



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-03077
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2016

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 on February 24, 2014. On October 30, 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 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. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on December 15, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March

11, 2016, and the case was assigned to me on April 13, 2016. On April 26, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 12, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and presented the testimony of three witnesses. I kept the record open until May 27, 2016, to enable him to submit documentary evidence. (Tr. 23-24.) He timely submitted Applicant's Exhibits (AX) A through I, which were admitted without objection. DOHA received the transcript (Tr.) on May 26, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted all the allegations, with explanations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 56-year-old employee of a federal contractor. He served on active duty in the U.S. Navy from June 1977 to December 2002 and retired as a senior chief petty officer (pay grade E-8). He has worked for federal contractors supporting another government agency since his retirement. He held security clearances from the DOD while in the Navy and from another government agency for about 14 years. (Tr. 8.) His clearance was suspended in February 2008 because of security concerns under Guideline B (Foreign Influence), but it was reinstated after those concerns were resolved. (GX 1 at 63-64.)

While on active duty, Applicant was responsible for installing and maintaining security alarm systems aboard Navy ships. As a civilian, he worked in sensitive locations requiring the highest levels of security clearances. He directly supported senior military and civilian officials during Desert Storm. He has never had a security violation.

Applicant married in June 1977 and divorced in November 2002. His first wife receives 42% of his retired pay, based on their years of marriage while he was on active duty. He married his current wife in December 2005. He has an adult daughter from his first marriage and a nine-year-old daughter and a five-year-old son from his current marriage.

Applicant met his current wife while on an extended overseas assignment. She is a native of the country where they met. About four months after they met, they were engaged to be married. After they married in December 2005, Applicant sponsored her to immigrate to the United States, and he purchased an airline ticket for her to travel from her native country to the United States. She came to the United States in September 2006. About three weeks after she arrived in the United States, Applicant learned that she had exchanged her one-way ticket for a round-trip ticket, at Applicant's expense, and she returned to her native country to visit her family shortly thereafter.

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

After their daughter was born in June 2007, his wife asked Applicant to finance another trip to her native country to introduce their daughter to her family, and he complied. (Tr. 103-05.)

Applicant purchased a home in July 2010. He testified that he had never owned a home, and he did not realize how expensive it was to purchase, furnish, and maintain a home. He purchased furniture and appliances on credit, and obtained a \$30,000 personal loan from his credit union. He recently paid off the personal loan and several debts not alleged in the SOR. (AX E.)

Shortly after Applicant signed the contract to purchase the home, his car was rear-ended and "totaled." Applicant had counted on paying off the loan on the car and having additional funds for furnishing the home, but he was required to buy a replacement car. (Tr. 108.)

Applicant testified that he misplaced his federal tax forms while moving into the new house and failed to file his federal and state tax returns for 2010. He "never got back" to filing his 2010 returns. He then failed to file his federal and state tax returns for 2011 and 2012, because he owed at least \$7,000 and could not afford to pay it. (Tr. 109-10.) He did not file federal income tax returns for 2013 and 2014 until July or August 2015. (Tr. 154-55.) He has not filed state tax returns since 2011. (Tr. 151.) His failures to timely file federal and state income tax returns are alleged in SOR ¶¶ 1.i and 1.j.

Applicant's son was born the year after he and his wife moved into their new home, and his wife started pressuring him to buy airline tickets so that she, their daughter, and the new baby could visit her family in her native country. Applicant could not afford to buy the tickets, and so he used his company credit card to buy three round-trip tickets and two laptop computers for his wife to give to her family members while visiting. He charged a total of about \$7,000 to the credit card. (Tr. 110-11, 156.) He testified that he purchased the tickets and the laptops after several months of marital strife and insistence by his wife that she needed to visit her family. After his wife's trip, he learned that she used the two laptops as barter for a rental vehicle instead of gifts. (Tr. 99.)

Applicant testified that he notified his supervisors within days of making the purchases that they would appear on the company's credit card statement. (Tr. 158.) He agreed to reimburse the company by payroll deductions of \$500 per month. (Tr. 98, 156; AX C.) The company's facility security officer (FSO) and the person responsible for company expense accounts testified that Applicant voluntarily disclosed his unauthorized purchases, identified each of the unauthorized transactions, and repaid the unauthorized purchases in full by payroll deduction, plus a 30.75% penalty for personal use of the card. (Tr. 29-34, 48-52.) He made the agreed payments from May 2012 to July 2013, totaling \$7,658. (AX C.) Applicant's misuse of the company credit card is alleged in SOR ¶¶ 1.k and 2.a.

Applicant testified that he has never sought or received financial counseling. He conceded that he might benefit from counseling. (Tr. 162-63.) He does not have a budget, but he tracks his income and expenses on a spreadsheet. (AX A; AX B.) His wife had a daughter from an extramarital affair in October 2015. The child lives with them, and they incur expenses for child care. Applicant is not legally obligated to support her child, but the biological father does not pay child support. (Tr. 118.)

Applicant is still driving the car he purchased in 2010 to replace the one that was totaled, but he recently purchased a new car, a 2015 model purchased in 2016, for which he is making monthly payments of \$850. (Tr. 128.) He testified that he is making the payments on the new car every month, but "maybe not exactly on the due date." (Tr. 130.)

Applicant testified that he and his wife have not been intimate since she became pregnant with their son. They live in the same house, but his wife lives upstairs and he lives in the basement. He described their relationship as "roommates in the same house." His wife recently found part-time employment and her net monthly pay is about \$800. (Tr. 120.) He testified that he is contemplating divorce, but he cannot pursue it until he can afford to pay child support. (Tr. 119-21.)

Applicant's credit bureau reports (CBRs) for March 2014 and March 2015 establish the debts alleged in SOR ¶¶ 1.a-1.h. (GX 3; GX 4.) The status of these debts is set out below.

SOR ¶ 1.a, credit-card account referred for collection in July 2014 for \$3,834. Applicant testified that he fell behind on the payments on this account around March 2011. His bank records reflect five \$259 payments and one \$531 payment during July through October 2013. (AX H; AX I.) He has not made any payments or had any contact with the creditor or the collection agency since the debt was referred for collection. (Tr. 139.)

SOR ¶ 1.b, credit-card account referred for collection in April 2012 for \$3,593. Applicant testified that he had been making regular payments of \$200 and expected to pay off the debt in three or four months. (Tr. 140.) His bank records reflect two payments of \$300 and \$220 in December 2013, a \$130 payment in January 2014, monthly \$100 payments from February to July 2014, monthly \$275 payments from August 2014 to July 2015, and monthly \$200 payments from August 2015 to May 2016. (AX G.)

SOR ¶ 1.c, installment purchase of electronics and appliances referred for collection in November 2013 for \$2,897. Applicant has not contacted the creditor or made any payments on this debt. (Tr. 141.)

SOR ¶ 1.d, collection account opened in October 2013 for \$52. Applicant testified that this debt was paid, but he provided no documentation of payment. (Tr. 144.)

SOR ¶¶ 1.e and 1.f, state tax liens. A state tax lien for \$1,912 was filed against him in January 2014. A second state tax lien for \$13,349 was filed against him in February 2014 (GX 3 at 4.) Applicant has not contacted the state tax authority, and the liens are unresolved. (Tr. 145-48.)

SOR ¶ 1.g, cell phone account referred for collection in November 2012 for \$664. Applicant testified that this account was for a cell phone that he provided to his wife. She lost it or gave it away, and he stopped making the payments. The account was only in his name. He has not resolved the debt. (Tr. 148-49.)

SOR ¶ 1.h, delinquent state and federal taxes for tax years 2011 and 2012. Applicant has a payment agreement with the IRS. He paid \$120 per month from September 2015 to March 2016. He increased his payments to \$800 per month in April 2016, after he paid off the \$30,000 signature loan from his credit union. He owes the IRS about \$13,233. (Tr. 112; AX D.) He has taken no action to resolve his delinquent state taxes.

Applicant's FSO testified that, notwithstanding the misuse of the company credit card, Applicant is a person of sound character and judgment who would put the protection of the United States ahead of anything else in his life. (Tr. 46.) The FSO was not familiar with the SOR. After reviewing it at the hearing, he testified that it caused him to question Applicant's ability to manage his finances. (Tr. 56.)

A close friend who has known Applicant and his family since childhood testified for Applicant. The witness and Applicant's father were Navy shipmates and personal friends, who frequently visited each other's homes. After Applicant retired from the Navy, they were co-workers employed by defense contractors. The witness testified that Applicant was not financially extravagant, did not abuse alcohol, and always behaved appropriately. The witness considered Applicant's current marriage to be "rocky." He considers Applicant trustworthy, reliable, and loyal. (Tr. 65-94.)

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 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 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 and CBRs establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(d): deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; 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 following mitigating conditions under this guideline 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, 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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's loss of a car that was almost paid for in 2010 was a condition beyond his control. However, his misuse of a company credit card was a voluntary act, not due to conditions beyond his control. His financial and tax problems are largely due to overspending, financial mismanagement, and yielding to pressure from his wife.

AG ¶ 20(c) is not established. Applicant has not received financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not established for SOR ¶¶ 1.a, 1.c-1.g, and 1.j. It is established for the credit-card debt in SOR ¶ 1.b, the federal income tax debt in SOR ¶ 1.h, and the failure to timely file federal income tax returns alleged in SOR ¶ 1.i.

Applicant's payment of the credit card debt has not mitigated the underlying breach of trust that led him to misuse the credit card. A security clearance adjudication is not a debt-collection procedure. It is an evaluation of a person's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Applicant's misuse of the credit card in response to financial pressure illustrates the concern underlying Guideline F and casts doubt on his current reliability and trustworthiness.

AG ¶ 20(e) is not established. Applicant has not disputed the debts alleged in the SOR.

Guideline E, Personal Conduct

Applicant's misuse of his company credit card is cross-alleged under this Guideline. 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 information."

Applicant's conduct establishes the following disqualifying conditions under this guideline:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially relevant:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) is not established. Applicant's misconduct was not minor, because it was a substantial breach of trust and involved a significant amount of money. It did not happen under unique circumstances. It was a single, isolated incident that occurred more than four years ago and has not recurred. However, when his misuse of the credit card is considered in the context of a long history of financial irresponsibility, it raises doubts about his current reliability, trustworthiness, and good judgment.

AG 17(d) is partially established. Applicant has acknowledged his behavior and is remorseful. However, he has not obtained counseling, and he is still married and living in the same household with his wife. The extent to which she may still adversely influence his financial judgment is unclear.

AG ¶ 17(e) is established. Applicant reported his behavior shortly after it occurred. He was candid and open with his supervisor and throughout the security clearance process, including the hearing.

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 some warrant additional comment.

Applicant served honorably in the U.S. Navy for more than 24 years. He served with distinction in positions of significant responsibility. He rose to the second highest enlisted rate in the Navy. He has worked for federal contractors for almost 14 years. He

has held security clearances throughout his military and civilian careers. His supervisors have vouched for his trustworthiness, reliability, and good judgment.

On the other hand, Applicant yielded to marital pressure to violate his employer's trust by misusing his company credit card. He spent money on airline tickets for his wife rather than paying his debts. His inability to manage his personal finances, repeated failures to timely file federal and state income tax returns, and his misuse of his employer's credit card raise doubts about his current reliability and good judgment that have not been mitigated.

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 not mitigated the security concerns raised by his financial problems and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his 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:	For Applicant
Subparagraph 1.c-1.g:	Against Applicant
Subparagraph 1.h (federal tax debt):	For Applicant
Subparagraph 1.h (state tax debt):	Against Applicant
Subparagraphs 1.i-1.k:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a:	Against Applicant
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Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge