



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-05867
)	
Applicant for Security Clearance)	

Appearances

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

10/25/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on November 4, 2014. On March 25, 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.

The SOR was sent to the corporate headquarters for Applicant's employer, located in a state other than Applicant's residence and work location, and Applicant did

not receive it until April 22, 2016. He answered the SOR on May 6, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 11, 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 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until September 2, 2016, to enable him to submit additional documentary evidence. He timely submitted AX B, C, and D, which were admitted without objection. DOHA received the transcript (Tr.) on August 26, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant did not expressly admit or deny any of the allegations. However, he stated that the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d-1.g, and 1.j-1.m were being handled by a credit counseling service (CCS), and he stated that he intended to contact the creditors and pay the debts alleged in SOR ¶¶ 1.c, 1.h, 1.i, 1.n, 1.o, and 1.p.

Applicant is a 54-year-old field engineer employed by a defense contractor since March 2004. He served in the U.S. Navy from February 1984 to February 2004 and retired as a chief petty officer (pay grade E-7). He married in February 1986; and he and his wife have two adult children, ages 28 and 26. He attended a community college from August 2010 to May 2012 and received an associate's degree. He received a security clearance in the Navy and continued to hold it as a contractor employee.

Applicant's financial problems began when he bought an expensive house in October 2003. His mother and brother moved in with him in 2008. He was trying to keep up the payments on his mother's house in another state, because she did not want to sell it. He borrowed money to pay his mother's bills. He missed a couple of mortgage loan payments around 2009 and could not catch up. His mother died of cancer around 2010, and he "just kind of fell apart" for a while. He resolved the delinquent loan payments in 2011 by giving the lender a deed in lieu of foreclosure. (Tr. 19-20, 27-28.)

Around 2013, Applicant's adult son had a seizure, was incapacitated, and moved into the home that Applicant was renting. Shortly thereafter, Applicant's daughter, her husband, and their five-year-old child moved in, because his daughter's husband was unemployed. His daughter's husband found employment around in the fall of 2015, but they continued to live with Applicant. (SOR Answer; Tr. 34.) Applicant's son recovered after nine or ten months, he moved in with his fiancée, and they had a son. In May 2016, when Applicant's grandson was eight months old, his son's fiancée died, and his son moved back into Applicant's home along with the newborn grandson. Applicant's daughter, her husband, their five-year-old child, Applicant's son, and his son's eight-month-old child still live in Applicant's home. (Tr. 35.) His son pays rent of \$200 per

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

month and his daughter and son-in-law pay \$270 per month, but Applicant still provides financial support to them. (Tr. 33-35.)

The SOR alleges 16 delinquent debts totaling about \$11,000, which are reflected in Applicant's credit bureau reports from November 2014 (GX 2) and January 2016 (GX 3.) Except for the two medical debts in SOR ¶¶ 1.l and 1.m, which became delinquent in mid-2012, all the debts became delinquent between April 2013 and November 2014. When Applicant submitted his SCA in November 2014, he disclosed numerous delinquent debts and attributed them to supporting his daughter, son-in-law, and grandson. (GX 1 at 28-32.)

Applicant had telephone conversations with CCS about his debts in March 2016, but he did not finalize his contract until May 2016, after he received the SOR. (Tr. 48.) Since May 2016, he has been paying CCS \$412 per month to resolve his debts. A total of 15 debts are being managed by CCS, including 10 debts alleged in the SOR. (SOR Answer, Enclosure 1.) The status of the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: collection account (\$1,734). Being paid through CCS at \$174 per month. (Item 12, CCS list; Tr. 36.)

SOR ¶ 1.b: medical bill placed for collection (\$100). Being paid through CCS at \$10 per month. (Item 1, CCS list; Tr. 36-37.)

SOR ¶ 1.c: medical bill placed for collection (\$98). Not handled by CCS, because CCS does not handle any debt less than \$100. Applicant has taken no action to resolve this debt. (Tr. 37.)

SOR ¶¶ 1.d, 1.e, and 1.f: charged off credit union debts (\$3,766; \$595; and \$2,248). Being paid through CCS at \$662 per month for all three debts. (Items 8, 10, and 15, CCS list; Tr. 38-39.)

SOR ¶ 1.g: charged off cellphone bill (\$1,071). Being paid through CCS at \$127 per month. (Item 5, CCS list; Tr. 39.)

SOR ¶ 1.h: charged off credit card account (\$1,065). This debt is not resolved. It is ineligible for the CCS plan, because Applicant has another debt to this creditor, which is not yet paid off, but which is being paid in weekly \$25 payments by automatic debit. (AX C; Tr. 39-40-42.)

SOR ¶ 1.i: cable service bill placed for collection (\$36). Not handled by CCS. Applicant has not yet taken any action to resolve this debt. (Tr. 42-43.)

SOR ¶ 1.j: home-improvement store bill placed for collection (\$954). Applicant was unable to recognize this debt at the hearing or provide any information about it. (Tr. 43.) However, the original creditor is listed in the CCS plan and the debt is

listed as paid in the CCS list and the January 2016 CBR. (Item 24, CCS list; GX 3 at Item 13.) It is resolved.

SOR ¶ 1.k: medical bill placed for collection (\$250). Being paid through CCS at \$25 per month. (Item 7, CCS list; Tr. 43-44.)

SOR ¶ 1.l: medical bill placed for collection (\$179). Being paid through CCS at \$18 per month. (Item 13, CCS list; Tr. 44.)

SOR ¶¶ 1.m: medical bill placed for collection (\$114). Being paid through CCS at \$12 per month. (Item 2, CCS list; Tr. 44.)

SOR ¶¶ 1.n and 1.o: medical bills placed for collection (\$84 and \$72). Not handled by CCS. Applicant has taken no action to resolve these debts. (Tr. 44.)

SOR ¶ 1.p: cable service bill placed for collection (\$36). Same debt as SOR ¶ 1.i. (Tr. 44-45.)

In addition to the debts alleged in the SOR, Applicant owes about \$3,600 in federal taxes, which he is paying by automatic debit at \$400 per month. (AX A; Item 36, CCS list; Tr. 51-52.) This debt is not alleged in the SOR.

Applicant testified that the medical debts arose when the medical providers did not submit the bills to his secondary health insurance after determining how much TRICARE would pay. He discovered that the bills frequently were not submitted to his secondary health insurance until a year after they were incurred, which made it more difficult for him to gather the necessary documentation. He testified that he intended to resubmit the medical bills to his secondary health insurance company. (Tr. 60-64.) However, in his post-hearing submission, he indicated his intention to simply pay the smaller medical bills that are not included in the CCS plan. (AX B.)

Applicant earns about \$57,000 per year, plus an additional \$3,000 per year in overtime pay. He also works part time as an instructor at a community college, earning about \$300 per month. (Tr. 25-27.) The CCS prepared a budget for Applicant, reflecting net monthly income of \$5,063, living expenses of \$4,123, and a net remainder available for debt payments of \$940.

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 CBRs, his documentary evidence, and his testimony at the hearing 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 established. Applicant encountered several conditions beyond his control: the illness and death of his mother, his mother's inability to maintain the payments on her home and pay her bills, the incapacitation of his son, the financial needs of his daughter and her unemployed husband, and the death of his son's fiancée shortly after giving birth to a son. His son was unable to contribute to household expenses for about nine or ten months. The debts alleged in the SOR did not become delinquent until after his mother, brother, children, and his children's families moved in with him. Applicant was dilatory in addressing his financial problems, but he eventually realized that he needed financial help. Since May 2016, he has been acting responsibly and making considerable progress in resolving his debts.

AG ¶ 20(c) is established. Applicant has received financial counseling from CCS, and there are "clear indications" that his financial problems are being resolved.

AG ¶ 20(d) is established. This mitigating condition requires a showing a 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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. However, Applicant's debts were not the result of irresponsible spending; they were the result of devotion to his family, albeit without full appreciation of the financial consequences of his decisions. The catalyst for signing a contract with CCS was the SOR, and Applicant has diligently complied with the CCS payment plan. Four small debts totaling \$290 are not included in the CCS plan, but the adjudicative guidelines do not require that an individual pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has a plan and has taken significant steps to implement it.

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 was candid, sincere, and credible at the hearing. He served honorably in the U.S. Navy for 20 years. He has held a security clearance throughout his military and civilian service. He has been generous to a fault with his family, helping them financially at the expense of his own financial wellbeing. He disclosed his financial distress when he submitted his SCA in November 2014. He started seeking financial help in early 2016, and he is making significant progress in resolving his delinquent debts. Based on his long record of service to the United States, his demeanor at the hearing, and the significant progress he has made in resolving his financial problems, I am confident that he will adhere to his CCS payment plan, resolve the four remaining debts alleged in the SOR but not included in his CCS plan, and avoid further financial delinquencies.²

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 mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

² Administrative judges do not have authority to grant conditional clearances. ISCR Case No. 99-0901, 2000 WL 288429 at *3 (App. Bd. Mar.1, 2000). See also ISCR Case No. 01-24328, 2003 WL 21979745 at *2 (App. Bd. May 23, 2003). However, applicants do not have a vested right to a security clearance. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts and avoid future delinquencies may result in future revocation of a security clearance.

Formal Findings

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

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

Subparagraphs 1.a-1.p:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge