



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-06010
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2017

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 February 25, 2015. On February 5, 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 1, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 13, 2016. On April 15, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on April 22, 2016, and did not respond. The case was assigned to me on February 6, 2017.

Findings of Fact¹

Applicant is 54 years old and has been married for 32 years. Three of his four children are over the age of 21 years. The youngest child is 19 years old. He was honorably discharged in 1984 after serving on active duty with the Air Force for four years. He has been employed full time with the same federal contractor since 2004. Prior to that, Applicant was employed full time as a civilian with the Air Force from about 1986 through 2004.²

In his SOR Answer, Applicant denied six of the nine SOR allegations (SOR ¶¶ 1.c through 1.f, 1.h, and 1.i). As to the three admitted debts, Applicant claimed that one was resolved (SOR ¶ 1.a) and that he was making payments to the other two creditors (SOR ¶¶ 1.b and 1.g). Applicant owes only seven of the nine delinquent debts alleged in the SOR totaling \$93,352,³ all but \$1,102 (SOR ¶ 1.c)⁴ of which is credit-card debt.

Based on the information contained in the credit reports,⁵ I find that the creditor alleged in SOR ¶ 1.i was granted a judgment (SOR ¶ 1.a) for the same credit card that it previously charged off. I will consider them together as one debt totaling the amount of the judgment. Similarly, I find that the creditor alleged in SOR ¶ 1.e was granted a judgment (SOR ¶ 1.b) for the same credit card that it previously placed for collection. I will consider them together as one debt totaling the amount of the judgment. I also find that the balances of the debts alleged in SOR ¶ 1.d (now being held by a collection company) and SOR ¶ 1.h are \$19,512 and \$12,157, respectively. Thus, I resolve SOR ¶¶ 1.e and 1.i in favor of Applicant.⁶

Applicant opened a credit-card account in 2006 with a credit limit of \$8,800.⁷ The creditor charged off the account in 2010 in the amount of \$10,761 (SOR ¶ 1.i),⁸ and in

¹ I extracted these facts from Applicant's answer to the SOR (Item 3), e-QIP (Item 4), and the summary of his personal subject interview (Item 6), unless otherwise indicated by citation to another item in the record. I considered that Item 6 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 6. Applicant was also informed that he was entitled to object to consideration of Item 6 on the ground that it was not authenticated. His failure to respond to the FORM constitutes a waiver of any objection to Item 6. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.").

² The record does not contain information about his employment status between 1984 and 1986.

³ SOR ¶¶ 1.a through 1.d and 1.f. through 1.h

⁴ SOR ¶ 1.c. is an automobile-loan account. See Item 5 at 4 and Item 7 at 4.

⁵ Items 5 and 7

⁶ When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

⁷ Item 5 at 4

2011 was granted a judgment of \$10,466 against Applicant (SOR ¶ 1.a).⁹ In his SOR Answer, without providing any corroborating documentation, he claims that he paid this debt in full in January 2016 after making monthly payments of \$300 to his creditor since 2013. This debt remains unresolved.

Applicant opened a credit-card account in 1998 with a credit limit of \$24,600.¹⁰ The creditor sent the account to collections in the amount of \$16,219 (SOR ¶ 1.e),¹¹ and in 2009 was granted a judgment of \$20,759 against him (SOR ¶ 1.b).¹² In his SOR Answer, without providing any corroborating documentation, Applicant claims that he has been making good-faith payments to his creditor. This debt remains unresolved.

Applicant opened an automobile-loan account in 2007, and the creditor charged off the account in 2012 in the amount of \$1,102 (SOR ¶ 1.c).¹³ In his SOR Answer, Applicant denied this debt on the basis that he did not recognize the account or the amount, and that he intended to dispute it with the credit bureau agencies. However, during his personal subject interview, he acknowledged this debt as a joint account with his wife, and that he intended to resolve it on or before April 2017 via monthly payments of \$50. This debt remains unresolved.

Applicant opened a credit-card account in 1998 with a credit limit of \$19,000.¹⁴ The creditor charged off the account in the amount of \$18,424 (SOR ¶ 1.d),¹⁵ and transferred it to a collection company who reports a balance of \$19,512.¹⁶ During his personal subject interview, Applicant acknowledged that he and his wife used this joint credit card to pay college costs and incidentals, and that he intended to resolve it on or before 2025 via monthly payments of \$50. In his SOR Answer, he denied this debt on the basis that it was resolved through his wife's bankruptcy proceedings, and that he intended to dispute it with the credit bureau agencies. This debt remains unresolved.

Applicant opened a credit-card account in 2005 with a credit limit of \$16,500.¹⁷ The creditor charged off the account in the amount of \$19,389 in 2009 and reports a

⁸ Item 5 at 4

⁹ Item 5 at 3; Item 7 at 1

¹⁰ Item 5 at 3

¹¹ Item 5 at 3

¹² Item 5 at 3; Item 7 at 2

¹³ Item 5 at 4; Item 7 at 4

¹⁴ Item 5 at 5; Item 7 at 5

¹⁵ Item 7 at 5

¹⁶ Item 5 at 5 and 12; Item 7 at 2 and 5

¹⁷ Item 5 at 3

balance of \$15,691 (SOR ¶ 1.f).¹⁸ In his SOR Answer, Applicant denied this debt on the basis that he did not recognize the account or the amount, that he had disputed it, and that he intended to dispute it further with the credit bureau agencies. However, during his personal subject interview, he acknowledged that he and his wife used this joint credit card to pay college costs and incidentals, and that he intended to resolve it on or before 2025 via monthly payments of \$50. This debt remains unresolved.

Applicant opened a credit-card account in 1995 with a credit limit of \$11,700, and the creditor sent the account to collections in the amount of \$13,665 (SOR ¶ 1.g).¹⁹ In his SOR Answer, without providing any corroborating documentation, Applicant claims that he has been making good-faith payments to his creditor. This debt remains unresolved.

Applicant opened a credit-card account in 2001 with a credit limit of \$12,300.²⁰ The creditor charged off the account in the amount of \$13,667 in 2009 (SOR ¶ 1.h), and reports a balance of \$12,157.²¹ In his SOR Answer, Applicant denied this debt on the basis that he did not recognize the account or the amount, that he had disputed it, and that he intended to dispute it further with the credit bureau agencies. However, during his personal subject interview, Applicant acknowledged that he and his wife used this joint credit card to pay college costs and incidentals, and that he intended to resolve it on or before 2025 via monthly payments of \$100. This debt remains unresolved.

Applicant opened a credit-card account in 1984 with a credit limit of \$15,100, and the creditor charged off the account in 2009 and transferred it.²² During his personal subject interview, Applicant acknowledged that he and his wife used this joint account for incidentals and home furnishings, and that he intended to resolve it on or before 2025 via monthly payments of \$50. This debt remains unresolved.

Applicant reported only two delinquent credit card accounts in his e-QIP, claiming that he was in the process of paying one and that the creditor canceled the other one. During his personal subject interview, after being confronted, Applicant admitted that he

¹⁸ Item 5 at 3

¹⁹ Item 5 at 4

²⁰ Item 5 at 4

²¹ Item 5 at 4

²² This debt was not alleged in the SOR. However, 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) (citations omitted). Therefore, I will consider it accordingly.

owed substantial additional delinquent debt. He claimed that he did not list this additional debt due to oversight.²³

Applicant attributes his delinquent debt to the use of high-interest credit cards to pay for three of his children's college expenses (tuition, costs, transportation, and other incidentals). He acknowledges that he was financially overextended and that this debt was not incurred due to circumstances beyond his control. In 2014, Applicant financed a \$13,614 vehicle for 60 months with a monthly payment of \$238.

Applicant has received credit counseling, the details of which are not contained in the record. In the FORM, Department Counsel advised Applicant that he had not provided any documents in support of the assertions made in his SOR answer or a personal financial statement, monthly budget, or recent pay stub. Department Counsel advised Applicant of his opportunity to provide these documents and others in his response to the FORM. Applicant did not respond to the FORM.

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.

²³ Applicant's failure to disclose this additional delinquent debt on his e-QIP was not alleged in the SOR. See Footnote 22 above concerning conduct not alleged in the SOR.

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").

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's numerous delinquent debts remain unresolved and have persisted since at least 2009.

AG ¶ 20(b) is not established. Applicant did not incur any debt due to circumstances beyond his control.

AG ¶ 20(c) is not fully established. Although Applicant has received some type of financial counseling, his debt remains unresolved. Since Applicant did not respond to the FORM, the record contains insufficient detail and documentation about his ability to repay his debt, the reasons that it has persisted, and his plan to address it. Therefore, I cannot conclude that his financial problems are under control.

AG ¶ 20(d) is not established. Because his claims are unsubstantiated by corroborating documentary evidence, I cannot conclude that Applicant is working with his creditors, that he resolved the debt alleged in SOR ¶ 1.a, that the debt alleged in SOR ¶ 1.d was resolved through his wife's bankruptcy, or that he made payments to his creditors for the debts alleged in SOR ¶¶ 1.b or 1.g.

AG ¶ 20(e) is not established. Applicant does not have a reasonable basis to dispute the debts alleged in SOR ¶¶ 1.c, 1.f, or 1.h given that he acknowledged and took responsibility for them during his personal subject interview.

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). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor.²⁴ After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person (including Applicant's lack of complete candor about the state of his financial indebtedness in his e-QIP), I conclude Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, 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.

²⁴ ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

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.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraphs 1.f – 1.h: Against Applicant

Subparagraph 1.i: For 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