



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-05347
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha L. Manns, Esq., and
Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2017

Decision

MARINE, Gina L., 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 (e-QIP) on July 15, 2013. On February 22, 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 DOD on September 1, 2006.

Applicant answered the SOR on March 22, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 25, 2016, and the case was assigned to me on February 2, 2017. On February 8, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 1, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Government's exhibit list was appended to the record as Hearing Exhibit (HE) I. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on March 8, 2017.

Findings of Fact¹

Applicant, age 31, has a seven-year-old son born of his marriage that ended by divorce in 2013. He received a high school diploma and has earned college credits in avionic and electrical engineering.² He honorably served in the U.S. Air Force from 2003 through 2007.

Applicant is an engineering technician and has been employed full time by his current employer since April 2015.³ Before that, he was unemployed for about ten months after being terminated in June 2014 by his former employer of five years.⁴ He collected unemployment compensation during that period because his termination was ultimately construed as a layoff.⁵ Applicant has held a secret clearance since 2003.⁶

The SOR alleges 23 debts totaling \$64,246. However, the SOR does not specify the amount charged off for the debt alleged in SOR ¶ 1.q. I find that the amount was \$1,027,⁷ which brings the total amount alleged in the SOR to \$65,273. Applicant admits to all but three SOR debts, totaling \$47,239.⁸ His SOR debt consists of two automobile-loan accounts totaling \$15,138 (SOR ¶¶ 1.a, 1.q), 10 student-loan accounts totaling \$40,227 (SOR ¶¶ 1.b. – 1.g, 1.k, 1.p, 1.s, 1.t), a \$2,097 child-support account (SOR ¶ 1.h), six medical accounts totaling \$3,410 (SOR ¶¶ 1.i, 1.l – 1.o, 1.v), three utility accounts totaling \$1,754 (SOR ¶¶ 1.j, 1.u, 1.w), and a \$2,647 tax account (SOR ¶1.r). He attributes his financial indebtedness to his 2013 divorce and to his ten-month period

¹ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer and e-QIP (GE 1).

² Tr. at 9.

³ Tr. at 10 and 46.

⁴ Tr. at 47-48.

⁵ Tr. at 48. I considered the discrepant details Applicant provided in his SOR answer and at the hearing (Tr. at 34, 39, 47) about the reasons for his 2014 termination, but did not find them to be security significant in light of the circumstances and record as a whole.

⁶ Tr. at 10.

⁷ GE 5 at 9.

⁸ See also Tr. at 70-74. In his SOR answer, he denied only one debt (SOR ¶ 1.a), but clarified at the hearing that he also denied SOR ¶ 1.i on the basis that he had no knowledge of it and SOR ¶ 1.q on the basis that it has been resolved.

of unemployment between 2014 and 2015.⁹ Without providing any further details, in his SOR answer, Applicant described his divorce as “expensive” and claimed that he inherited all of the marital debt.

Despite his admissions to the contrary, Applicant denies owing any delinquent medical debt, in part because he believes it may have been incurred by his father and inadvertently attributed to him because they share the same name; and in part, because he had full-coverage medical insurance while in the military.¹⁰ Applicant plans to research his medical debt (SOR ¶¶ 1.i, 1.l – 1.o, 1.v) and dispute them, as appropriate.¹¹ Applicant voluntarily surrendered two vehicles in an effort to resolve the remaining liability he owed on two separate car loans, one in 2013 after an accident that totaled his car (SOR ¶ 1.q) and one in 2014 after his termination (SOR ¶ 1.a). One creditor filed a garnishment to recover the debt alleged in SOR ¶ 1.a.¹² Applicant has utility debt from 2008 (SOR ¶ 1.u),¹³ 2012 (SOR ¶ 1.w),¹⁴ and 2013 (SOR ¶ 1.j).¹⁵ Applicant plans to file Chapter 7 bankruptcy to resolve these medical, automobile, and utility debts.¹⁶ To that end, he hired an attorney in September 2016 and has been making periodic payments towards the fees required to file.¹⁷ Applicant has been on notice since at least his August 2013 interview with an OPM investigator that his delinquent debt was an issue with respect to his security clearance. At this time, these debts remain unresolved.

As of March 2017, Applicant owed approximately \$49,861 to the federal government for delinquent student-loan debt, which includes accounts not listed in the SOR.¹⁸ He incurred the debt when he stopped attending his college classes in approximately 2012 resulting in an overpayment of the funds to which he was entitled

⁹ See *also* Tr. at 34, 43-44, 50, 54-55, and 69.

¹⁰ GE 2 at p. 6, Tr. at 57, 72-73.

¹¹ Tr. at 74. Despite his earlier promise to do so following his 2013 subject interview, Applicant apparently never researched the medical debt alleged in SOR ¶ 1.v (GE 2 at p. 6). Applicant has relied on his bankruptcy attorney to research his debts (Tr. at 75).

¹² Tr. at 64, 67-68.

¹³ See *also* GE 3 at 9

¹⁴ See *also* GE 2 at p. 6, GE 3 at 9

¹⁵ See *also* GE 4 at p. 2

¹⁶ Tr. at 35, 49, 58-59, 62, 74.

¹⁷ Tr. at p. 59, 75

¹⁸ This amount includes the 10 accounts alleged in SOR ¶¶ 1.b. – 1.g, 1.k, 1.p, 1.s. – 1.t plus Applicant’s admission at hearing of several other unalleged accounts (AE B, GE 2 at p. 4, Tr. at 53-54, 60). As to the accounts not listed on the SOR, I will consider them only for the purpose of evaluating mitigation.

from his GI bill.¹⁹ Applicant filed applications to consolidate a portion of debt that he owes (\$42,325 including debt alleged in SOR ¶¶ 1.b – 1.g) in May 2016 and again in March 2017.²⁰ That creditor has been garnishing his wages for the past two years and the account remains in default status.²¹ He expects to receive Veteran's Administration (VA) disability income in the near future, which he plans to use to repay that portion of the debt that he owes to the VA (\$7,536/SOR ¶¶ 1.k, 1.p, 1.s, 1.t). These debts remains unresolved.

Applicant began paying child support in 2012.²² The amount has changed over time due to fluctuations in his income.²³ He accrued a balance of \$2,097 (SOR ¶ 1.h) as the result of those income-related adjustments.²⁴ His voluntary wage garnishment covers his current monthly child support obligation and an extra monthly amount to be applied to that balance.²⁵ This debt is in the process of being resolved.

In 2012, while still married and filing joint returns with his wife, Applicant incurred tax debt to State A of about \$3,000 (SOR ¶ 1.r) due to the failure of his wife's employer to deduct income taxes from her paycheck.²⁶ For the same reason, he also owes \$300 to the federal government for unpaid taxes from tax years 2012 and 2013.²⁷ He has not been in contact with State A to resolve this debt. Approximately three weeks prior to the hearing, he contacted the IRS to try to set up a payment plan.²⁸ He expects that his ex-wife will pay one-half of this tax liability.²⁹ These debts remains unresolved.

Applicant has never sought financial counseling.³⁰ On the one hand, Applicant claimed that his current monthly expenses are well under 50% of his take-home pay despite the fact that he earns annually about \$25,000 less than he did with his previous

¹⁹ Tr. at 82; GE 2 at p. 5.

²⁰ AE C, AE D, and Tr. at 36-37, 50-53

²¹ AE A and Tr. at 35, 50, and 81.

²² Tr. at 56

²³ See *also* Tr. at 37

²⁴ Tr. at 37, 54-56, 65, 72

²⁵ AE A and Tr. at 35, 54-56, 64, 66-7. The amount of the garnishment has varied over several pay periods.

²⁶ Tr. at 62-63, 77-78

²⁷ Tr. at 38, 77. Since this debt was not listed in the SOR, I will consider it only for the purpose of evaluating mitigation.

²⁸ Tr. at 78

²⁹ Tr. at 38, 79

³⁰ GE 2 at p. 6

employer.³¹ On the other hand, Applicant claimed that he “can’t afford” to make any voluntary payments to his creditors because of his wage garnishments.³² Applicant plans to rely on the bankruptcy discharge and student-loan consolidation to resolve his financial indebtedness. In his SOR answer, he claimed that he has taken his clearance seriously and that he has done everything to make sure that he does not lose it since he needs it for his job.

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.*

³¹ See *a/so* Tr. at 83.

³² Tr. at 50 and 68.

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 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 security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 has numerous delinquent debts that remain unresolved.

AG ¶ 20(b) is not established. Applicant's divorce and ten-month unemployment period were circumstances beyond his control. However, Applicant has not acted responsibly to resolve his debt since then.

AG ¶ 20(c) is not established. Applicant has not received financial counseling. While Applicant's child support debt is being resolved and he has initiated actions to resolve other debt, I cannot conclude that his financial problems are under control at this time.

AG ¶ 20(d) is not established. Applicant is credited with attempting a consolidation of his student-loan debt and a plan to repay his IRS debt, and with initiating steps to file Chapter 7 bankruptcy. However, these actions took place over three years after he first learned that his debts could negatively impact his security clearance and after he received the SOR. I question whether Applicant truly had no means to make voluntary payments to his creditors given that current monthly expenses comprise less than half of his take-home pay. Involuntary wage garnishments do not constitute the proactive good-faith action contemplated by this mitigating condition.

AG ¶ 20(e) is not established. Applicant has no reasonable basis to dispute his automobile-loan debts. While Applicant articulated a reasonable basis to dispute his medical debt, he did not provide any documentary proof to substantiate it nor has he taken any action to resolve the issue either with the creditors or credit reporting agencies. These debts were first brought to his attention in August 2013 and then noted in early 2016 among the reasons that his security clearance is in jeopardy. Despite this ample time to address his disputes, he has taken no action.

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 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 that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant 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**

Subparagraph 1.a – 1.g: **Against Applicant**

Subparagraphs 1.h: **For Applicant**

Subparagraphs 1.i – 1.w: **Against Applicant**

Conclusion

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

Gina L. Marine
Administrative Judge