



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-06031
)	
Applicant for Security Clearance)	

Appearances

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

03/23/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to a lengthy period of unemployment, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on December 23, 2014. On February 12, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Ex. 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 18, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 6, 2016, and the case was assigned to me on June 24, 2016. On August 23, 2016, the Defense Office

of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 13, 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 K, which were admitted without objection. DOHA received the transcript (Tr.) on September 21, 2016.

Findings of Fact

Under Guideline F, the SOR alleges six delinquent debts totaling approximately \$11,985. In his Answer, Applicant admits each of the allegations, states that three have been resolved, and explains the status of the remaining three debts. Applicant's admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from January 2016 and January 2015. (GX 3; GX 2.)

Applicant is a 34-year-old security officer currently employed by a defense contractor since February 2015. He enlisted in the U.S. Navy in August 2001 and served honorably until September 2012, when he was released at the rank of chief petty officer during a reduction in force. He intended to serve for 20 years and then retire. (Tr. 38; Tr. 47.) He and his first wife married in 2005 and divorced in 2009. They have two children, ages eleven and ten. He married his current wife in November 2010, and they have a four-year-old daughter. (GX 1; Tr. 69.)

Applicant began experiencing financial difficulties following his involuntary separation from the Navy. In an effort to reduce their living expenses, Applicant and his family moved in with his mother-in-law in about September 2012, and resided with her for about two years. (Tr. 38-39.) At the time of his separation, Applicant was earning about \$60,000 a year. He received \$30,000 in severance pay, which he used for his living expenses, including child support payments. (Tr. 35-36.) However, he was unemployed from September 2012 until March 2013, and worked only part-time as a security guard from March 2013 until February 2015, when he started full-time work with his current employer. (GX 1.) Throughout his period of unemployment and part-time employment, he routinely applied for full-time positions. (Tr. 39.) Applicant's wife is employed, earning \$10 an hour. (Tr. 39.)

Applicant enrolled in college in 2013 and used his military benefits to pay the tuition and for housing expenses. The U.S. Department of Veterans Affairs (VA) paid the tuition directly to the college, and paid the monthly housing allowance directly to Applicant. In about December 2014, after completing the winter quarter, Applicant did not re-enroll in college. However, the VA erroneously sent two additional checks to Applicant for his housing allowance, which totaled about \$3,600. Applicant used this money for living expenses, and is obligated to repay it. (Tr. 63-68.)

The \$1,920 debt alleged in SOR ¶ 1.a is listed on the January 2016 CBR as an educational loan owed to the college. However, Applicant testified that he did not have any loans for tuition, that the only debt he has that is associated with his college enrollment is owed to the VA for reimbursement for the overpayment of his housing

allowance, and that SOR debt 1.a is part of the amount he owes the VA. (Tr. 64-66.) He is currently repaying a \$4,356 debt to the VA through wage garnishment that began in April 2016. (Tr. 66; GX 4; AX C; AX K.) SOR debt 1.a is being resolved.

The \$301 debt alleged in SOR ¶ 1.e is for an administrative fee owed to child support enforcement in State A for transferring Applicant's case to child support enforcement in State B. Applicant was not aware of this debt until he received the SOR. He contacted child support enforcement in State A, and was ultimately directed to a website where he was able to pay the account in full. (AX I; Tr. 41.)

Applicant paid the \$100 debt owed to a cable company alleged in SOR ¶ 1.b. (AX H.) The \$988 debt alleged in SOR ¶ 1.c is for a delinquent credit-card account. Applicant contacted the creditor and entered a repayment plan to settle this account. He is making \$49 monthly payments for 12 months. (AX J; Tr. 42-43.) The \$727 past-due debt alleged in SOR ¶ 1.f is for a vehicle loan for Applicant's wife, for which Applicant cosigned. Applicant's wife settled the debt for \$3,500 and is making monthly payments of \$145. (Tr. 33.34.) This debt is being resolved.

The \$7,949 debt alleged in SOR ¶ 1.d is for the deficiency balance of a voluntarily repossessed vehicle. Applicant purchased the vehicle in February 2012 while still in the Navy, and fell behind on the payments in 2013, while unemployed. Applicant has maintained contact with the creditor, but has been unable to afford the repayment or settlement terms offered by the creditor. He will resolve this debt as soon as he completes his current repayment plans. (Tr. 70-72.)

Applicant also has financial issues that are not alleged in the SOR. Applicant completed his 2015 tax return using a computer tax program and discovered that he owed about \$1,000. Unable to pay, and uncertain of how to proceed because he had never previously owed taxes, he did not timely file his returns. He became concerned about this decision and consulted his father, who he considers to be financially astute. After chiding Applicant for not timely filing, his father advised him to file and pay his 2015 taxes when filing his 2016 returns. Applicant testified that he will follow his father's advice. (Tr. 80-82.)

Additionally, Applicant fell behind on his \$832 monthly child-support payments in about December 2012 due to his unemployment. In about January 2013, he filed a petition for modification of his child support obligation in State B, where he currently resides. However, because the case originated in State A, child support enforcement in State B had no record of Applicant's case. Unable to afford an attorney, Applicant was forced to navigate the process of transferring his case from State A to State B, and refile a petition for modification, on his own. Further complicating the process is the fact that Applicant's children reside with their mother in State C, and the modification order had to be adopted by the court in State C. Ultimately, Applicant's petition for modification was successful and his monthly child support obligation was reduced to \$650 in July 2016. (AX A; AX B; Tr. 54-58.) He pays his child support, including a percentage toward the arrearages, through garnishment. (AX K; AX E; Tr. 59.)

Applicant lives within his means and has not incurred any significant delinquent debt since 2013. (GX 2; GX 3.) He is making contributions to his 401(k). (AX K.) Applicant

has instituted his plan is to satisfy all his delinquent debts by first paying the smaller debts. He will then pay the remaining SOR debt. (Tr. 72.) He disclosed his child support arrearages and his unpaid taxes. (Tr. 57; Tr. 75) He was candid, and straight-forward while testifying. He accepts responsibility for his delinquent debts and vows to complete the repayment of them. (Tr. 72-74.) His shift commander highly recommends Applicant for a clearance, and states that he is a strong candidate for promotion. (AX D.)

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’s 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 testimony, corroborated by the record evidence, establishes 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").

However, a person can mitigate concerns about his ability to handle and safeguard classified information raised by his financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties arose from circumstances largely beyond his control. As a result of his nearly three-year period of unemployment and underemployment following his involuntary separation from the Navy, Applicant fell behind on his financial obligations. He acted responsibly by living with his mother-in-law for about two years to reduce expenses and not incur greater debt. He relentlessly sought employment, and has been in his current position since February 2015. Since gaining employment, he has paid three of the SOR debts, entered repayment plans for one debt, and is repaying a debt through garnishment. The fact that Applicant is paying a debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). However, payment by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006). He has contacted the creditor of the remaining SOR debt. He lives within his means and has not incurred any delinquent consumer debt since 2013.

Although Applicant's financial record is not perfect, he acted in good faith by establishing and enacting a plan which will ultimately resolve all his delinquent debts. "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). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to 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. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The circumstances that led to his indebtedness are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(d) apply.

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 those guidelines, but I have also considered the following:

Applicant served honorably in the Navy for more than 11 years with the intention of remaining on active duty until he retired. He lives within his means, and provides for his family. He has laid out a plan for rehabilitating his finances and has exhibited concomitant actions. He acted responsibly regarding his child support obligations and has a plan for resolving his tax issue. Given his overall proactive approach to debt resolution, including maintaining his child support obligations, I am confident that Applicant will continue his good-faith efforts to resolve his remaining delinquent debts.

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 grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.f:

For Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge