



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



In the matter of:

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ISCR Case No. 15-03227

Applicant for Security Clearance

Appearances

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

11/08/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges six delinquent debts including a mortgage account. While circumstances beyond his control damaged his finances, he did not provide enough documented progress paying his debts to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 23, 2014, Applicant completed and signed his Electronic Questionnaire for National Security Positions (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On February 20, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a

clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

On March 10, 2016, Applicant responded to the SOR. On July 8, 2016, Department Counsel was ready to proceed. On August 1, 2016, the case was assigned to me. On August 29, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 12, 2016. (HE 1) Applicant did not appear for his hearing. He was contacted at home; he elected to waive his right to a video teleconference or in-person hearing; and Applicant selected teleconference as the presentation media for his security clearance hearing. (Tr. 10) Applicant waived his right under the Directive to 15 days of notice of the date, time, and location of his hearing. (Tr. 10-11) The hearing was conducted as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; and all proffered exhibits were admitted without objection. (Tr. 18-19; Government Exhibits (GE) 1-4) On September 20, 2016, DOHA received a copy of the transcript of the hearing. Applicant was authorized until October 12, 2016, to submit post-hearing evidence. (Tr. 33) Applicant did not submit any post-hearing documentation. (HE 4, 5)

Findings of Fact¹

In Applicant's SOR response, he admitted all of the SOR allegations. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 30-year-old security specialist. (Tr. 6; GE 1) In 2004, he graduated from high school. (Tr. 6) In 2008, he joined the Army Reserve, and he served on active duty from 2009 to 2012. (Tr. 6, 25) He remained in the Army Reserve after leaving active duty. (Tr. 6) His military occupational specialty (MOS) is combat engineer (12B). (Tr. 6) He is a sergeant (E-5) (Tr. 6)

In 2009, he married, and in 2013, he divorced. (Tr. 7) He had one child from his first marriage, who is now five years old. (Tr. 22) In 2015, he married. (Tr. 7) He has three children in his household, who are ages 5 years (stepchild), 18 months, and two months. (Tr. 8, 23) He has a six-year-old child from a non-marital relationship. (Tr. 24) He does not abuse illegal drugs, and there is no evidence of security violations. (GE 1)

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

Financial Considerations

Applicant's spouse, who was employed in the Air National Guard, was placed on bed rest during her pregnancy, and Applicant took leave under the Family Medical Leave of Absence (FMLA) program to care for their children. (Tr. 20, 28) While he was on FMLA, he was not receiving pay, and his debts became delinquent. (Tr. 21) After his spouse had a baby, he resumed making payments to his creditors. (Tr. 21)

After leaving active Army service, Applicant attended college, and he lived on his VA benefits. (Tr. 26) In 2014, he obtained employment in security. (Tr. 26) He went on FMLA for about a year, and in December 2015, he obtained another security job. (Tr. 27) When his spouse works for the Air National Guard, Applicant stays home with their children. (Tr. 28-29) He works in his security employment on evenings and weekends while she watches the children. (Tr. 29) He has about \$400 monthly, after a recent reduction in his child support responsibilities, remaining to pay his debts. (Tr. 30)

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

SOR ¶ 1.a alleges a mortgage account with past-due monthly payments totaling \$129,080 on a balance of \$190,471. In 2007, Applicant purchased a residence in an urban area. (Tr. 47) In 2008 or 2009, Applicant left the residence; in 2009, he and his spouse separated; and in about 2010, she left the residence. (Tr. 47-48) The monthly payment was \$1,700, and Applicant used the Servicemember's Civil Relief Act to block the creditor from resolving the debt. (Tr. 49) No payments were made for about six years. (Tr. 49) Eventually, Applicant attempted to sell his home through a short sale; he offered a deed in lieu of foreclosure; and when those actions were unsuccessful, the home was sold at auction in July or August 2016. (Tr. 31-32, 49-51) After the auction he believed he owed over \$100,000 to the creditor. (Tr. 34) Applicant said he had the documentation from the auction sale, and he would provide it after the hearing. (Tr. 32) Department Counsel and I emphasized the importance of Applicant providing documentation showing efforts to resolve the debt and to show the magnitude and status of the debt. (Tr. 33, 43, 52, 59-60)

SOR ¶ 1.b alleges a child support debt placed for collection for \$6,001. Applicant's SOR response indicates on March 1, 2016, the child support arrearage was \$7,071; the monthly payment was \$535; and the monthly arrearage payment was \$65. Applicant said that on August 22, 2016, he went to court to contest his child support debt. (Tr. 17) The judge reduced the delinquency by \$3,000, and he reduced the monthly payment from \$595 to \$200. (Tr. 17) Department Counsel requested that Applicant provide the documentation showing a reduction in his child support debt such as the court order he alluded to during his statement. (Tr. 35, 43) He did not provide evidence of his child support payments.

SOR ¶ 1.c alleges a DOD debt placed for collection for \$255. SOR ¶¶ 1.d and 1.e allege two Department of Veterans Affairs (VA) debts placed for collection for

\$1,221 and \$2,430. Applicant believed the debts were associated with failing a class funded by the VA or DOD. (Tr. 35-38, 39-40) Applicant's SOR response included a February 8, 2016 letter from the VA indicating a payment plan was scheduled to begin on February 28, 2016, with monthly \$150 payments. Applicant said he was complying with the \$150 monthly payment plan. (Tr. 40) Department Counsel acknowledged that the documentation of record provided a basis for concluding the debts in SOR ¶¶ 1.c and 1.e were duplications of the debt in SOR ¶ 1.d, and he emphasized the importance of receipt of documentary evidence of the claimed \$150 monthly payments. (Tr. 40-41, 43) No documentary evidence of payments to the VA was provided.

SOR ¶ 1.f alleges a charged-off credit card debt for \$4,198. Applicant's SOR response included a February 10, 2016 letter from the creditor acknowledging receipt of \$150 and indicating a monthly payment plan was established with monthly \$150 payments. He said he was paying \$150 monthly to address this debt. (Tr. 39) The balance of the debt is \$5,207. (SOR response) Department Counsel requested documentation showing additional payments on the SOR ¶ 1.f debt such as bank statements showing debits from his account. (Tr. 43-47)

Applicant did not receive financial counseling. (Tr. 42) Applicant did not provide any documentation showing any payments to address any of the debts in the statement of reasons, except for one \$150 payment to the credit card debt in SOR ¶ 1.f.

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.

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 SCA, credit reports, SOR response, and hearing record. 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;² 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:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance

²The 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)).

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 presented some important mitigating information. Several circumstances beyond his control adversely affected his finances. Applicant was unemployed or underemployed for several years. His spouse was on bed rest during her pregnancy. However, he did not provide enough specifics about how these circumstances adversely affected his finances, and he did not show that he acted responsibly to address his delinquent SOR debts during the last five years.

SOR ¶¶ 1.c and 1.e are mitigated as duplications of the debt in SOR ¶ 1.d. He is not credited with mitigating the other SOR debts because he did not provide sufficient documentation showing progress paying the debts or a reasonable dispute of any debts, such as copies of letters to the SOR creditors and credit reporting companies disputing his responsibility for any debts. The only evidence of payments was a letter indicating he made one \$150 payment to the creditor in SOR ¶ 1.f.

There is insufficient evidence about why he was unable to make greater documented progress resolving any of 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.

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 those guidelines, but some warrant additional comment.

Applicant is a 30-year-old security specialist. In 2004, he graduated from high school. In 2008, he joined the Army Reserve, and he served on active duty from 2009 to 2012. He remained in the Army Reserve after leaving active duty, and he is a sergeant. His MOS is combat engineer. In 2015, he married, and he has five children under the age of seven. He does not abuse illegal drugs, and there is no evidence of security violations. Applicant is credited with mitigating the debts in SOR ¶¶ 1.c and 1.e.

The disqualification evidence is more persuasive. Applicant has a lengthy history of delinquent debt. Applicant's mortgage has been delinquent for five years. He estimated that he owed \$100,000 on the mortgage debt after the residence was auctioned. He also had delinquent debts owed for a credit card, child support, and to the VA. He did not provide copies of his tax returns, which would have documented his changes in income; he did not show that he acted responsibly to address his delinquent debts; he did not show how he reduced his expenses to conform with reductions in his income; he did not provide a current budget; he did not provide documentation showing a reasonable dispute of any SOR debts; he did not provide documented payment histories of non-SOR debts such as his rent or mortgage, student loans, vehicle loan, and credit card accounts. His failure to make greater documented progress resolving his SOR debts and to provide that documentation for inclusion in the record evidence shows lack of responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented financial progress is necessary to mitigate financial considerations 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 considerations security concerns are not mitigated. It is not clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility at this time.

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
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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