



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-04560
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

08/08/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant has not resolved his delinquent debts, thus he has failed to mitigate the concern. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on September 16, 2014. On December 7, 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 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 December 29, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 23, 2016, and the case was assigned to me on March 14, 2016. On March 23, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for April 12, 2016. Counsel for Applicant entered his appearance on March 29, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A through Q, which were admitted without objection. I kept the record open until April 22, 2016, to enable him to submit additional documentary evidence. He timely submitted AX R and S, which I have admitted without objection. DOHA received the transcript (Tr.) on April 21, 2016.

Procedural Issues

On Department Counsel's motion, and without objection, I amended the SOR by striking ¶ 1.h, because it is a duplicate of SOR ¶ 1.e.

Findings of Fact

The SOR, as amended, alleges six delinquent debts totaling \$43,414, and a past-due mortgage loan of \$223,894. In his Answer, Applicant admitted three of the debts, which totaled \$6,895. However, while he admitted SOR ¶¶ 1.a and 1.e, he qualified that he had received an Internal Revenue Service Form 1099-C, Cancellation of Debt (1099-C) for these two debts, which he filed with his 2012 and 2014 tax returns, respectively. He admitted SOR ¶ 1.b, but stated that it is paid. He admitted and denied SOR ¶ 1.f, the delinquent mortgage loan, explained the background of how the debt was incurred, and stated that he is in ongoing negotiations to modify the loan. He denied SOR ¶¶ 1.c, 1.d, and 1.g. Applicant's admissions in his Answer are incorporated in my findings of fact.

Applicant is a 45-year-old senior functional analyst employed by a defense contractor since September 2014. He served honorably on active duty in the U.S. Navy from January 1990 until June 2014, and held a security clearance, at various levels, throughout his service. He received an associate's degree in 2011, and a bachelor's degree in 2013. He and his wife have two children, ages 14 and 12. (GX 1.)

Applicant's over 24-year military career included multiple deployments. From 2006 until 2010, he worked a two-months-on, two-months-off deployment schedule. (Tr. 44-46.) Due in part to the time demands of his work schedule, Applicant's wife was responsible for handling the couple's finances. (Tr. 46.) Applicant's wife underwent surgery on January 14, 2008, and spent three days in the hospital. The day after her release, she began experiencing severe complications, and was re-hospitalized for nearly a month. Applicant was deployed during her surgery, but briefly returned home on emergency leave following the complications. (Tr. 50.) After her release from the hospital, Applicant's wife was debilitated for nine to ten months. (Tr. 37-39.) During this time, Applicant's mother-in-law visited in order to care for his wife and their children. His mother-in-law also tried to help manage the household by paying some of the bills. (Tr. 35; Tr. 39-40.)

According to both Applicant and his wife, it was during this period of 2008 that they lost control of their financial management, to include missing two or three mortgage

payments. In his Answer, Applicant stated that his “wife contacted [the lender] after she realized the auto[matic] payment hadn’t been taken.” Applicant stated that in approximately April 2008, he learned that he and his wife had missed two or three mortgage payments, and learned that they were delinquent on other debts in the 2008-2009 timeframe. (Tr. 48). He stated, in summary, that after missing two payments, the mortgage loan was transferred to the lender’s foreclosure department. His wife made multiple attempts to reconcile the account, but was told not to make any payments until the lender contacted them. After about six months, the lender told Applicant and his wife that their “account was in a military hold/limbo status” where it would remain until the lender contacted them again. In 2010, Applicant and his family were stationed abroad, and the lender told Applicant that that the loan would remain on “military hold, with the Soldiers and Sailors Act deal” until they returned. (Tr. 68.) Applicant’s wife maintained contact with the lender until it went bankrupt in 2012. He and his wife had no contact with any entity regarding the mortgage loan until about April 2015, when they were contacted by the current lender. They began negotiations with the current lender, however, in December 2015, the loan was sent to the foreclosure department, where it is being held without processing while loan modification negotiations are ongoing.

The delinquent debts are reflected in Applicant’s credit bureau reports (CBRs) dated March 2015 and September 2014. (GX 3; GX 2.) Each of the debts is discussed below.

SOR ¶ 1.a, credit-card account, charged off for \$5,876. The date of last activity was August 2010. Applicant produced with his Answer a 1099-C provided by the creditor. AX R shows that he included this income as required on his 2012 federal tax return. However, on March 18, 2016, Applicant filed a written dispute with the creditor, demanding validation of the debt, and stating that he did not recall having opened an account with the creditor. (AX C.)

SOR ¶ 1.b, medical bill for \$157. Applicant paid this bill in full on July 6, 2015. (AX O.)

SOR ¶ 1.c, credit-card account, charged off for \$5,162 in August 2008. On March 18, 2016, Applicant filed a written dispute with the creditor, with the same format as the dispute letter for SOR ¶ 1.a, demanding validation of the debt, and stating that he did not “recall having opened an account with” the creditor. (AX D.) However, he testified that he did, in fact, have a credit-card account with this creditor, and stated that he disputed the debt because he didn’t “recognize the amount.” He does not know what became of this account, but he no longer has the card. (Tr. 63.)

SOR ¶ 1.d, vehicle loan, charged off for \$30,033 in April 2009. This debt was incurred by Applicant for a truck loan. He testified that he is unsure when the account became delinquent. From July 2010 until May 2014, Applicant and his family were living abroad, and the truck was left in military storage in the United States. Upon returning to the United States in 2014, he eventually began receiving his mail regularly, which included a notice of delinquency and a demand for Applicant to contact the creditor. The creditor demanded full payment or the truck would be repossessed. Applicant was unsuccessful in negotiating a repayment schedule and was unable to pay the balance.

The truck was repossessed and sold at auction in September 2015, with a deficiency balance owed of \$14,897. (AX E.). (Tr. 80-84.) Applicant produced a 1099-C provided by the creditor to be filed with his 2015 federal tax return. (AX E.) He testified that he provided a copy of the form to his tax preparer, and that the income would be included when he timely filed his 2015 tax return. (Tr. 64-65.) However, he did not provide a copy of his 2015 tax return with his post-hearing submission.

SOR ¶ 1.e, store-issued credit-card account, charged off for \$862 in September 2010. The date of last activity on this consumer account was December 2007. Applicant produced a 1099-C provided by the creditor. AX S shows that he included this income as required on his 2014 federal tax return. However, on March 18, 2016, Applicant filed a written dispute with the creditor, with the same format as the dispute letters for SOR ¶¶ 1.a and 1.c, demanding validation of the debt, and stating that he did not “recall having opened an account with” the creditor. (AX D.)

SOR ¶ 1.f, mortgage loan, past due for \$223,894. GX 2 reflects that the date of last activity on this debt was November 2007, several months before Applicant’s wife’s problematic surgery. Applicant stated in his Answer and testified that they have been in negotiations with the mortgage loan creditor for a loan modification. AX G, dated March 1, 2016, is the first page of a cover letter for a loan modification agreement, which highlights some of the terms of the agreement. The letter states that the modification agreement must be signed by Applicant and his wife and received by the lender on or before March 11, 2016, and that the first monthly payment of \$3,300 is due on April 1, 2016. The following exchange occurred during Applicant’s testimony:

Applicant’s Attorney: And you have offered Exhibit G, which is proof of a loan modification?

Applicant: Yes, sir.

Applicant’s Attorney: And is that, indeed, what occurred on this property?

Applicant: That is.

Applicant’s Attorney: And with the modification, what is going to happen...if you know?

Applicant: Payments are going to continue but increase.

However, during cross-examination, it came to light that Applicant had not signed the agreement nor had he made the first payment. He stated that despite the April 1, 2016, deadline, the modification offer was extended until May 1, 2016. Applicant initially thought that the modification would include waiving of the interest that had accrued over the multiple years of non-payment, however, this did not occur. Instead, the mortgage loan balance went from \$556,593 in September 2014 to approximately \$621,000 in March 2016, with monthly payments that would be higher than what Applicant was initially required to pay. Applicant stated that he will likely not agree to the terms of the modification, and the mortgage loan will be foreclosed or the house will be sold in a short sale. (Tr. 70-71; Tr. 85.) Neither Applicant nor his wife refuted that the mortgage

loan went delinquent in 2007, prior to her surgery. Applicant did not provide any information about the status of this debt in his post-hearing submission.

Between 2006 and 2010, when the majority of the debts alleged in the SOR were incurred, Applicant's wife was primarily responsible for managing the couple's finances. (Tr. 46.) However, Applicant became aware of the delinquent mortgage in April 2008 and other unpaid debts soon thereafter, stating "after she was ill for a little while, I started realizing that stuff wasn't getting paid." (Tr. 48.)

Applicant and his wife testified that they now regularly discuss their finances, and that they maintain their budget using a spreadsheet. (Tr. 41; Tr. 59.) On March 22, 2016, Applicant and his wife completed a one-hour, online credit-counseling course. He testified that he learned, "[Y]ou actually have to constantly watch your account for frivolous spending" and to verify that "payments are actually being made, especially automated payments." (Tr. 59.) Applicant did not submit a copy of their budget.

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 admissions, corroborated by the record evidence, establish 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 incurred the delinquent SOR debts between 2006 and 2010. He and his wife experienced a tumultuous nine to ten month period in the aftermath of her January 2008 surgery, and some of these delinquencies may be attributable to this event. However, the date of last activity on the delinquent mortgage account alleged in SOR ¶ 1.f was November 2007, and the credit-card debt in SOR ¶ 1.e was charged off in December 2007, prior to the surgery. The credit-card account in SOR ¶ 1.a was last active in August 2010, and the debt in SOR ¶ 1.b was incurred in September 2014, well after her recovery. Applicant's truck was repossessed in 2015.

Applicant became aware that his mortgage loan was delinquent in April 2008, and that other bills were delinquent in the 2008-2009 timeframe. Yet, his delinquent mortgage loan remains unresolved and the debt continues to grow. He has not entered into the loan modification agreement and is not likely to do so. There is no record evidence that Applicant filed the 1099-C with his 2015 taxes for his charged-off truck loan of \$14,897. While Applicant filed 1099-C's with his tax returns as required for SOR debts 1.a and 1.e, having his debts cancelled is not the same as repaying his creditors, and therefore does not merit the same level of mitigation. He has repaid only one creditor - for the \$157 debt alleged in SOR ¶ 1.b. "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.) Applicant's

conduct cannot be construed as “a good-faith effort to repay creditors or otherwise resolve debts.”

While Applicant disputed three of his debts on the basis that he did not recall ever having accounts with the creditors, the record evidence shows that Applicant did in fact have accounts with each of them. Additionally, Applicant had already received and filed 1099-C's from two of the creditors. Clearly, Applicant did not have a legitimate basis to dispute these debts.

Applicant's one-hour online credit-counseling session less than three weeks before the hearing, offers little in the way of mitigation. While Applicant and his wife testified that they have a budget, they did not provide a copy of it. Applicant offered no plan for resolving his delinquent mortgage should the loan modification not occur, other than stating that the house would be sold in a short sale or foreclosed. As Applicant's debts remain unresolved, and there is no stated plan to resolve them, there is no indication that his financial problems are under control. Applicant has failed to meet his burden of production or persuasion. None of the mitigating conditions 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's 24-year military career, during which he maintained a security clearance, is commendable. However, through intention, indifference, or ineptitude, Applicant failed to resolve his delinquent accounts. His substantial delinquent mortgage loan remains outstanding. He has not shown that his finances are under control.

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

not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has not 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): AGAINST APPLICANT

Subparagraphs 1.a – 1.g:	Against Applicant
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Subparagraph 1.h:	Withdrawn
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Conclusion

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

Stephanie C. Hess
Administrative Judge