



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-02857
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to a lengthy period of inconsistent employment, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on July 23, 2014. On October 15, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. 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 submitted Answer to the SOR on January 22, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 6, 2016, and the case was assigned to me on June 24, 2016. On August 23, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing

was scheduled for September 13, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted into evidence without objection. Applicant testified and I kept the record open until September 27, 2016, to enable him to submit additional documentary evidence. He timely submitted a statement and two documents (AX A through AX C), which I have admitted without objection. DOHA received the transcript (Tr.) on September 21, 2016.

Findings of Fact

Under Guideline F, the SOR alleges 20 delinquent debts totaling approximately \$34,981. These delinquent debts primarily include credit-card accounts, medical bills, and a motorcycle loan. In his Answer, Applicant admits 15 of the allegations and denies 5. He also states that he paid five of the debts, is paying four of the debts, and that two of the debts are duplicates. His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from September 2015 and August 2014. (GX 3; GX 2.)

Applicant is a 38-year-old simulation interactor currently employed by a defense contractor since January 2015, and employed in the defense industry since December 2009. He served honorably in the U.S. Army reserve from April 2000 until August 2004, when he received his commission. He served as an officer on active duty from August 2004 until December 2009. He was deployed in Afghanistan from October 2006 until January 2008. Applicant received a bachelor's of science degree in August 2004. He has held a secret clearance since at least 2004. He and his wife married in 2006, and they have a 5-year-old son. Applicant also has a 15-year-old son from a prior relationship. Applicant's older son resides with his mother and Applicant provides monthly support of at least \$200. Applicant's wife and younger son reside in another state. Applicant lives away from his family in order to maintain his employment. (GX 1; Tr. 58-60.)

While in the service, Applicant bought a car and used his credit cards for consumer purchases, and was easily able to maintain the monthly payments along with his other financial obligations. However, he began experiencing financial difficulties after he left active duty in 2009. He started work with a defense contractor in December 2009, and was employed until February 2010, when the contract ended. From 2009 until 2015, he worked sporadically on contracts, experiencing short periods of employment followed by periods of unemployment. As a result, Applicant became delinquent on his financial obligations. (Tr. 28-32.)

Applicant has been steadily employed, fulltime, since January 2015. (Tr. 31.) Applicant's wife is employed, maintains her own household expenses, and provides medical insurance for her and Applicant's son. Applicant sends money when he can. (Tr. 58-60.) With the exception of the \$260 medical debt (SOR ¶ 1.h) and the \$442 cable bill (SOR ¶ 1.r), incurred in 2013, all the SOR debts were incurred between late 2009 and 2012, as a result of Applicant's erratic income. During his periods of unemployment, Applicant sold his personal belongings so he could pay rent and other necessary expenses without incurring additional debt. (Tr. 24.)

In June 2010, Applicant discontinued his cable television service to reduce his expenses, but failed to timely return the equipment, which gave rise to the \$367 cable bill alleged in SOR ¶ 1.f. He subsequently paid the bill and resumed service. (Tr. 24.) He again discontinued his cable service in November 2013, failed to return the equipment, and incurred the \$442 cable bill alleged in SOR ¶ 1.r. Applicant paid the account, and resumed service. He currently has cable service with the second provider and the debt does not appear on the September 2015 CBR. (Tr. 35-36; GX 3.)

Applicant paid the \$179 past-due credit-card account. (SOR ¶ 1.m.) He later opened a low-credit-limit credit card with the same creditor, which he maintains for emergency use, and in an effort to begin reestablishing his credit. (Tr. 40-41.) Applicant asserts that the debts alleged in SOR ¶¶ 1.k, 1.n, and 1.o are duplicates of a single line of credit used for the purchase of furniture. He paid this account in 2015. (Tr. 39-40; Tr. 66.)

Applicant paid the two \$50 accounts alleged in SOR ¶¶ 1.s and 1.t in April 2008, before clearing his duty station. (Tr. 54; Answer.) He made payments during periods of employment on the \$4,125 credit-card account alleged in SOR ¶ 1.a, and on the \$1,884 loan alleged in SOR ¶ 1.c. He contacted the two creditors to resume payments, which began in October 2016. (Tr. 50-53; AX A.) He entered repayment plans with the creditor of SOR debts 1.d and 1.g, and began monthly payments in October 2016. (AX A – AX C.)

The \$16,069 past-due debt alleged in SOR ¶ 1.l is for a loan for a motorcycle that was later repossessed. The initial loan was \$15,000 in March 2014, with a balance of \$14,365 at the time of repossession in April 2010. The balance current does not reflect any resale offset. (GX 2; GX 3; Tr. 48-51.) Applicant was unemployed and unable to make payments, and the motorcycle was repossessed. He has not been contacted by the creditor recently. (Tr. 48-50.) Applicant owes the \$1,000 debt alleged in SOR ¶ 1.p for a timeshare he no longer owns. He has contacted the creditor several times and will pay this debt through monthly installments. (Tr. 42.)

Applicant disputes the \$2,424 on-line university debt opened in 2010 and charged-off in 2014. (SOR ¶ 1.b.) He never registered for classes at this university, and was not in a position to do so in 2010. He spoke with the creditor and explained this, and has not been contacted by the creditor since. (Tr. 43-44; Tr. 61.) He also disputes the \$513 cellular service bill (SOR ¶ 1.q) on the basis that he maintains an account with this service and does not have a past-due balance. (Tr. 49-50.)

Applicant disputes the \$635 (SOR ¶ 1.e); \$260 (SOR ¶ 1.h); and, \$170 (SOR ¶ 1.j) medical accounts. He receives medical treatment only through the Department of Veterans Affairs (VA). He has not incurred medical bills for his wife or either of his sons. (Tr. 45-46.) He also disputes the \$209 charged-off automobile loan. (SOR ¶ 1.i.) He stated that this account was for a car he purchased in 2004 and paid off in 2011. (Tr. 38; GX 3.)

Although Applicant has been in his current job since January 2015, he continues to seek more stable employment. He lives within his means and has not incurred any significant delinquent debt since 2012. (Tr. 56; GX 2; GX 3.) He is currently enrolled in

courses at a technical college, which is being paid for through the VA. (Tr.55.) He was contrite, candid, and straight-forward while testifying. He accepts responsibility for his delinquent debts and will continue to steadily repay them. (Tr. 69-70.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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 an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 testimony, corroborated by the record evidence, establishes 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”).

However, a person can mitigate concerns about his ability to handle and safeguard classified information raised by his financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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;

AG ¶ 20(d): the individual initiated 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.

Applicant's financial difficulties arose from circumstances largely beyond his control. As a result of the instability in his employment for over five years, Applicant was unable to maintain his financial obligations. He acted responsibly by making lifestyle changes to reduce his financial obligations, and to not incur additional debt. He has not incurred any significant delinquent debt since 2012.

Applicant acted in good faith by paying six of his debts, entering repayment agreements for four others, disputing one debt, and contacting the creditor of another debt. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Although Applicant's finances are not perfect, he has implemented a reasonable plan to repay his creditors. The circumstances which led to his indebtedness are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(e) apply.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the military. He has held a security clearance for at least 13 years. He made personal sacrifices, such as living away from his wife and son, and selling his personal belongings to prevent incurring additional debt. He lives within his means, and is continuing to pursue his education. I am confident that Applicant will continue his good-faith efforts to resolve his remaining delinquent debts.

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 mitigated the security concerns raised by his delinquent debts and his omissions on his e-QIP. Accordingly, I conclude he 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.t:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge