



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-03083
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/10/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond his control, Applicant experienced tax-related issues and other financial difficulties, but mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on September 9, 2014. On October 30, 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 answered the SOR on March 25, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 28, 2016, and the case was assigned to me on June 30, 2016. On that same day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 26, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until August 9, 2016, to enable him to submit additional documentary evidence. He timely submitted AX D and E, which I have admitted without objection. DOHA received the transcript (Tr.) on August 3, 2016.

Findings of Fact

The SOR alleges that Applicant failed to file his 2009 through 2013 Federal tax returns as required, and that he owes two delinquent debts totaling \$12,730. In his Answer, Applicant admits each of the allegations, and explains his taxes and the two debts. Applicant's admissions in his Answer are incorporated in my findings of fact. The delinquent debts are corroborated by credit bureau reports from November 2015 and October 2014. (GX 2; GX 3.)

Applicant is a 58-year-old aircraft inspector working for his current defense-contractor employer since 1999. He has worked on the same defense contract since 1986. After graduating from high school, he served honorably on active duty in the U.S. Army from January 1979 until October 1985, and held a clearance during part of that time. He married in 1983, and separated in 2010. He has two adult children. (GX 1.)

Applicant's tax issues (SOR ¶ 1.a.) and other financial difficulties (SOR ¶¶ 1.b and 1.c) began in 2010 when his wife moved out of their marital home. Applicant had his 2009 Federal tax return professionally prepared to file jointly with his wife as "married," as he had done throughout his marriage. However, his wife had become uncommunicative and uncooperative, and she refused to sign the return. He was unable to ascertain if his wife was filing a return, and if so, under what marital status. He was also uncertain about how his wife's failure to properly file a return could affect his tax liability, and did not want to be held personally responsible for his wife's tax liabilities. He preferred not to file as "married filing separately" because it would increase his tax liability. As a result of these circumstances, Applicant did not timely file his 2009 Federal tax return. Applicant did not resolve his tax filing conundrum, and did not timely file his 2012 through 2013 Federal tax returns. (Tr. 65-68.)

In 2014, increasingly concerned about the potential ramifications of his unfiled returns, Applicant hired a tax attorney to resolve his tax issues. He was advised to promptly file all unfiled returns, and did so through the professional tax preparation company he always used. At that time, Applicant discovered he owed approximately \$10,000 in delinquent taxes, fees, and penalties. (GX 4; Tr. 43.) Applicant's tax debt is not alleged in the SOR.

Upon becoming aware of the approximate amount of taxes he owed, Applicant opened a designated savings account in which he amassed \$12,000 to pay the tax debt. (AX B; Tr. 22-25.) He continued to retain the tax attorney for a monthly fee of \$350 to work with the IRS to resolve the tax debt, and to monitor Applicant's credit to ensure that Applicant's wife was not incurring any unauthorized joint debt with Applicant. (Tr. 20; Answer.) At the hearing, Applicant expressed his frustration with the tax attorney for not having reached a resolution with the Internal Revenue Service (IRS), and made several offers to give a \$12,000 check to me, as an agent of the Federal government, to pay the tax debt. (Tr. 12-13; Tr. 22; Tr. 24-25; Tr. 72.) Ultimately, Applicant personally contacted the IRS and reached an offer in compromise for a total repayment of \$10,000. He paid a \$186 fee and made an initial 20% payment of \$2,000 in August 2016. He will pay the balance of \$8,000 in installments, however, he has the funds set aside to pay the balance in full and is willing to do so. (Answer; AX D; Tr. 20-25.)

Applicant timely filed his 2014 and 2015 tax returns through the professional tax preparation company, and was entitled to a \$1,234 refund in 2015. This refund was retained by the IRS and applied to Applicant's tax debt. Applicant recognizes that he should have taken definitive action much earlier than he did and regrets his failure to do so. (Tr. 67-70.) SOR ¶ 1.a is being resolved.

The \$11,659 debt alleged in SOR ¶ 1.b is for a \$10,000 personal loan taken by Applicant in 2007 to finance improvements on his marital home. After his wife left in 2010, Applicant became solely responsible for many household expenses that had previously been shared, including this debt. Ultimately, he was unable to make the monthly payments and the account became delinquent. At some point, the creditor stopped contacting Applicant. (Tr. 32-34.)

In early 2014, Applicant hired a credit-consulting firm to assist him in resolving his delinquent accounts. However, in about September 2014, he personally contacted the creditor for the personal loan to determine the status of the debt and to try to resolve it. The creditor informed Applicant that the debt was "written off" and no further action was required by him. Applicant relayed this information to the credit-consulting firm, and it disputed the debt. (GX 4; Tr. 58-61; GX 3.)

At some point in late 2014 or early 2015, Applicant terminated the monthly services of the credit-consulting firm. (Tr. 58.) In early 2015, Applicant again contacted the personal-loan creditor and was informed that the debt was considered a "recovery"

account and was eligible for repayment. He arranged for \$300 monthly payments to be automatically withdrawn from his bank account beginning in March or April 2015. However, Applicant had inadvertently given incorrect banking information to the creditor and the payments were not withdrawn. Upon realizing this, Applicant contacted the creditor and his bank and rectified the error. During this process, Applicant also renegotiated his monthly payments to \$200, as part of his ongoing efforts to live within his means. (Tr. 28-31.) SOR ¶ 1.b is being resolved.

The \$1,071 debt alleged in SOR ¶ 1.c is for cable equipment. When Applicant moved to his current residence in 2013, he returned his two cable boxes and closed his account. At an unspecified time, he became aware that his credit bureau report (CBR) showed this account as delinquent. He contacted the company to dispute the debt and was informed that his closed account listed a \$0 balance. (Tr. 39-41; Answer.) The account does not appear on the October 2015 CBR. SOR ¶ 1.c is resolved.

In 2013, Applicant moved to his current residence to decrease his monthly rent payments from \$1,100 to \$650. He does not have any current delinquent debt and lives within his means. (GX 2; Tr. 32-33.) He is considered to be “a conscientious and dependable employee.” (AX C.)

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"). 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.

Applicant's financial problems arose from circumstances largely beyond his control. Specifically, when Applicant's wife left him in 2010, he was unable to meet the household financial obligations on his income alone. Additionally, his wife refused to sign their 2009 joint tax return and would not give Applicant the necessary information to file on his own. Uncertain of how to resolve his tax-filing issues, he also failed to timely file his 2010 through 2013 tax returns.

Applicant acted responsibly and in good faith to resolve his financial issues and ensure he was not incurring any joint delinquent debt with his estranged wife by retaining the professional services of a credit-consulting firm and a tax attorney in 2014, over a year before the SOR was issued. He proactively set aside \$12,000 to pay off his tax debt. While Applicant arguably should have acted sooner to resolve his tax-filing issues, he relied on the tax attorney, to whom he paid \$350 a month, to reach an agreement with the IRS. Ultimately, concerned and frustrated that his financial issues remained unresolved, he took action. He resolved his delinquent personal loan (SOR ¶ 1.b) by contacting the creditor himself and entering into a repayment plan. He entered an offer in compromise with the IRS and made a large initial payment. He contacted the creditor of SOR debt 1.c and successfully disputed it.

“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).

While Applicant’s finances are not perfect, he has taken significant actions to regain control of his finances and has established a sufficient track record of debt resolution. 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 Army for six years, and held a clearance for part of that time. He has worked on the same defense contract for over 30 years, and has held a clearance the entire time. He took steps to resolve his financial issues, including the unalleged tax debt, over a year before the SOR was issued. He sincerely regretted not taking earlier action to resolve his tax-related issue. Applicant addressed the SOR debts in a responsible manner and has not incurred any recent delinquent debt. His conduct demonstrates that he has the good judgment, reliability, and trustworthiness required of those granted access to classified information. I am confident that he will continue his good-faith efforts to maintain his financial stability.

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. 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.c:

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