



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-05034
)	
Applicant for Security Clearance)	

Appearances

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

10/14/2016

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 (SCA) on October 31, 2014. On February 29, 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 March 26, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 17, 2016,

and the case was assigned to me on July 20, 2016. On July 27, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 17, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until September 2, 2016, to enable him to submit additional documentary evidence. He timely submitted AX E through J, which were admitted without objection. DOHA received the transcript (Tr.) on August 26, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.c-1.t. He denied SOR ¶¶ 1.a and 1.b. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 35-year-old sheet metal worker employed by a defense contractor since April 2013. His previous jobs were in the private sector. He was fired from a job in December 2009 for a safety violation (lifting merchandise over his head without using a step stool) and was unemployed for about six months. (Tr. 22, 28.) When he found a new job, he was making about \$3.00 per hour less than his previous job. (Tr. 31.) He has never held a security clearance.

Applicant married in August 2008. He has three children, ages 13, 10, and 6. (Tr. 24.) His wife was employed until 2010, when she became pregnant. Before her pregnancy, she was earning about \$40,000 to \$45,000 per year, and their household income was about \$85,000 per year. (Tr. 32.) She returned to the workforce in 2013, and she now earns about \$35,000 per year. (Tr. 30.)

When Applicant submitted his SCA, he reported that he failed to file his federal income tax return for 2012 and that he owed about \$7,951 in federal taxes. (GX 1 at 30.) He also disclosed numerous delinquent debts.

Based on the information in Applicant's SCA, the SOR alleged that he failed to file his federal income tax return for 2012 (SOR ¶ 1.a). At the hearing, he testified that his wife misplaced her W-2 form, and so they filed their return without it. The Internal Revenue Service (IRS) tax return transcript reflects that they filed a joint return for 2012 in April 2013 and were entitled to a refund of \$8,931. He testified that the IRS deducted about \$7,000 from their refund. However, the tax return transcript does not reflect a deduction or a tax debt. (Tr. 34-35; AX G.) They timely filed their federal income tax returns for 2013, 2014 and 2015, claiming refunds of \$7,131; \$7,777; and \$8,415. (AX H, I, and J.)

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

The SOR also alleges 19 delinquent debts, which are reflected in Applicant's credit bureau reports from November 2014 (GX 2) and December 2015 (GX 3). The evidence concerning these debts is summarized below.

SOR ¶ 1.b: federal tax debt for tax year 2012 (\$7,951). The IRS tax transcript for this tax year reflects that Applicant was entitled to a refund, and there is no evidence of unpaid federal taxes in the record. (AX G.) Applicant has refuted this allegation.

SOR ¶ 1.c: judgment filed in May 2014 for unpaid rent (\$1,000). Applicant testified that this debt was incurred before he was laid off. (Tr. 43.) He contacted the creditor in June 2015. (Tr. 42.) In June 2016, he paid \$1,936 to this creditor and obtained a statement from the creditor that the debt was settled. (AX C.) The amount of the payment appears to be the total of two unsatisfied judgments filed by this creditor, one of which was alleged in the SOR. The debt has been resolved.

SOR ¶ 1.d: judgment filed in January 2014 (\$715). Applicant testified that this debt is a credit-card account. He testified that he has not attempted to resolve this debt because he gave higher priority to resolving a delinquent auto loan.² (Tr. 45.)

SOR ¶¶ 1.e-1.h, 1.k, 1.l, and 1.r-1.t: medical bills placed for collection (\$76; \$103; \$1,194; \$102; \$342; \$59; \$358; \$174; and \$451). Applicant testified that these medical bills were incurred when one of his children became ill, and his medical insurance had not yet taken effect. He has not contacted the creditors or taken any action to resolve these debts. (Tr. 50-51, 54, 59.)

SOR ¶ 1.i: utility bill placed for collection (\$449). After the hearing, Applicant submitted a statement that he had orally agreed to a payment agreement for this debt. He had not provided any documentation of the agreement or made any payments by the time the record closed. (AX E.)

SOR ¶ 1.j: cellphone bill placed for collection (\$1,101). On August 29, 2016, Applicant entered into a payment agreement under which the debt will be paid in full in August 2017. The first payment was due on September 9, 2016, after the record closed. (AX F.)

SOR ¶ 1.m: credit-card account placed for collection (\$768). Applicant telephonically contacted the current collection agency for this debt, but he had not yet discussed a settlement by the time the record closed. (AX E.)

SOR ¶ 1.n: cable and internet bill placed for collection (\$944). Applicant has not taken any action to resolve this debt. (Tr. 55.)

² The delinquent auto loan was incurred after Applicant cosigned a car loan for his wife, his wife was unable to make the payments, and they voluntarily surrendered the auto in March 2016. He and his wife currently owe about \$7,749 on the auto loan, and in June 2016 they began making payments of \$356 per month on the debt. (AX B; Tr. 45-50.) The delinquent auto loan is not alleged in the SOR.

SOR ¶ 1.o: unsecured loan placed for collection (\$697). Applicant obtained this loan in 2012. He has taken no action to resolve this debt. (Tr. 56.)

SOR ¶ 1.p: fitness center bill placed for collection (\$480). Applicant signed a contract for a gym membership and was unable to cancel the contract. He contacted the creditor, who expressed willingness to settle the debt, but Applicant has taken no further action to resolve the debt. (Tr. 57-58.)

SOR ¶ 1.q: cable bill placed for collection (\$457). Applicant testified that he contacted the creditor, who expressed willingness to settle the debt, but he has taken no further action to resolve the debt. (Tr. 58.)

Applicant's wages were garnished in February and May 2015 for a delinquent automobile loan. The debt was satisfied in July 2015. (GX 3 at 1.) His wages were garnished again in June 2016 for delinquent state taxes of about \$1,200. (GX 4; Tr. 38.) As of the date of the hearing, Applicant owed about \$800 in state taxes. (Tr. 40.) These debts are not alleged in the SOR.³

Applicant testified that his take-home pay is about \$2,300 per month, and his wife's is about \$1,400. His rent is \$1,300 per month. He estimated that his other monthly expenses are cellphones (\$200); Internet service (\$100); utilities (\$260), car insurance (\$200); and gasoline for two cars (\$340). He has no car payments. If his estimates are accurate, he has net monthly remainder of about \$1,300. He testified that he could not remember how much he has left after paying all expenses (Tr. 64.) He has about \$8,000 in his 401(k) retirement account. He and his wife have separate bank accounts. He testified that he has about \$700 in savings but he does not know how much his wife has. (Tr. 64-65.)

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,

³ 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 delinquent debts not alleged in the SOR for these limited purposes.

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, corroborated by 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"). Applicant refuted the allegations that he failed to timely file his tax return for 2012 (SOR ¶ 1.a) and that he was indebted to the IRS for \$7,951 for tax year 2012 (SOR ¶ 1.b). Thus, 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 established.

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 several conditions that were largely beyond his control: his pay reduction after being laid off, his wife's unemployment during pregnancy and the birth of a child, and his children's uninsured medical expenses. He receives limited credit under this mitigating condition for his six-month period of unemployment, because it occurred after he was fired for a safety violation. He has acted responsibly regarding the judgment in SOR ¶ 1.c and the cellphone bill in SOR ¶ 1.j. He contacted the creditors in SOR ¶¶ 1.p and 1.q, but he has not responded to their offers to settle the debts. He claimed that he had a payment agreement for the utility bill in SOR ¶ 1.i, but he submitted no documentation of payments or a payment agreement. He has not contacted the medical creditors or made any payments, even though the debts in SOR ¶¶ 1.e, 1.f, 1.h and 1.l are for nominal amounts. He has taken no action to resolve the debts in SOR ¶¶ 1.d, 1.n, and 1.o.

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and his financial situation is not under control

AG ¶ 20(d) is established for the debts in SOR ¶ 1.c and 1.j. It is not established for the other debts alleged in the SOR.

AG ¶ 20(e) is not established for the debts alleged in SOR ¶ 1.c-1.t. because Applicant has not disputed them. He denied owing the federal tax debt alleged in SOR ¶ 1.b and presented evidence refuting it.

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 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

Paragraphs 1.a-1.c:	For Applicant
Paragraphs 1.d-1.i:	Against Applicant
Paragraph 1.j:	For Applicant
Paragraphs 1.k-1.t:	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