



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-05305
)	
Applicant for Security Clearance)	

Appearances

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

10/12/2016

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 September 17, 2014. On February 16, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD 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 DOD on September 1, 2006.

Applicant answered the SOR on April 11, 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. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 26, 2016, scheduling the hearing for August 15, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1

through 3 were admitted in evidence without objection. Applicant testified, but he did not present the testimony of any other witnesses and did not submit any documentary evidence. I kept the record open until August 31, 2016, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A through D, which were admitted without objection.¹ DOHA received the transcript (Tr.) on August 24, 2016.

Findings of Fact²

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

Applicant is a 43-year-old help-desk technician employed by a defense contractor since November 2008. He has held a security clearance since January 2009.

Applicant served in the U.S. Army Reserve from April 1994 to April 2008 and was honorably discharged. He was employed in the private sector until he began his current job. He received an associate's degree in networking and security management in October 2006 and a bachelor's degree in computer science in May 2012. He estimates that he has about \$110,000 in student loans. (Tr. 28.)

Applicant married in October 2005. He has two children, an eight-year-old daughter and a six-month-old son. (Tr. 21.)

The SOR alleges 13 delinquent debts totaling about \$82,817. The debts are reflected in Applicant's credit bureau reports (CBRs) from September 2014 (GX 2) and June 2015 (GX 3). Applicant testified that the delinquent debts were the result of bad communication and lack of teamwork between him and his wife. (Tr. 20.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: second mortgage past due for \$37,167, with a balance of \$48,050. Applicant testified that he refinanced the first mortgage on his home around 2008 or 2009. The payments on the first mortgage loan are current. He did not realize that the refinancing did not include the second mortgage loan. He was unaware that the second mortgage loan was delinquent until sometime after September 2014, when he checked his CBR. He testified that no liens were filed and no foreclosure proceedings initiated. He testified that he contacted the lender for the first mortgage loan, who could not explain why the second mortgage loan was not included in the refinancing. He testified that he contacted the holder of the second mortgage loan, who offered to settle the debt for \$10,000. He did not offer any documentary evidence of the settlement offer.

¹ AX C and D are photographs of documents in which only part of each document is copied, but enough information is visible to identify the information relevant to the SOR.

² Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to other documents in the record.

He hoped to borrow from his 401(k) retirement account to settle the debt, but he cannot obtain another loan from his 401(k) until he repays the loan he obtained to pay his daughter's school tuition. (Tr. 36-43.) He considered making a hardship withdrawal from his 401(k) account, but decided that the tax consequences of an early withdrawal made this option imprudent. (Tr. 71.) After the hearing, he submitted evidence of another offer to settle the debt for an amount ranging from \$20,896 to \$25,076, based on the duration of the payment period. (AX C.) In his cover email, he stated that he was trying to negotiate a lower amount. (AX A.) As of the date the record closed, he had not accepted the offer or made any payments. The debt is not resolved.

SOR ¶¶ 1.b: credit card debt charged off for \$20,434. After the hearing, Applicant submitted evidence that the creditor offered to settle the debt for \$8,173. (AX D.) As of the date the record closed, he had not accepted the offer or made any payments. This debt is not resolved.

SOR ¶¶ 1.d and 1.f-1.j: credit card debt charged off for \$1,822; judgment for delinquent credit card balance, filed in February 2009 for \$11,345; and credit card debts placed for collection of \$2,504; \$578; \$420; and \$1,773. Applicant has done nothing to resolve these debts. (Tr. 46, 50, 54-57.)

SOR ¶ 1.c: student loan past due for \$968, with a balance of \$5,645. Applicant testified that all his student loans are in deferment. (Tr. 21.) His CBRs reflect several student loans in deferment, but this student loan is reflected in his CBRs as past due. (GX 2 at 8; GX 3 at 2.) He testified that this debt was placed in forbearance in January 2016 until September 2016. He hoped to enroll in a master's program in September 2016, which would place the loan in a deferred status. (AX A; Tr. 46-47.) As of the date the record closed, he had presented no evidence that the debt was deferred or in forbearance. The debt is unresolved.

SOR ¶ 1.e: delinquent car loan charged off for \$5,184. Applicant testified that he bought a car for his wife, but only his name was on the loan. His wife agreed to make the payments, but she did not. The car was repossessed after the payments were past due for about three months. He has not done anything to resolve the debt. (Tr. 51-53.)

SOR ¶¶ 1.k-1.m: medical debts for \$479, \$121, and \$22. Applicant has done nothing to identify the creditors or resolve these debts. (Tr. 57-58.)

Applicant testified that most of the debts alleged in the SOR were solely in his name, because his wife has a bad credit record. (Tr. 72.) He currently earns about \$52,000 per year. On average, he earns about \$3,000 in overtime pay, in addition to his base pay. (Tr. 29-31.) His wife is a registered nurse and earns about \$80,000 per year. (Tr. 59.) Their daughter attends a private school where the tuition is \$18,000 per year. Their daughter received a scholarship of \$10,000 per year, and Applicant borrowed about \$6,000 from his 401(k) retirement account in February 2016 to pay the balance of her tuition. (Tr. 43, 60-61.) As of August 29, 2016, he had \$28,730 in his 401(k)

retirement account. (AX B.) Applicant testified that his net monthly remainder after paying all living expenses is between \$1,500 and \$2,000 per month. (Tr. 62.)

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 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 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 numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. The financial irresponsibility of Applicant's wife was arguably a condition beyond his control, but it was facilitated by his decision to entrust her with credit cards, rely on her promise to make the payments on a new car in spite of her bad credit history, and his failure to monitor her spending. He contacted the creditors alleged in SOR ¶¶ 1.a and 1.b, but only after he realized that his security clearance was in jeopardy. He has not accepted any settlement offers or made any payments on the debts.

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

AG ¶ 20(d) is not established. This mitigating condition 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). Applicant has not made any payments on the debts alleged in the SOR. He has negotiated with the lender of the debt in SOR ¶ 1.a, but has not reached an agreement or tendered any payments. He recently received a settlement offer for the debt in SOR ¶ 1.b, but he has not accepted it or made any payments. Thus far, he has made promises to pay, but no payments. A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

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 his current employer for almost eight years, and he has held a security clearance for more than seven years. His financial problems are largely due to a dysfunctional relationship between him and his wife regarding family finances, his unwise decision to entrust his wife with credit cards and a car payment in spite of her bad credit history, and his decision to borrow money to send his daughter to an expensive private school instead of resolving other debts. It is not clear whether he and his wife have yet arrived at a workable partnership for the family finances. His intended solution for the debts in SOR ¶¶ 1.a and 1.b is to pay them by incurring more debt, *i.e.*, a loan from his 401(k) account.

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.m:

Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge