR ¶ 1.f was opened by someone else, that event also would be a condition beyond his control. The debts in SOR ¶¶ 1.a-1.f all became delinquent shortly after his three-month period of unemployment. The medical bill alleged in SOR ¶ 1.g did not become delinquent until 2014, well after Applicant returned to full-time employment. The identity theft occurred in 2016, well after the debts alleged in the SOR were already delinquent. Applicant has not acted responsibly regarding any of the debts. He has been employed since late 2011, but he provided no evidence that he contacted any of his creditors. He provided no evidence of a contract with a debt-management company or any progress in resolving the debts, either in his answer or at the hearing. He contacted a bankruptcy attorney, but failed to submit evidence that he had paid the attorney's fee or filed a bankruptcy petition.

I have considered whether Applicant's PTSD and the effects of the medication for it constitute a condition beyond his control. His omissions from his SCA, which he attributed to the medication, indicate that his attention to detail and ability to comprehend a complex document may be affected, but there is no evidence that he is unable to perform his job and conduct his personal and financial affairs. He was able to testify cogently at the hearing and conduct business with a bankruptcy attorney, and he was responsive to correspondence regarding his post-hearing submissions. His PTSD and anxiety appear to be controlled by medication. I conclude that his PTSD is not a condition largely beyond his control within the meaning of this mitigating condition.

AG ¶ 20(c) is not established. There is no evidence that Applicant has received counseling in the past or has completed the counseling required for a bankruptcy, and his financial situation is not under control.

AG ¶ 20(d) is not established. Applicant has made no payment agreements or payments. He has not yet filed a bankruptcy petition.

AG ¶ 20(e) is not established. Although Applicant asserted that he did not open the telecommunications account alleged in SOR ¶ 1.f, he submitted no documentation showing that he disputed the debt with the original creditor or the collection agency.

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified his SCA by answering "No" to all the financial questions and failing to disclose his delinquent debts. The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition for Applicant's negative answers to the financial questions in his SCA is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities." In his answer to the SOR and at the hearing, Applicant stated that he did not mean to answer the question in the negative, but that he was medicated when he completed the SCA and did not pay attention to the questions. His lack of attention to the questions in the SCA was demonstrated by his omission of his period of unemployment and his failure to list his children in the SCA.

Applicant was open and candid at the hearing, and he credibly attributed his omissions from the SCA to the effects of his medication for PTSD. I am satisfied that he did not intend to falsify his SCA or mislead investigators. AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

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 and applying the adjudicative factors in AG ¶ 2(d).³

Applicant has open, candid, and sincere at the hearing. His plan to file a Chapter 13 bankruptcy petition is sound and reasonable. Unfortunately, he has a track record of not carrying out his intentions in financial matters. I am not convinced that he will follow through with his bankruptcy or establish a track record of complying with a Chapter 13 payment plan.

I have incorporated my comments under Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the

³ The factors are: (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.

allegation of falsification under Guideline E, but he has not mitigated the security concerns raised by delinquent debts.

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.g:	Against Applicant
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Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge