



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-04001
)	
Applicant for Security Clearance)	

Appearances

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

02/22/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances beyond his control, including natural disaster, divorce, and several periods of unemployment, Applicant experienced 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 October 9, 2014. On December 11, 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 February 29, 2016, attaching his attorney's entry of appearance, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 28, 2016, and the case was assigned to me on May 18, 2016. On July 6, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 27, 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 Exhibit (AX) A through R, which were admitted without objection. I kept the record open until August 10, 2016, to enable him to submit additional documentary evidence. He timely submitted AX S and T, which I have admitted without objection. DOHA received the transcript (Tr.) on August 4, 2016.

Procedural Matters

At an unspecified date prior to the hearing, Applicant ceased being represented by his attorney. While the attorney did not notify DOHA of his withdrawal of representation, Applicant stated affirmatively on the record that he was representing himself and was prepared to proceed.

At the hearing, on the Government's motion, and without objection, I amended the SOR, striking allegations 1.f, 1.g, 1.i, and 1.k.

Findings of Fact

The amended SOR consists of eight alleged debts: A mortgage loan deficiency balance of \$86,109 (SOR ¶ 1.j); a delinquent disaster relief loan of \$37,658 (SOR 1.e); and five delinquent consumer accounts totaling \$5,868 (SOR ¶¶ 1.a – 1.d, 1.h, and 1.l). In his Answer, Applicant admits four debts, denies two debts, and explains the status of each account. He admits in part and denies in part the deficiency balance and the disaster relief loan, and explains their current statuses. 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 39-year-old employee of a defense contractor in his current job since October 2014. He has been employed by defense contractors in various jobs since 2006. He enlisted in the Navy in May 2000, serving honorably on active duty until 2006, during which time he was deployed to Guantanamo Bay, Cuba, for almost two years. He reenlisted in the Navy reserve in late 2006, where he served honorably until 2010, with the final rank of E5. He received an associate's degree in 2011 and a bachelor's degree in 2014, and has completed several technical certification programs. He married in 2002, divorced in 2007, and has had sole custody of his only child since

March 2010. He has never received child support payments for his now 12-year-old son. (GX 1; Tr. 62-62; Tr. 23.)

Applicant's financial difficulties began in August 2005, when Applicant's apartment was hit by Hurricane Katrina, destroying all of his personal belongings. Applicant and his wife accepted a disaster relief loan of about \$40,000, with the intention of using the money to rebuild their lives, and working together to repay the loan. However, he and his wife separated in 2006, by which time they had spent between \$15,000 and \$20,000 of the loan. During the divorce proceedings, which were finalized in 2007, Applicant was court ordered to pay his wife approximately \$6,000 of the remaining proceeds of the loan, and became solely responsible for repaying the entire debt. (Tr. 37-42.) The \$37,658 debt alleged in SOR ¶ 1.e is for the balance owed on this loan.

Applicant began working for a defense contractor in August 2006. In 2009, he purchased a house with a Federal Housing Administration (FHA) loan. The FHA, part of the Department of Housing and Urban Development (HUD), provides mortgage insurance to approved lenders to protect them from mortgage-default-related losses. Under the terms of Applicant's loan, he was required to pay mortgage insurance premiums, both upfront and annually, to contribute to the FHA's mortgage insurance pool.¹

In April 2010, the contract Applicant was working on ended and he was laid off. He was unemployed from April until October 2010. He started working for another defense contractor in November 2010, and worked until September 2012, when he was again laid off. In about October 2012, he missed his first mortgage loan payment. In about December 2012, Applicant found work in another state, where his mother lived, however, he took a substantial pay-cut. He and his son moved in with Applicant's mother so that she could help with child care, and Applicant could commute to work. (GX 1; GX 2; Tr. 29-30.)

During this time, Applicant regularly traveled back to his house to maintain the upkeep and to try to rent it out. He attempted to negotiate a mortgage loan modification, but was unsuccessful. After seeking advice from a housing service, he again attempted to reach a modification, and was again denied. (Tr. 29-31.)

Between September and mid-October 2013, Applicant was again unemployed. He moved back into his house, and secured employment in October 2013, again in another state. The house was foreclosed upon in about October or November 2013 and Applicant moved out in December 2013. In about January 2014, Applicant moved to the area where he was employed, and worked until about May 2014, when he was again

¹ See generally: www.hud.gov and www.fha.com.

laid off. He was hired by his current employer in October 2014, and continues to work and reside in the same area. (GX 1; Tr. 30-31.)

The largest SOR debt is the \$86,109 amount allegedly owed by Applicant for a mortgage loan deficiency balance following the foreclosure of his house. (SOR ¶ 1.j.) However, Applicant thinks the \$86,109 is the amount he owed on the mortgage loan at the time he defaulted, and not a deficiency balance. (Tr. 35-36.) The account was closed in October 2013, and the house was sold in about April 2014 for an unknown amount. (GX 2; Tr. 34-37.) According to the FHA, when an FHA loan is foreclosed, the ownership of the house reverts to HUD as “real estate owned” or “REO.” HUD then lists the property for sale to the general public, and uses proceeds of the sale to recover as much of the losses as possible for the mortgage lender. The lender then files an insurance claim with FHA for reimbursement of the remaining losses.² The October 2014 CBR states in the comments line, “Grantor reclaimed collateral to settle defaulted mortgage.” (GX 3.)

Applicant has not received any demands for payment of this loan since the foreclosure. He contacted the lender several times to ascertain what, if any, balance he owed. Each time, he was routed to several different departments, including the foreclosure department and the REO department, but was not given any information about his account. (Tr. 29-31; Tr. 35-37.) The 2014 and 2015 CBRs show a balance of \$86,109, but show \$0 past due. (GX 2; GX 3.) Applicant has since disputed the debt, and the February and July 2016 CBRs show a closed account with a \$0 balance. (AX D; AX O.) This debt is resolved.

The second largest debt alleged in the SOR is the \$37,658 disaster relief loan debt alleged in ¶1.e. Applicant has been repaying this debt through garnishment since about May 2015, with monthly payments of \$500 to \$700, depending on his earnings. His 2014 and 2015 Federal tax refunds, totaling approximately \$9,000, were also applied to this debt. At the time Applicant began repayment, the debt had increased to approximately \$45,000. The balance as of June 2016 was \$30,623. He will repay this debt in full. (Tr. 38-40; AX O.)

The \$4,415 debt alleged in SOR ¶ 1.c is for a credit card used primarily for moving expenses. Although the creditor offered a lump-sum payoff, Applicant entered a \$50 monthly repayment agreement in order to maintain the account as open. The balance owed as of June 2016 was \$3,615. (AX P; Tr. 48-52.)

The \$506 debt alleged in SOR ¶ 1.a is for a cable bill. Applicant entered a \$50 monthly repayment agreement with the creditor, and this debt was paid. The \$86 debt alleged in SOR ¶ 1.b is for a telecommunications bill that Applicant has paid.

² See generally: www.hud.gov and www.fha.com.

The \$193 debt alleged in SOR ¶ 1.d is for a credit card. Applicant entered a \$50 monthly repayment agreement, and the debt was paid off. (AX Q through T; Tr. 44-47.)

The \$473 debt alleged in SOR ¶ 1.h is owed to an insurance company. Applicant contacted the company and negotiated a \$50 monthly repayment schedule. The company later rescinded its agreement, and the debt remains unpaid. Applicant will pay this debt in full. (Tr. 53-54.)

The \$195 debt alleged in SOR ¶ 1.i is for a city camera violation. Applicant contacted the appropriate enforcement authority and was told there is no record of the debt. Applicant disputed the debt and it has been removed from his CBR. (AX O; Tr. 53-55.)

Applicant recently opened two credit-card accounts with \$500 limits in an effort to rebuild his credit. One of the balances is about \$300 and the other is about \$120. He has not incurred any significant delinquent debt since 2013 and is current on all his ongoing financial obligations. (GX 3; AX O; Tr. 69-71.)

Applicant provided five letters of recommendation from his current supervisor, his hiring supervisor, two coworkers, and a disabled veterans' job placement specialist. Applicant is held in high regard and considered to be a hardworking, honest, and trustworthy person with deep integrity, who follows security protocols. (AX A.)

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 struggles arose from circumstances largely beyond his control. In 2005, he and his family were victims of Hurricane Katrina. In an effort to recover from the personal devastation of the storm, he and his wife accepted a disaster relief loan with the intention of repaying it together. Their subsequent divorce left

Applicant responsible for the entire debt, and ultimately for the sole care and financial support of their son. Applicant was unemployed from September 2012 until December 2012, from September 2013 until mid-October 2013, and from May 2014 until October 2014: a total of over 11 months. Each of these periods of unemployment significantly strained his financial circumstances, with a cumulative effect of Applicant's inability to catch up on payment of his delinquent debts in general, and on his mortgage loan in particular.

Applicant acted responsibly and in good faith by seeking and securing employment and furthering his education to broaden his employment opportunities. He paid off three debts, and is repaying another debt through an ongoing plan. He successfully disputed two debts, one of which shows a \$0 balance on his recent CBR, and the other of which has been removed. Before disputing his mortgage loan deficiency balance, Applicant made multiple attempts to ascertain what, if anything, he owed on the loan. Additionally, because his mortgage loan was an FHA loan, it is likely that there was no deficiency balance owed to the mortgage loan lender. Additionally, Applicant necessarily contributed to the offset of any losses sustained by the lender by paying upfront and monthly insurance premiums from 2009 until 2012.

Since May 2015, Applicant has been repaying SOR debt ¶ 1.e through garnishment, and the balance is notably reduced. The fact that Applicant is paying the debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug.26, 2010). However, payment by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006). Applicant has acted responsibly by managing to resolve the majority of his other delinquent debts while paying \$500 to \$700 a month through garnishment. He will continue to pay this debt until it is satisfied.

Applicant contacted the creditor of the \$473 debt alleged in SOR ¶ 1.h, the only unresolved debt, and attempted to negotiate a repayment plan. He will pay this debt in full. He has not incurred any significant delinquent debt since 2013. "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 Navy on active duty for six years and as a reservist for four years. He is a single parent who has never received child support payments. Applicant addressed all of the SOR debts in a responsible manner and has not incurred any recent delinquent debt. He is trusted and respected by his supervisor, coworkers, and the job placement specialist who placed him with his current employer. I am confident that Applicant 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.e; 1.h; 1.j and 1.l: For Applicant

Subparagraphs 1.f; 1.g; 1.i; and 1.k: Withdrawn

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