



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



In the matter of:

)
)
)
)
)

ISCR Case No. 15-02887

Applicant for Security Clearance

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant did not make sufficient progress resolving the debts alleged in his statement of reasons (SOR). He did not present any evidence of any payments to his SOR creditors. He did not provide any correspondence from or to creditors showing settlement offers or attempts to negotiate payment plans. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 4, 2014, Applicant completed and signed an Electronic Questionnaire for National Security Positions (e-QIP) (SF 86). (Item 2) On January 22, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant an SOR pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006. The SOR set forth security concerns arising under the financial considerations guideline.

On February 20, 2016, Applicant provided a response to the SOR, and he requested a decision without a hearing. On April 27, 2016, Department Counsel completed the File of Relevant Material (FORM). On May 4, 2016, Applicant received the FORM. Applicant did not respond to the FORM. On December 22, 2016, the case was assigned to me. The Government's case consisted of five exhibits. (Items 1-5)

Findings of Fact¹

In Applicant's SOR response, he admitted the debts in SOR ¶¶ 1.b through 1.f. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 69 years old, and from August 1968 to November 2009, he worked as a chief executive officer (CEO) for a corporation. (Item 2) In August 2014, he accepted employment with a defense contractor that entails access to classified information. (Item 2) From August 2011 to February 2012, he worked as a 3D detailer for a company. (Item 2) In 1971, he received a bachelor's degree.

Applicant served in the Army inactive reserve from 1971 to 1977, and he received an honorable discharge. (Item 2) In 1971, he married, and his two children were born in 1977 and 1980. (Item 5)

Financial Considerations

In his September 4, 2014 SCA, Applicant said a bank cancelled his company's line of credit in 2009.² Applicant personally guaranteed the line of credit, and the bank placed a lien against Applicant's home. Another company, which had provided insurance guarantees or bonding for Applicant's corporation, placed a \$495,000 lien against Applicant's homestead. (Item 5) He said the debt in SOR ¶ 1.g for \$55,000 was not a personal debt, and he was challenging it in the courts. He said he was late three weeks on a monthly payment, and a property he owned with a mortgage of \$220,000 went into foreclosure in 2009.³

¹Some details have been excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

²Unless stated otherwise, the source for the information in this paragraph is Appellant's September 4, 2014 Electronic Questionnaire for National Security Positions (e-QIP) (SF 86). (Item 2)

³Applicant's SOR does not allege that he owed \$495,000 to a creditor or that he owed \$220,000 in relation to a mortgage that went into foreclosure. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of

Applicant's history of delinquent debt is documented in his credit reports and SOR response. The status of his SOR debts is as follows:

SOR ¶ 1.a alleges a collection account debt for \$681. Applicant said the creditor informed him the debt was charged off. (Item 3) He is able to pay the debt; however, he does not know where to send the check. (Item 3) See SOR ¶ 1.h *infra*.

Applicant admitted responsibility for the debts in SOR ¶¶ 1.b through 1.g and said they resulted from the collapse of his business in 2009. (SOR response) Those debts are as follows: SOR ¶ 1.b is a charged-off bank debt for \$6,830; SOR ¶ 1.c is a charged-off bank debt for \$21,124; SOR ¶ 1.d is a commercial collection co-maker account for \$266,146; SOR ¶ 1.e is a charged-off bank debt for \$21,706; SOR ¶ 1.f is a charged-off bank debt for \$13,886; and SOR ¶ 1.g is a charged-off bank debt for \$55,676.

SOR ¶ 1.h alleges a charged-off account for \$1,443. The debt is owed to the same creditor as in SOR ¶ 1.a. (Item 3) Applicant indicated he believed the debt needed an explanation. (Item 3) I have credited Applicant with mitigating the debt in SOR ¶ 1.a, because the debts in SOR ¶¶ 1.h and 1.a are duplications of each other.

Applicant explained that his bank "without just cause, demanded payment of his company's credit line."⁴ His company was very busy at that time, and his company's credit was "maxed out." "Due to slow receipt of payments," he could not pay down the credit line. The "bank foreclosed on the company," and the company was forced to close, ending employment for 14 employees. He accused the bank of acting illegally and of destroying a thriving vibrant business. He associated the delinquent debts in SOR ¶¶ 1.b through 1.g with the collapse of his company. He said he made an agreement to pay the debt in SOR ¶ 1.g; however, the court made a mistake, and "no payments have been required of me."

There is no evidence that Applicant received financial counseling. There is no evidence that he violated security rules, abused alcohol, or used illegal drugs. Department Counsel emphasized the lack of mitigating evidence, debt payments, or other resolution of the SOR debts. (FORM at 2)

The file lacks supporting documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the delinquent accounts alleged

the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These two allegations will not be considered because there is insufficient factual development in the record to know that happened with these two large debts.

⁴The source for the information in his paragraph is Applicant's February 19, 2016 SOR response. (Item 3)

in the SOR. There is no evidence of Applicant's income, and he did not provide a budget or personal financial statement. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 "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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports and SOR response. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁵ and

(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.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

⁵The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's stated efforts to resolve his delinquent debt do not warrant full application of any mitigating conditions to any of his SOR debts. Applicant did not provide enough details about what he did to address his SOR debts. He did not describe receipt of financial counseling.

After crediting Applicant with mitigating SOR ¶ 1.a as a duplication, seven unresolved SOR debts for \$386,811 remain to be addressed. Applicant did not provide sufficient documentation relating to his SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from any creditors to establish maintenance of contact with creditors;⁶ (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution of his debts. Applicant failed to establish mitigation under AG ¶ 20(e) for any other SOR debts because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

There is insufficient evidence about why Applicant was unable to make greater progress resolving his SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

⁶"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

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. 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 some warrant additional comment.

Applicant is a 69-year-old former CEO of a corporation. In August 2014, he applied for employment with a defense contractor that entails access to classified information. From August 2011 to February 2012, he worked as a 3D detailer for a company. From August 1968 to November 2009, he worked as a CEO for a corporation. In 1971, he received a bachelor's degree. He served in the Army inactive reserve from 1971 to 1977, and he received an honorable discharge.

Applicant has a history of financial problems. He had financial problems beginning in 2009 when his company's line of credit was called by his bank. His company went out of business, and substantial debts resulted. After crediting Applicant with mitigating SOR ¶ 1.a as a duplication, seven unresolved SOR debts totaling \$386,811 remain to be fully addressed. He provided insufficient corroborating or substantiating documentary evidence of payments to his other SOR creditors, payment plans, or his communications to those seven SOR creditors. He did not provide documentation showing his attempts to resolve any of his SOR debts in good faith. His actions show lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not

warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge