



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-02521
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley Esq., Department Counsel
For Applicant: *Pro se*

01/04/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F for financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 21, 2014. On November 30, 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 January 4, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 28, 2016. On March 30, 2016, a complete copy of the file of relevant material (FORM) was sent 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 6, 2016, and submitted his response on May 11, 2016. The case was assigned to me on December 12, 2016.

Findings of Fact¹

Applicant is 50 years old. He has been married since 1995. He and his wife have two children, ages 18 and 9. Applicant received an associate's degree in 1989 and a bachelor's degree in 1992.

Applicant has been steadily employed full time as a quality engineer by a federal contractor for over four years. He had been previously employed full time by a manufacturing company for almost nine years until he was laid off due to a plant closure in March 2010.² Applicant received a severance of \$40,000 and also unemployment benefits of approximately \$1,800 per month. Applicant remained unemployed for 13 months until he began work with his current employer, first as a contractor in April 2011 and then as a direct hire in April 2012. During the immediate period following his layoff, Applicant continued to make full payments to his creditors and took steps to reduce his expenses.

Applicant moved his family into his mother-in-law's home in July 2011 to help her avoid its foreclosure³ and because he was unable to afford the rent on his own home. He then paid approximately \$14,000 in a lump sum to bring her mortgage loan current.⁴ His moving costs totaled approximately \$5,000. Applicant and his family now reside in the home and pay 100% of the monthly mortgage loan payment (about \$1,586) and other unspecified expenses associated with the home. His mother-in-law lives in separate living quarters on the property. Neither Applicant's wife nor his mother-in-law work outside the home. However, his mother-in-law receives some sort of "senior fixed income," and his wife occasionally sells cosmetics products for which she earns an unspecified income. Without providing any detail, Applicant states that his wife's "health has made it difficult for her to work outside the home." Applicant's mother-in-law does not financially contribute to the mortgage or any of the other expenses of the home. In late July or early

¹ I extracted these facts from Applicant's FORM response, SOR answer (Item 2), security clearance application (Item 3), and the summary of his background investigation interview (Item 5) unless otherwise indicated by a parenthetical citation to another item in the record. I considered that the summary of the in-person interview conducted during Applicant's background investigation (Item 5) 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 5. Applicant was also informed that he was entitled to object to consideration of Item 5 on the ground that it was not authenticated. Applicant did neither in his response to the FORM.

² This nine-year period was between 10/2001 and 3/2010. Applicant was also employed by this same employer for six years between 4/1994 and 10/2000.

³ She experienced financial hardship due to the loss of her husband's income.

⁴ Initially, Applicant loaned this \$14,000 to his mother-in-law with the expectation that it would be paid back from funds available in the equity of her home. However, the home's mortgage is underwater.

August 2016, she was diagnosed with breast cancer, which Applicant says has caused further delays with his debt repayment plan given that his wife's attention has been diverted to caring for her mother.

Applicant earned 30% less income with his current employer when he was first hired as a contractor compared to his previous salary (no further details provided). At some point after April 2012, Applicant's healthcare coverage increased (amount unspecified) and, due to the age of his two used vehicles and the stress of an extended commute, he incurred extraordinary vehicle gas, maintenance, and repair expenses.⁵ At some point after March 2010, Applicant depleted his savings and the funds from an IRA withdrawal to help keep him and his family afloat. Applicant admits that he still lives paycheck to paycheck and claims that, contrary to a bankruptcy judge's finding, he does not have any funds remaining each month to pay towards his delinquent debt.

Applicant incurred credit card debt of approximately \$14,867 (SOR ¶ 1.a, 1.b, 1.c, and 1.d). Applicant paid the debt alleged in SOR ¶ 1.c (\$1,400).⁶ However, the other credit card debt remains unresolved.

Applicant is also indebted for a \$93 water bill (SOR ¶ 1.e), a \$58 satellite dish bill (SOR ¶ 1.f), and a \$57 electric bill (SOR ¶ 1.g), all of which are associated with a prior residence. Applicant promised to pay these debts in April 2016. However, these debts remain unresolved.

Applicant paid his 2010 and 2011 taxes as required, but then incurred debt of approximately \$15,000 to the IRS for those tax years due to the fees and fines associated with an early IRA withdrawal of \$40,000. Applicant began paying towards this debt in April 2011 and the remaining balance is approximately \$2,470 (SOR ¶ 1.h). Applicant anticipated that the IRS would withhold his tax year 2014 refund to partially satisfy this debt. However, it remains unresolved.

Applicant filed a Chapter 7 bankruptcy petition (SOR ¶ 1.i) in March 2015 (Item 6). Applicant claimed liabilities of \$54,423, consisting of primarily credit card debt and personal loans (some of which are alleged in the SOR); a \$2,470 tax debt (SOR ¶ 1.h); and a \$14,007 federal student loan debt (not alleged in the SOR) (Item 7).⁷ At the time

⁵ Per Applicant's FORM response, these expenses include: \$128 per week for gas and car repair bills (\$500 for window repair and \$600 for a lock cylinder and O2 sensor repair). However, he did not provide any details about the timeframes to which these amounts refer.

⁶ I considered that Applicant did not provide any documentation to corroborate his claimed payment of the debt alleged in SOR 1.c. However, since the Government's support for SOR 1.c rests solely on Applicant's eQIP admission, without more, I am unable to find that this debt remains outstanding.

⁷ 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) (citations omitted). Therefore, I will consider the debts referenced in Applicant's bankruptcy petition but not alleged in the SOR accordingly.

of his March 2015 bankruptcy filing, Applicant's monthly gross income was \$7,550 and, after payroll deductions and expenses, his monthly net remainder was \$1,690 (Item 7). The bankruptcy trustee estimated Applicant's monthly disposable income to be \$899 (Item 7). The court dismissed the case in July 2015 (SOR ¶ 1.i.) for abuse, finding that Applicant's obligations were primarily consumer debts and that he had monthly disposable income available to repay his creditors in an amount that exceeded the statutory threshold for presumption of bad faith (Item 7). Applicant declined the bankruptcy trustee's invitation to refile under Chapter 13 (Items 6 and 7).

Applicant has received the required credit counseling associated with his bankruptcy proceedings. In the FORM, Department Counsel advised Applicant that the absence of compelling documentation that he has in fact either paid or successfully refuted the validity of all his delinquent debts precludes a favorable finding. Although Applicant did provide a written response to the FORM, he provided no corroborating documentation in support of the claims outlined therein. Likewise, Applicant did not provide any such documentation in support of his answer to the SOR.

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 SOR alleges credit card debt of approximately \$14,867 (SOR ¶¶ 1.a, 1.b, 1.c, and 1.d.), a \$93 water bill (SOR ¶ 1.e), a \$58 satellite dish bill (SOR ¶ 1.f), a \$57 electric bill (SOR ¶ 1.g), and a delinquent tax debt of \$2,470 (SOR ¶ 1.h). These debts remain unresolved. It also alleges a Chapter 7 bankruptcy petition that was dismissed for abuse (SOR ¶ 1.i).

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 numerous delinquent debts remain unresolved. They were not incurred under circumstances making them unlikely to recur and they cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's 2010 job loss was a circumstance beyond his control. However, by failing to provide sufficient detail and documentation about his ability to repay his delinquent debt and other circumstances that have enabled it to persist,⁸ Applicant has failed to meet his burden to show that he acted responsibly in light of those circumstances.

⁸ In his FORM response, Applicant provided monetary figures purporting to clarify these circumstances. Specifically, Applicant states that (for some unspecified time period) he took home \$900 per week, paid \$128 per week for gas, and incurred unexpected car repair bills (\$500 for window repair and \$600 for a lock cylinder and O2 sensor repair). However, he did not provide any details about the timeframes involved or rebut the facts set forth in his bankruptcy documents (Items 6 and 7).

AG ¶ 20(c) is not fully established. Applicant has received financial counseling, but each of Applicant's SOR debts, including several debts under \$100, remain unresolved over four years after resuming gainful employment. There are no clear indications that Applicant's financial problems are under control.

AG ¶ 20(d) is not fully established. Applicant is credited with the steps he took to cut expenses and pay debts during the immediate period following his layoff, reducing his IRS debt, filing for bankruptcy, and working with a debt consolidation company. However, besides paying one of his credit card debts (SOR ¶ 1.c), Applicant has neither satisfied nor made payments towards any other debt since a bankruptcy judge dismissed his Chapter 7 case in July 2015.

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). I also considered the unresolved debts referenced in Applicant's bankruptcy petition that were not alleged in the SOR, including a \$14,007 federal student loan debt. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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	Against Applicant
Subparagraph 1.b	Against Applicant
Subparagraph 1.c	For Applicant
Subparagraphs 1.d - 1.i:	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