



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-04600
)	
Applicant for Security Clearance)	

Appearances

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

09/21/2016

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 April 3, 2014. On December 9, 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 on March 24, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 25, 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 9, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit documentary evidence. I kept the record open until July 11, 2016, to enable him to submit documentary evidence. He did not submit any evidence. DOHA received the transcript (Tr.) on June 17, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.e, 1.f, 1.k, 1.m, and 1.q. He denied SOR ¶¶ 1.d, 1.l, and 1.s. He responded that he was “not sure” about SOR ¶¶ 1.a-1.c, 1.g-1.j, 1.o, 1.p, and 1.r; and I have treated these responses as denials. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 48-year-old information assurance analyst employed by a defense contractor since July 2013. He was employed by another defense contractor from November 2012 to July 2013, but he left by mutual agreement because he was unable to obtain a classified internet account. He served on active duty in the U.S. Navy from August 1998 to November 2012 and received an honorable discharge. He held a security clearance and eligibility for access to sensitive compartmented information while on active duty.

Applicant married in November 2000 and separated in September 2012. He and his wife have continued to live together in the same house, but not as husband and wife, because he cannot afford to rent an apartment, and his wife is disabled. (Tr. 25-26.) He has a 21-year-old daughter from a previous relationship. He and his wife have two children, ages ten and eight. His wife has a 17-year-old daughter from a previous relationship. The three younger children live with Applicant and his wife. (Tr. 28.)

Applicant attended a university from November 2012 until May 2015 and received an associate’s degree in network security. (Tr. 45-46; GX 1 at 9.) He financed his education with the GI Bill, and he has no student loans or educational debts.

The SOR alleges 19 delinquent debts totaling about \$30,000. The evidence concerning the debts is summarized below.

SOR ¶¶ 1.a-1.c, judgments filed in 2015 for \$3,096; \$2,031; and \$1,707. Applicant was unable to identify these debts at the hearing, and he has done nothing to investigate them. (Tr. 48-49.)

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

SOR ¶ 1.d, medical debt for \$111. Applicant testified that he believed this debt was paid by TRICARE, but he submitted no documentation of payment. (Tr. 50-51.)

SOR ¶ 1.e, department store debt, charged off for \$1,023. This account was opened in 2008 and used to purchase clothing and household items. Applicant testified that he fell behind on his payments in 2012. The collection agencies offered to settle the account, but none of their settlement offers were affordable. (Tr. 52-53.) The debt is not resolved.

SOR ¶ 1.f, department store debt, charged off for \$1,851. Applicant testified that this account had a zero balance when he deployed in 2010 and had reached its maximum limit when he returned, due to his wife's spending. He made a few payments and then could not afford to pay any more. (Tr. 53-54.) The debt is not resolved.

SOR ¶¶ 1.g and 1.h, credit-card accounts, placed for collection of \$3,105 and \$1,689. Applicant was unable to identify these debts, but he had not contacted the original creditors or collection agencies, and he has not disputed the debts. (Tr. 54-56.)

SOR ¶¶ 1.i and 1.j, credit-card accounts, placed for collection of \$609 and \$902. The same collection agency is involved in these two debts. Applicant contacted the collection agency, determined that the debts were valid, but did not accept a settlement offer because he could not afford to pay it. (Tr. 56-58.)

SOR ¶ 1.k, mortgage loan in foreclosure. This debt is a Department of Veterans Affairs real estate mortgage opened in April 2012 for \$241,400. The payments were past due for about \$1,465. Applicant's last payment was in April 2014. He testified that he obtained a loan modification around November 2013 that lowered his payments by about \$100, but he still could not afford them. The lender gave him six months without payments, which were added to the amount of the loan. When he could not resume making payments, the lender suggested a short sale. Applicant could not find a buyer, and foreclosure was initiated in August 2015. (Tr. 58-60; GX 4 at 6.) Applicant testified that he recently contacted the lender and was informed that he does not owe any money. (Tr. 83.) A credit bureau report from November 2015 reflects that the mortgage loan was paid and closed with a zero balance. (GX 4 at 9.)

SOR ¶ 1.l, military credit-card account, charged off for \$2,744. Applicant paid this debt in full in April 2014. (Attachment to SOR Answer.)

SOR ¶¶ 1.m and 1.n, department store debts, charged off for \$3,104 and \$2,031. Applicant admitted that these debts are valid, but he testified that he could not afford to pay them. He has not tried to resolve them. (Tr. 62-63.)

SOR ¶¶ 1.o, 1.p, and 1.r debts charged off for \$901, \$884, and \$698. These debts involve the same creditor. Applicant was unable to identify these debts but has made no attempt to investigate them. (Tr. 64.)

SOR ¶ 1.q, furniture store account, charged off for \$698. Applicant admitted this debt, but it is not resolved. (Tr. 65.)

SOR ¶ 1.s, credit-card account, placed for collection of \$3,399. Applicant denied this debt and testified that he had a credit card issued by this creditor but he closed it in 2008. He has not filed a dispute with the credit bureau. (Tr. 65-66.) The debt is not resolved.

Applicant's wife stopped working in 2008 to take care of her parents, who were in poor health. Both of her parents passed away within a year after she stopped working. She never returned to the workforce because of her disability. She suffers from pulmonary embolism, fibromyalgia, neuropathy, and diabetes. (Tr. 26-27; GX 1 at 23-24.)

Applicant testified that his financial problems began in 2011, when he received nonjudicial punishment in October 2011 for dereliction of duty. His punishment arose from his disagreement with his military superiors about the scope of his duties as an alternate security manager, and he believes that his punishment was unfair. (Tr. 31-35.) He was reduced from petty officer first class (pay grade E-6) to petty officer second class (pay grade E-5), which subjected him to discharge under the Navy "high-year tenure" rules that required a sailor with his years of service to hold a rate of petty officer first class or higher in order to remain on active duty. The reduction also lowered his pay from about \$4,200 per month to about \$3,200 month. (Tr. 36-37.)

After Applicant was discharged, he found a job with a defense contractor, earning less than \$2,000 per month. (Tr. 37.) He left this job by mutual agreement when he was unable to obtain a classified internet account. (Tr. 40; GX 1 at 11.) In his present job, his monthly income is about \$3,400. (Tr. 43.) He estimated that his monthly expenses are about \$2,400, which would leave him a net monthly remainder of about \$1,000, but he also testified that he is living paycheck to paycheck. He has no savings. (Tr. 67-70, 72-73.) He has consulted with a bankruptcy attorney, but he has not decided whether to file a bankruptcy petition. (Tr. 24, 67-68.)

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).

Applicant's admissions, his testimony at the hearing, and his credit bureau reports 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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant encountered some conditions that were beyond his control: his wife's disability and her excessive spending that resulted in the debt alleged in SOR ¶ 1.f. However, the primary cause of his financial problems was of his own doing. He was punished for dereliction of duty while in the Navy, which led to his reduction in rate, discharge from the Navy, and inability to find civilian employment with pay comparable to his Navy pay. He has acted responsibly regarding the military credit card (SOR ¶ 1.l) and his delinquent mortgage loan (SOR ¶ 1.k), but not regarding the other debts alleged in the SOR.

AG ¶ 20(c) is not established. Applicant has consulted with a bankruptcy attorney, but he has not sought or received financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.k and 1.l, but not for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant was unable to identify several debts alleged in the SOR, but he had done nothing to investigate them and he has not filed disputes with any creditors, collection agencies, or 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 and I have considered the factors in AG ¶ 2(a). 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

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

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

Subparagraphs 1.a-1.j:	Against Applicant
Subparagraphs 1.k and 1.l:	For Applicant
Subparagraphs 1.m-1.s:	Against Applicant

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.

LeRoy F. Foreman
Administrative Judge