



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-04772
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Don Scott, Esq.

01/05/2017

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 (SCA) on September 23, 2014. On January 17, 2016, 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 February 3, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 20,

2016, and the case was assigned to me on September 7, 2016. On October 21, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 15, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and presented the testimony of three other witnesses. He did not submit any documentary evidence. I kept the record open until December 16, 2016, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, consisting of a cover letter, one enclosure (the SOR), and Attachments A through E, which were admitted without objection. DOHA received the transcript (Tr.) on November 23, 2016. The record closed on December 17, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.d-1.g, 1.i, and 1.m-1.o. He denied SOR ¶¶ 1.b, 1.c, 1.h, and 1.j-1.l. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 42-year-old analyst and subject-matter expert in electronic warfare. He has been employed by a defense contractor since March 2014. He served on active duty in the U.S. Navy from January 1993 to February 2013, when he retired as a petty officer first class (pay grade E-6). He was a part-time, self-employed independent contractor from August 2013 to March 2014, when he began his current job. He received a security clearance when he completed boot camp in 1993. He received a top secret clearance and eligibility for access to Sensitive Compartmented Information (SCI) in March 2003, and he retained his clearances when he began working as a contractor employee. (Tr. 43.)

Applicant married in April 1995 and separated in January 2010. He and his wife have three children, ages 21, 19, and 16. He and his 21-year-old son have the same name. Applicant uses the suffix "Sr." to distinguish his name from his son's.

The SOR alleges 15 delinquent debts that are reflected in Applicant's credit bureau reports (CBRs) from October 2014 (GX 4 and December 2015 (GX 3.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: cell phone account, delinquent since December 2011, placed for collection of \$320 in March 2014. Applicant admitted this debt in his answer to the SOR. The debt is a fee for early termination of service. In a personal subject interview (PSI) in February 2015, Applicant told the investigator that he was in the process of setting up a payment plan for this debt. (GX 2 at 10.) At the hearing, he admitted the debt but did not comment on any plan to resolve it. (Tr. 53-54.) In his post-hearing submission, he stated that he was making payments on the debt, but he did not provide any documentation of payments. Applicants who claim that debts are being paid are

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

expected to support their testimony with documentary evidence. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). The debt is not resolved.

SOR ¶ 1.b: telecommunications account, delinquent in August 2014, placed for collection of \$300 in October 2014. Applicant denied this debt in his answer to the SOR. He testified that he does not have cable service with the provider alleged in the SOR. (Tr. 60-61.) He filed a dispute with the collection agency, and the debt has been removed from his credit record. (AX A, Attachment B.)

SOR ¶ 1.c: credit card account, sold to another lender and placed for collection of \$512 in January 2011. Applicant denied this debt in his answer to the SOR. He disputed the debt with the credit bureau, claiming that someone else opened the account in his name. Reinvestigation by the credit bureau is in progress. (Tr. 49, 61-62; AX A, Attachment A.) The debt is not resolved.

SOR ¶¶ 1.d-1.g: student loans, past due for \$112 with balance of \$1,858; past due for \$194 with balance of \$3,210; past due for \$237 with balance of \$3,455; and past due for \$109 with balance of \$1,845. Applicant has consolidated his student loans and he was scheduled to resume making payments on December 11, 2016, five days before the record closed. (AX A, Attachment C.) He did not submit any evidence showing that the December 11, 2016 payments were made.

SOR ¶ 1.h: telecommunications account, delinquent in December 2014, placed for collection of \$3,715 in November 2015. Applicant denied this debt in his answer to the SOR. He testified that this debt is for his son's cellphone. (Tr. 64-65.) He did not provide any documentation supporting his belief that the debt is for his son's cellphone. The December 2015 CBR reflects that this is an individual account in Applicant's name, it was opened in July 2014, and it became delinquent in December 2014. (GX 3 at 4.) The December 2016 CBR reflects that he has disputed the debt on the ground that it is not his account and belongs to a relative or another person with the same or similar name. Reinvestigation by the credit bureau is in progress. (AX A, Attachment A.) The debt is not resolved.

SOR ¶ 1.i: time-share property, past due for \$1,668, last payment in August 2010, balance due of \$10,461. Applicant testified that he and his wife used this property until they separated. When they separated, he sent her money to pay several bills, including this debt, but she did not make the payments. (Tr. 51-52.) Applicant testified that he had not contacted this creditor. (Tr. 67.) After the hearing, he received a letter from the creditor, informing him that the contract was cancelled and collection activity has been stopped. (AX A, Attachment D.)

SOR ¶ 1.j: credit card account, placed for collection of \$762 in July 2008. Applicant denied this debt, contending that he never had an account with this creditor. (Tr. 49-50.) In his February 2015 PSI and at the hearing, he stated that he had disputed the debt with the collection agency and asked for documentation of the debt. He submitted no written documentation of a dispute. The debt was reflected in the October

2014 CBR, but not in the CBRs for December 2015 and December 2016. The Fair Credit Reporting Act (FCRA) would prohibit reflecting this debt on any CBRs after July 2015.² Thus, it is not clear from the CBRs whether the debt was deleted from his credit record under the FCRA or his dispute was resolved in his favor. Since Applicant has the burden of persuasion, I have resolved this allegation against him.

SOR ¶ 1.k: telecommunications account, placed for collection of \$572 in July 2011. Applicant testified that this debt was for unreturned equipment, and that he contacted the provider, who agreed that the equipment had been returned. (Tr. 48-49.) He testified that he returned the equipment in a pre-addressed and prepaid box supplied by the provider. (Tr. 79.) He has not filed a dispute with the credit bureau. The debt was reflected in the October 2014 CBR, but not the CBRs from December 2015 and December 2016. The debt is too recent to have been deleted from Applicant's CBRs under the FCRA. The fact that it was not reflected in the more recent CBRs indicates that it was resolved. (GX 3; AX A, Attachment A.)

SOR ¶ 1.l: delinquent medical bill for \$110. Applicant denied this debt in his answer to the SOR. The SOR alleges that the debt was reflected in a CBR dated May 5, 2015, but the record contains no CBR bearing that date. There is no evidence in the record supporting SOR ¶ 1.l, and it is resolved for Applicant.

SOR ¶ 1.m: foreclosed home mortgage, with unpaid balance of \$195,000. The SOR incorrectly alleges that this debt was a deficiency balance of \$195,000 after foreclosure. The October 2014 CBR, on which the SOR was based, reflects that there was a \$195,000 balance due on the mortgage loan. (GX 4 at 3.) Applicant testified that he was reassigned in 2009, was unable to rent or sell his home, was maintaining two households because his family had already moved to his new duty station, and he was unable to make the payments on the mortgage loan. The property was foreclosed in December 2009, sold in January 2010 for \$195,000, and sold again in June 2010 for \$229,900. (Tr. 45-46; AX A, Attachment E.) The debt is not reflected in the CBRs from December 2015 and December 2016 (GX 3; AX A, Enclosure A.) The debt is resolved.

SOR ¶ 1.n: travel club, placed for collection of \$1,103 in September 2012. In his post-hearing submission, Applicant stated that this debt was linked to the time-share debt in SOR ¶ 1.j, and was cancelled. He provided no documentation of the linkage. The debt is not resolved.

SOR ¶ 1.o: delinquent medical bill, placed for collection of \$886 in April 2010. Applicant admitted this debt in his answer to the SOR, but at the hearing he testified that he did not recognize it. He also testified his medical insurance covered his

² Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

medical bills. (Tr. 52-53.) He has not disputed the debt with the original creditor, the collection agency, or the credit bureau. The debt is not resolved.

Applicant earns about \$75,000 per year. His wife is a federal employee, earning about \$52,000. Applicant pays child support of \$800 for his youngest child, \$500 for her college tuition, and the car insurance for his two youngest children. (Tr. 55-56.) He has two retirement accounts totaling about \$30,000. His net monthly remainder after paying all his bills is about \$500. (Tr. 55-56, 59.)

One of Applicant's co-workers, a retired U.S. Navy officer who has held a top secret clearance and SCI eligibility for about 35 years, described Applicant's character as "above board." He has known Applicant for about nine years. He has no doubts about Applicant's judgment or trustworthiness in dealing with classified information. He was unfamiliar with the SOR and unaware of Applicant's financial problems. (Tr. 22-28.)

Another co-worker, who retired from the U.S. Navy as a senior chief petty officer (pay grade E-8) after 26 years of service, considers Applicant to be "very professional, very knowledgeable." This co-worker testified that he had no reason to question Applicant's financial responsibility, but he admitted that he was unaware of the details of Applicant's financial history. (Tr. 29-33.)

The lead contract employee on Applicant's current project retired from the Navy as a commander (pay grade O-5) and holds a top secret clearance and SCI eligibility. He worked with Applicant as a peer and recently became the lead contractor. He has known Applicant since about 2013 and has daily contact with him. He considers Applicant careful with classified material and has no concerns about his financial responsibility. He was not familiar with the allegations in the SOR. (Tr.34-40.)

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 in his answer to the SOR, his testimony at the hearing, and his 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 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 recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant encountered conditions largely beyond his control: a marital breakup and the failure of his wife to pay certain bills as agreed. He also suspects possible fraud, and possible mistaken identity causing his son's debts to be reflected in his CBRs. However, possible fraud is not a sufficient basis for finding mitigation under AG ¶ 20(b). Actual fraud, established by substantial

evidence, may provide mitigation in appropriate circumstances, but Applicant has presented no evidence to support his suspicions. ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012.) Furthermore, he has not acted responsibly. The home mortgage debt alleged in SOR ¶ 1.m was resolved by the foreclosure sale in 2010. However, he did not begin to seriously address his other delinquent debts until he was confronted with them in the February 2015 PSI. He presented no documentation at the hearing, and most of his activity regarding the debts occurred during the 30 days after the hearing.

AG ¶ 20(c) is not fully established. Applicant has obtained legal advice, but he has not sought or obtained financial counseling within the meaning of this mitigating condition. He recently took significant steps to gain control of his finances, but the evidence falls short of “clear indications” that his financial problems are being resolved.

AG ¶ 20(d) is established for the debt in SOR ¶ 1.k, but not for the other debts alleged in the SOR. “Good faith” within the meaning of this mitigating condition 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. Applicant testified that he was making payments on the cellphone debt in SOR ¶ 1.a, but he provided no documentary evidence showing the dates, amounts, or frequency of payments. He recently made payment agreements for his delinquent student loans in SOR ¶¶ 1.d-1.g, but provided no evidence of payments as of the date the record closed, and too little time has passed to establish a track record of timely payments on the student loans. He admitted at the hearing that he had not yet taken any action to resolve the time-share debt in SOR ¶ 1.i or the travel-club debt in SOR ¶ 1.n. The creditor’s decision to abandon collection efforts on the debt in SOR ¶ 1.i does not establish a good-faith effort to resolve it.

AG ¶ 20(e) is not fully established for the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.h, because Applicant provided no documentary evidence of the basis for disputing the debts. Although Applicant denied the debts alleged in SOR ¶¶ 1.j and 1.k, he submitted no evidence that he filed disputes with the original 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline(s), but some warrant additional comment.

Applicant served honorably in the U.S. Navy for many years. He has held high-level clearances for most of his military and civilian service, apparently without incident. He is highly regarded by his co-workers, but the probative value of their testimony is diminished by their unfamiliarity with the allegations in the SOR. He neglected his financial responsibilities for many years, and he did not take significant steps to right his financial ship 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**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.j:	Against Applicant
Subparagraphs 1.k-1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge