



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-04553
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 28, 2014. On November 30, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. 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 the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 14,

2016, and the case was assigned to me on May 2, 2016. On May 12, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 6, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on June 13, 2016.

I kept the record open until July 11, 2016, to enable Applicant to submit additional documentary evidence. He timely submitted AX C through G, which were admitted without objection. When he submitted AX C through G, he indicated that additional evidence was forthcoming. I subsequently extended the deadline for submitting additional evidence to September 6, 2016, but he did not submit any additional evidence.

Findings of Fact¹

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.j. He denied SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.h, and 1.m. He stated that he was "not sure" about SOR ¶¶ 1.d, 1.g, 1.i, 1.k, and 1.l. He did not admit or deny SOR ¶ 1.n. I have treated his responses as denials of SOR ¶¶ 1.b-1.i and 1.k-1.n. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 51-year-old senior security engineer employed by defense contractors since March 2014. He previously worked for defense contractors from July 1996 to November 2000 and from April 2002 to March 2014. He has held a security clearance since May 2007.

Applicant graduated from college in December 1989 with a bachelor's degree. He is in a master's degree program and needs about 35 credits to complete it. (Tr. 40.) He married in March 1995. His wife passed away in October 2015. He has two sons, ages 26 and 20, who live with him.

Applicant's wife was employed by an investment firm until she began having pulmonary problems in 1998 and was unable to continue working. She began receiving disability pay, which was about half of her previous salary. In 2004, she was diagnosed with severe sarcoidosis that required a double lung transplant, which was completed in 2005. Although Applicant had medical insurance, he incurred uninsured expenses, especially in post-transplant care and medications. His wife was hospitalized for a month. The surgery and post-transplant care were performed at a specialized medical facility that was a considerable distance from their home. Applicant's wife needed to rent an apartment near the hospital for about three and a half months of daily medical appointments.

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Applicant's father passed away in August 2005, and his mother passed away in February 2006. He incurred unexpected expenses to attend their funerals and resolve their estates. (Answer to SOR.)

In January 2010, Applicant's wife was diagnosed with cancer. She was hospitalized until May 2010, and received frequent follow-up treatment until 2012, causing them to incur additional uninsured medical expenses and transportation expenses. Applicant took periods of leave without pay to care for his wife until she recovered. Her health continued to slowly decline until she passed away in October 2015. (Answer to SOR; Tr. 33-36.)

Applicant estimated that he had out-of-pocket expenses of \$15,000 to \$20,000 per year from April 2004 until his wife passed away in 2015. (Tr. 49-51.) His credit bureau report (CBR) from January 2007 reflected 40 judgments entered against him between 2001 and 2006, many of them for medical debts. Twenty judgments were listed as satisfied, one was listed as appealed, and the status of 19 was listed as unknown. (GX 2 at 4-12.) The judgments are not reflected in his subsequent CBRs and are not alleged in the SOR.

The SOR alleges that Applicant failed to pay his federal taxes for "at least" tax years 2008 and 2009, and that a federal tax lien for about \$18,241 was filed against him in 2012 and remains unpaid. (SOR ¶¶ 1.a and 1.b). He testified that he and his wife did not file tax returns for tax years 2005 to 2008. Their failures to file returns and pay the taxes due resulted in several tax liens being filed against them.² (Tr. 58.) Applicant's CBRs from September 2014, March 2015, and November 2015 reflected the tax lien alleged in SOR ¶ 1.b as well as two other tax liens for \$13,358 and \$72,981 that were satisfied in June 2013 and May 2014. (GX 3 at 4; GX 4 at 4; GX 5 at 1-2.) In 2012, Applicant made an installment payment agreement with the IRS to pay the delinquent taxes for 2008 at the rate of \$218 per month, and he has made the payments as agreed. As of May 18, 2016, he owed \$5,873 for 2008. (Tr. 59; AX A; AX C.)

In addition to Applicant's federal tax debt, the SOR alleges 12 other delinquent debts, which are reflected in his CBRs from January 2007 (GX 2), September 2014 (GX 3), March 2015 (GX 4), and November 2015 (GX 5.) The status of these debts is set out below.

² The judgments reflected in Applicant's January 2007 CBR and his failures to timely file his tax returns for tax years 2005 to 2008 are not alleged in the SOR and may not be an independent basis for revoking his security clearance. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the judgments and his failures to timely file his tax returns for these limited purposes.

SOR ¶¶ 1.c and 1.n, cable service bill (\$113-\$116). SOR ¶ 1.c alleges the original creditor and SOR ¶ 1.n alleges the collection agency for the same debt. In Applicant's answer to the SOR and at the hearing, he stated that he was a current customer of the cable company and that he paid his bill every month. He testified that he did not know why the debt was listed on his CBRs as delinquent, but he had not contacted the creditor or the credit bureaus to dispute the information in the CBR. (Tr. 59-60.) His November 2015 CBR reflects that the account became delinquent in June 2009. (GX 5 at 2.) After the hearing, he submitted his June 2016 bill from the cable company, and it reflects a past due amount of \$95.93. (AX D.) The debt is not resolved.

SOR ¶ 1.d, delinquent rent bill (\$155). In his answer to the SOR, Applicant stated that he was "not sure" about this debt. His November 2015 CBR reflected that the account became delinquent in December 2013. (GX 5 at 2.) At the hearing, he testified that the debt was incurred for his son's lodging at college, that it had been resolved, and that he could provide documentation showing it was resolved. (Tr. 60.) However, he did not submit any documentation to support his testimony.

SOR ¶¶ 1.e and 1.f, medical bills (\$55 and \$92). In his response to the SOR and at the hearing, Applicant stated that these bills were from his doctor and had been paid in full. (Tr. 60.) They are unrelated to his wife's medical problems. He did not provide any evidence of the circumstances under which he incurred these debts. His November 2015 CBR reflected them as having become delinquent in August and December 2013 and as unpaid. (GX 5 at 2.) After the hearing, he submitted evidence that the bills were paid on July 11, 2016, the deadline set at the hearing for submitting additional evidence. (AX E; AX F.)

SOR ¶ 1.g, collection account (\$190). In his answer to the SOR, Applicant stated that he was "not sure" about this debt. His March 2015 CBR reflected that the date of last activity on this account was in October 2009. (GX 4 at 2.) At the hearing, he testified that he contacted the creditor by telephone about three months before the hearing, but that he had not received a response. (Tr. 60, 62.)

SOR ¶ 1.h, telephone bill (\$60). In his answer to the SOR and at the hearing, Applicant stated that this debt had been paid and that he was a current customer of this provider. (Tr. 60.) His November 2015 CBR reflected that the debt first became delinquent in April 2009 and that the account was closed by the provider. (GX 5 at 5.) After the hearing, he provided evidence of a \$251 payment to this creditor on July 11, 2016, the deadline set at the hearing for additional evidence. (AX G.)

SOR ¶ 1.i, collection account (\$554). In his answer to the SOR, Applicant stated that he was "not sure" about this debt. His September 2014 CBR reflected that a bank was the original creditor, the date of last activity was in October 2008, and it was referred for collection in November 2013. (GX 3 at 9.) At the hearing, Applicant testified that he contacted the collection agency about three months before the hearing, and the agency had responded, but he had not taken any further action. He did not state what, if

anything, the collection agency offered. (Tr. 62-63.) He did not provide any documentation regarding the status of this debt. It is unresolved.

SOR ¶ 1.j, student loan past due for \$561. In his answer to the SOR, Applicant admitted this debt and stated that he had made arrangements to pay it on March 22 and April 7, 2016. (Tr. 64.) After the hearing, he submitted evidence of a \$197 payment on March 23, 2016, but no evidence of an April payment. (AX C.)

SOR ¶ 1.k, charged-off loan for a time-share property (\$15,661). Applicant's September 2014 CBR reflected that this debt was charged off in September 2010. In his answer to the SOR, Applicant admitted this debt and promised to reach out to the creditor and arrange to pay it. At the hearing, he testified that he had contacted the creditor about three months before the hearing, but he had not received a response. (Tr. 65.) The debt is not resolved.

SOR ¶ 1.l, collection account (\$451). In his answer to the SOR, Applicant stated he was "not sure" about this debt. His September 2014 CBR reflected that the debt was referred for collection in May 2010. (GX 3 at 9.) As of the date of the hearing, he had not attempted to contact the creditor or dispute the debt. (Tr. 67.)

SOR ¶ 1.m, traffic ticket (\$250). In his answer to the SOR, Applicant stated he was "not sure" about this debt. His September 2014 CBR reflected that it was referred for collection in April 2012. (GX 3 at 9.) At the hearing, he testified that it had been paid and he had proof of payment. (Tr. 67.) He did not submit any documentation to support his testimony.

A friend who has worked with Applicant in media technology for their church for more than ten years submitted a letter describing him as a team player, devoted husband and father, and a skilled technician. (AX B.) Applicant's security officer, who retired from the Navy after 21 years of service and has worked for the Navy as a civilian since 1999, has known Applicant since around 1998. They attend the same church and have become good friends. He described Applicant as a "stand-up guy," deeply religious, devoted to his family, and trying to meet his financial obligations. (Tr. 22-28.)

Applicant was earning about \$90,000 per year until September 2015, when he changed jobs and began earning about \$130,000 per year. (Tr. 44-46.) His net monthly income is about \$7,000, his expenses and debt payments (including payments to the IRS) total about \$5,312, and he has a net monthly remainder of about \$1,788. (Tr. 70-76.)

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 § 2.

Eligibility for a security clearance is predicated upon the applicant 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.” 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

The evidence indicates that the debts alleged in SOR ¶¶ 1.a and 1.n are duplicates. The creditor alleged in SOR ¶ 1.n is the collection agency for the original debt in SOR ¶ 1.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.n in Applicant's favor.

Applicant's admissions, corroborated by the CBRs, 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 disqualifying condition in AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same") is not applicable because his failures to timely file tax returns was not alleged in the SOR.

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.

AG ¶ 20(a) is partially established. Applicant's delinquent debts are numerous, and recent. However, the tax debt in SOR ¶¶ 1.a and 1.b, and the consumer and medical debts alleged in SOR ¶¶ 1.c, 1.g, 1.h, 1.i, 1.k, 1.l, and 1.n were incurred and became delinquent under unusual circumstances making them unlikely to recur. Applicant's wife was battling serious medical problems, he and his wife were under physical and mental stress, and they were incurring substantial medical expenses and other incidental expenses related to her medical treatment. However, the debts alleged in SOR ¶¶ 1.d-1.f, 1.j, and 1.m were unrelated to her illness and medical treatment.

AG ¶ 20(b) is partially established. The illness of Applicant's wife and the expenses related to it were circumstances largely beyond his control. However, the medical debts alleged in SOR ¶¶ 1.e and 1.f were for Applicant's medical care and unrelated to his wife's illness. He did not provide any evidence showing whether his medical debts were for routine medical care or emergencies beyond his control. He acted responsibly regarding his federal tax debt by contacting the IRS, entering into a payment agreement in 2012, and making the payments as agreed. He has not acted responsibly regarding his other debts. His wife's cancer treatment ended in 2012. His income dramatically increased when he began a new job in September 2015. He claimed that the debts in SOR ¶¶ 1.c, 1.d, and 1.n were resolved, but he submitted no documentation to support his claims. He has not contacted the creditor in SOR ¶ 1.l. He testified that he had a payment agreement for the debt in SOR ¶ 1.j and he provided proof of one payment, but no proof any subsequent payments. He did not contact the creditors in SOR ¶¶ 1.g, 1.i, and 1.k until three months before the hearing, well after he received the SOR. He did not pay the debts in SOR ¶¶ 1.e, 1.f, and 1.h until after the hearing.

AG ¶ 20(c) is not established. Applicant has not received financial counseling, and many of his delinquent debts remain unresolved.

AG ¶ 20(d) is established for SOR ¶¶ 1.a and 1.b, but not for the other delinquent debts. This guideline requires a showing of good faith. 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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of

qualifying for a security clearance. The evidence set out in the above discussion of AG ¶ 20(b), indicates that Applicant made one payment of the debt in SOR ¶ 1.j and paid the debts in SOR ¶¶ 1.e, 1.f, and 1.h to protect his security clearance, not because of a sense of obligation. The debts in SOR ¶¶ 1.c, 1.g, 1.i, 1.k, and 1.l are not resolved. The adjudicative guidelines do not require that Applicant resolve all the debts in the SOR, but they do require that he have a coherent, credible plan for resolving them and take substantial steps to implement it. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's last-minute resolution of a few debts and failure to document his claims that other debts have been resolved fall short of establishing a good-faith effort to resolve his financial problems.

AG ¶ 20(e) is not established. Although he was unsure of the status of several debts, he has not disputed any of them with the original creditors, the collection agencies, or the credit bureaus.

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 some warrant additional comment.

Applicant has worked for defense contractors and held a security clearance for many years, apparently without incident. He went through a period of serious physical, emotional, and financial stress from 2004 to 2015. He resolved many of the medical debts reflected in his January 2007 SCA. On the other hand, he submitted his most recent SCA more than three years ago and was aware that his delinquent debts were a security concern. He received a significant pay increase two years ago, and he now has a substantial monthly remainder, but he did not take his financial situation seriously until he realized that his security clearance was in jeopardy.

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 continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.b:	For Applicant
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Subparagraphs 1.c-1.m:	Against Applicant
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Subparagraph 1.n:	For Applicant
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Conclusion

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

LeRoy F. Foreman
Administrative Judge