



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



In the matter of:

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ISCR Case No. 15-04421

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges five delinquent debts totaling \$43,501. He made \$147 monthly payments for eight months to address two SOR debts. He did not provide a plan to address his other SOR debts. Financial considerations security concerns are not mitigated. Applicant did not intentionally fail to disclose his delinquent debts on his November 7, 2014 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Personal conduct security concerns are mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 7, 2014, Applicant completed and signed his SCA. (Government Exhibit (GE) 1) On January 15, 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 Applicant, 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 Guidelines F (financial considerations) and E (personal conduct).

On February 16, 2016, Applicant responded to the SOR and requested a hearing. On August 8, 2016, Department Counsel was ready to proceed. On September 8, 2016, the case was assigned to me. On November 16, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 5, 2016. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant did not offer any exhibits; and all proffered exhibits were admitted without objection. (Tr. 14-15; GE 1-5) On December 13, 2016, DOHA received a copy of the transcript of the hearing. No post-hearing documents were provided.

Findings of Fact¹

In Applicant's SOR response, he admitted responsibility for the debts in SOR ¶¶ 1.a through 1.f, and he denied the allegation in SOR ¶ 2.a.

Applicant is a 75-year-old information technology problem solver, who has worked for his employer for 18 months. (Tr. 6, 8; GE 1) In 1961, he graduated from high school. (Tr. 6) He has completed one year of college. (Tr. 6) In 1966, he married, and his children were born in 1969, 1972, and 1976. (Tr. 7-8) He served in the Army from 1961 to 1964, and from 1977 to 1994. (Tr. 6-7) He honorably retired as a master sergeant. (Tr. 6-7) He has held a security clearance for about 20 years, and there is no evidence of security violations. (Tr. 20)

Financial Considerations

Applicant's annual pay from his defense contractor employment is \$40,000. (Tr. 8) He receives military retired pay, and he and his spouse receive social security benefits. (Tr. 16) He does not receive disability benefits from the Department of Veterans Affairs. (Tr. 18) His spouse handles the family bills. (Tr. 17) He is not aware of the status of their debts. (Tr. 18) His spouse keeps a budget. (Tr. 18)

Applicant's history of delinquent debt is documented in his credit reports, Office of Personnel Management personal subject interview (OPM PSI), and SCA. The status of his SOR debts is as follows:

SOR ¶¶ 1.a through 1.e allege five delinquent student loans that Applicant cosigned with his daughter for \$6,631, \$4,435, \$7,630, \$10,017, and \$14,788. SOR ¶ 1.f alleges that several student loans were charged off and transferred to recovery.

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

Applicant's daughter graduated from college in 2010. (Tr. 20) Around 2012, 2013, or 2014, Applicant's daughter filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code, and her student loans went into collections. (Tr. 22, 27-29) Creditors were frequently calling Applicant's home. (Tr. 23) About seven or eight months before his hearing, Applicant began making monthly payments on the debts in SOR ¶¶ 1.a and 1.b. (Tr. 21, 24; GE 5) Applicant's December 1, 2016 credit report shows that he has been paying \$88 monthly to address the debt in SOR ¶ 1.a and \$59 monthly to address the debt in SOR ¶ 1.b. (GE 5)

Applicant has not made any payments to the other SOR creditors. (Tr. 24) He has not talked to his daughter about paying her education loans in a year. (Tr. 24-25) He does not know how many student loans or the total amount of the debt he is responsible for paying. (Tr. 26) He said the total amount might be between \$70,000 and \$80,000. (Tr. 27) Applicant did not believe he could bring the student loans to current status. (Tr. 29) He did not describe a plan for addressing the debts in SOR ¶¶ 1.c through 1.f.

Personal Conduct

Section 26, Financial Record, of Applicant's SCA asks in the past seven (7) years: have "you had any bills or debts turned over to a collection agency?"; have you "been over 120 days delinquent on any debt(s)"; are "[y]ou currently delinquent on any Federal debt?"; have "you had any account . . . charged off . . . for failure to pay as agreed?"; are "you currently over 120 days delinquent on any debt(s)?" (GE 1) Applicant answered "no" to these five questions. Applicant's February 9, 2015 OPM PSI states that Applicant volunteered that he was cosigned on his daughter's student loans and that those loans were delinquent. (GE 2)

Applicant did not list the student loans on his SCA because he forgot about them at the time he was completing his SCA. (Tr. 23; SOR response) Applicant regretted his incorrect financial answers on his SCA.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules

of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is documented in his credit reports, SOR response, OPM PSI, 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 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. He is making payments to address SOR ¶¶ 1.a and 1.b. His spouse uses a budget. However, he did not provide enough specifics about his finances, and he did not show that he acted responsibly to address his delinquent SOR debts during his current employment and especially after he was notified of the existence of a security concern in the SOR.

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)).

Applicant is not credited with mitigating the SOR debts in ¶¶ 1.c through 1.f because he did not provide any documentation showing progress paying the debts, a reasonable dispute of these debts, or an inability to make monthly payments on at least one of these delinquent debts. He did not describe any plan to address the debts in SOR ¶¶ 1.c through 1.f.

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving more 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.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case. AG ¶ 16(a) provides, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, [or] determine security clearance eligibility. . . ." ³

Applicant answered "no" to financial questions in Section 26, Financial Record, of his November 7, 2014 SCA, which asks in the past seven (7) years: have "you had any bills or debts turned over to a collection agency?"; have you "been over 120 days delinquent on any debt(s)?"; are "[y]ou currently delinquent on any Federal debt?"; have "you had any account . . . charged off . . . for failure to pay as agreed?"; are "you currently over 120 days delinquent on any debt(s)?" (GE 1)

³The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant's February 9, 2015 OPM PSI states that Applicant volunteered that he was cosigned on his daughter's student loans and that those loans were delinquent. Applicant credibly stated he did not list five student loans on his SCA because he forgot about them at the time he was completing his SCA. Applicant refuted the allegation that he intentionally provided false information on his SCA. See *also* AG ¶¶ 17(a) and 17(f).⁴ Personal conduct 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 Guidelines E and 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 75-year-old information technology problem solver, who has worked for his employer for 18 months. In 1961, he graduated from high school. He has completed one year of college. He served in the Army from 1961 to 1964, and from 1977 to 1994. He honorably retired as a master sergeant. He has held a security clearance for about 20 years, and there is no evidence of security violations.

Applicant made \$147 monthly payments to address the debts in SOR ¶¶ 1.a and 1.b for about eight months, and he is credited with mitigating those two debts. His spouse uses a budget to address their expenses and debts.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant's daughter's student loan debts have been delinquent for several years. The delinquent debts in SOR ¶¶ 1.c through 1.e total \$32,435, and he

⁴AG ¶ 17(a) states, "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17 (f) states, "the information was unsubstantiated"

may have more than \$20,000 in additional student loan debt as alleged in SOR ¶ 1.f. He does not have an adequate understanding of his finances. He did not provide enough specifics about how any circumstances beyond his control adversely affected his finances, and he did not show that he acted responsibly to address his delinquent debts. His failure to make greater progress resolving his SOR debts shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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 v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Unmitigated financial considerations security 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 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 personal conduct security concerns are mitigated; however, financial consideration 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:	For Applicant
Subparagraphs 1.c through 1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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