



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



In the matter of:)	
)	
[Redacted] ¹)	ISCR Case No. 15-06355
)	
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 granted.

Statement of the Case

Applicant submitted a security clearance application on November 2, 2012. On March 11, 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.

¹ Applicant's name is incorrectly reflected in the SOR, and his first name and middle name were reversed in the transcript of the hearing. His name is correctly reflected in the caption of this decision.

Applicant answered the SOR on April 15, 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 26, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 16, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. I kept the record open until August 31, 2016, to enable him to submit additional documentary evidence. He timely submitted AX K through P, which were admitted without objection. DOHA received the transcript (Tr.) on August 25, 2016.

Findings of Fact²

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

Applicant is a 32-year-old database administrator employed by a defense contractor since September 2012. He served in the U.S. Army Reserve from January 2004 to March 2007. He was on active duty in the U.S. Army from March 2007 to March 2010, and then returned to the U.S. Army Reserve, serving from March 2010 to the present. He served in Iraq from March 2009 to February 2010. He received honorable discharges from his first tour of duty in the USAR and from his active-duty tour in March 2010. He received a security clearance when he entered on active duty in 2007 (Tr. 8.) He has a 50% service-connected disability for post-traumatic stress disorder (PTSD). (Exhibit C to SOR Answer; Tr. 82.)

Applicant married in May 2008. He and his wife have an eight-month-old daughter. He attended several college-level institutions from April 2009 to August 2012, and he has an associate's degree in computer and information science.

Applicant's financial problems began shortly after his father was diagnosed with terminal cancer and passed away in June 2006. Applicant moved to his father's state of residence to be with him, and was able to continue working for the same employer. After his father's death, he became seriously depressed and quit his job. He was unemployed for about a year. He lived in his mother's basement during that time and let his unpaid bills accumulate. In March 2007, he enlisted in the Regular Army and served on active duty, seeking to have a regular source of income and to instill some discipline in his life. (SOR Answer at 2; Tr. 30-31.)

After Applicant left active duty, he read several financial planning publications that advocated ignoring old debts. When he applied for a loan to buy a home in 2014, the loan officer advised him to ignore his old debts until they dropped off his credit

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

report, because reviving them would hurt his credit score. (Tr. 46-47.) When he hired a lawyer to help him respond to the SOR, his lawyer advised him that he needed to take care of his old debts if he wanted to keep his security clearance. (Tr.32-33; SOR Answer at 2-3.)

The SOR alleges 14 delinquent debts totaling about \$31,921. The delinquent debts are reflected in his credit bureau reports (CBRs) from November 2012 (GX 3), February 2015 (GX 4), and February 2016 (GX 5). The evidence concerning these debts is summarized below.

SOR ¶ 1.a, debt to U.S. Government agency, placed for collection in December 2013 for about \$2,127. The debt arose from overpayment of veteran's educational benefits due to inaccurate reporting of the number of classes he took. Applicant testified that he contacted the appropriate government agency to settle the debt, and he agreed to a voluntary garnishment of his pay. (Tr. 51-52.) About \$1,399 was collected by garnishment of Applicant's pay in May and June 2015. (GX 2 at 11-14.) He paid the remainder of the debt in two installments in April 2016, shortly after he received the SOR. (AX A.)

SOR ¶ 1.b, debt for \$1,495, charged off in July 2008. This debt was cancelled by the creditor and reported on Applicant's federal income tax return as income for tax year 2014. Applicant testified that he did not know why the debt was cancelled. (Exhibit F to SOR Answer; Tr. 54.)

SOR ¶ 1.c, debt for \$759, charged off in September 2010. Applicant resolved the debt through a payment agreement and made his final payment in June 2016. (AX B; Tr. 55-56.)

SOR ¶ 1.d, deficiency after vehicle repossession, referred for collection in March 2009 for \$14,526. Applicant testified that he voluntarily surrendered the vehicle when he could not afford the payments, and he replaced it with an old used vehicle. (Tr. 31.) In April 2016, after he received the SOR, he sent a letter by certified mail to the creditor, asking how much the creditor received from the sale of the vehicle and how the deficiency was computed, and expressing his willingness to settle the debt. (AX O.) After he received an unresponsive reply, he called the creditor, but he still has not received the information he requested. (Tr. 58-61.) The debt is not resolved.

SOR ¶ 1.e, credit-card account, charged off for \$6,049 in February 2007. At the hearing, Applicant could not remember if he reached out to this creditor. (Tr. 61.) After the hearing, he submitted evidence that he sent a certified letter to the creditor in April 2016, and another certified letter on the day after the hearing. (AX N; AX O.) He has not received a response to his letters, and the debt is not resolved.

SOR ¶ 1.f, telecommunications debt, placed for collection of \$195 in February 2008. Applicant disputed this debt, and it was removed from his credit file as an erroneous charge. (AX C; Tr. 62-63.)

SOR ¶ 1.g, department store debt, charged off for \$413 in December 2007. Applicant contacted the creditor and was informed that his account was archived, that all information had been deleted, and that the creditor would not accept a payment. (AX G.)

SOR ¶ 1.h, debt for \$277, referred for collection in March 2008. In April 2015, Applicant tried to send a certified letter to the creditor, but he sent it to an educational institution with the same acronym, and it was returned to him. (AX I; AX N.) He was unaware that the creditor's contact information was listed in the November 2012 CBR until it was pointed out by Department Counsel. (Tr. 64-65.) On the day after the hearing, he sent the letter to the address listed in the November 2012 CBR, and it was returned to him with a post office label stating, "No such number, unable to forward." (AX L; AX N.) The debt is not yet resolved.

SOR ¶ 1.i, credit-card account, placed for collection of \$752. Applicant disputed this debt in July 2016, and the collection agency acknowledged receipt of his dispute. The dispute had not been resolved as of the date the record closed. (AX D.)

SOR ¶ 1.j, credit-card account, placed for collection of \$2,995 in October 2012. In April 2016, Applicant sent a certified letter to the collection agency but it was returned by the postal service as undeliverable. His letter was not sent to the address reflected in his November 2012 CBR. He then called the telephone number reflected in the November 2012 CBR, and he disputed the debt on the ground that he had never purchased the computer for which the debt was listed. (AX K.) He received a letter from the collection agency acknowledging his dispute, and informing him that it was investigating the validity of the debt. (AX P.) The dispute is not yet resolved.

SOR ¶ 1.k, finance company debt, placed for collection of \$1,609 in February 2010. In November 2015, Applicant received a settlement check for \$151 after the original creditor settled a complaint of engaging in unfair, deceptive, or abusive practices. (Answer to SOR; AX G; AX H.) The debt was listed in Applicant's November 2012 CBR, but it was not listed in his CBRs from February 2015, February 2016, and August 2016. (GX 4; GX 5; AX J.)

SOR ¶ 1.l, cell phone account, placed for collection of \$393 in December 2006. Applicant settled this debt for about \$90. The original creditor agreed not to pursue the remaining balance but will not restore service until the full amount is paid. (AX E.)

SOR ¶ 1.m, telecommunications account, placed for collection of \$194 in March 2006. Applicant paid this account in full in July 2016. (AX F.)

SOR ¶ 1.n, insurance bill, placed for collection of \$137 in September 2012. Applicant contacted the creditor and was informed that they could not find an account for him. (AX G.) The debt was listed in Applicant's November 2012 CBR, but it was not listed in his CBRs from February 2015, February 2016, and August 2016. (GX 4; GX 5;

AX J.) Since less than seven years have elapsed since the debt was referred for collection, the deletion of the debt from Applicant's credit record indicates that the debt was resolved.³

In response to DOHA financial interrogatories, Applicant provided a personal financial statement in June 2015. It reflected that his net income, including his spouse's salary, was about \$4,261; his monthly expenses were \$2,684; his debt payment on his home mortgage loan was \$1,550; and he had a net monthly remainder of \$26. (GX 2 at 15.) In April 2016, he completed a financial management course offered by a federal agency. (Exhibit E to SOR Answer.) In his answer to the SOR, he submitted an updated personal financial statement reflecting monthly family net income of \$6,732, expenses and debt payments of \$5,284, and a net monthly remainder of about \$1,398. (Exhibit D to SOR Answer.) He recently received an increase in his gross annual salary from about \$50,000 to about \$85,000. (Tr. 39.) His wife earns about \$30,000 per year. (Tr.71.) At the hearing, he estimated that his current net monthly remainder is now about \$1,500. (Tr. 78.)

When Applicant answered the SOR, he submitted letters from his step-father (who has held a security clearance for 25 years), two fellow soldiers who served with him in Iraq, a former coworker, and three long-time friends. They describe him as honest, reliable, dedicated and responsible. They have watched him demonstrate initiative, generously help others in need, and strive to improve himself. He is considered a loyal friend, loving husband and father, and a person of exemplary character.

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

³ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, which is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

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 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 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 established. The death of Applicant's father was a circumstance beyond his control, but he voluntarily quit his job after his father's death. There is no medical evidence in the record establishing the cause or severity of his

depression during the year after his father's death. The service-connected disability for PTSD was the result of service in a combat zone. The record does not reflect whether he was more predisposed to PTSD as a result of his father's untimely death.

AG ¶ 20(c) is established. Applicant completed a financial management course, and he has made significant strides in gaining control of his finances.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.a-1.e, 1.g, 1.h, and 1.k-1.n. Even though debts alleged in SOR ¶¶ 1.d, 1.e, and 1.h have not been paid, Applicant has made good-faith efforts to resolve them.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, 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 to systematically contact his creditors, verify the accuracy of the CBR information, and either pay the debts, establish a payment plan, or dispute them.

Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Except for the debt alleged in SOR ¶ 1.a, Applicant did not begin to seriously address his delinquent debts until he consulted with a lawyer after receiving the SOR. His realization that his security clearance was in jeopardy undoubtedly was the catalyst for taking action. However, protecting his clearance was not his sole motivation. The evidence reflects that he was also motivated by his desire to put his life in order, act responsibly, and take care of his family.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.f, 1.i, and 1.j. In each case, Applicant questioned the basis for the debt and documented his dispute with letters to the creditors or collection agencies.

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 received a security clearance shortly after he began his active-duty Army service, before his year of financial irresponsibility began to affect his credit history. He was financially unsophisticated and made some unwise installment purchases while on active duty. He submitted his current SCA when he needed to obtain a higher level clearance, not realizing that his old debts would haunt him. He sought legal counsel when he received the SOR, and he has followed his lawyer's advice and vigorously addressed his financial problems. While he has not resolved all his delinquent debts, he has a plan and has taken significant steps to implement it. He enjoys a reputation for reliability, trustworthiness, and good judgment. His employer has demonstrated confidence in him by sponsoring him for a higher-level clearance and giving him substantial pay raises. I am confident that he will continue to demonstrate financial responsibility and good judgment.⁴

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.

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.n:

For Applicant

⁴ 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). If Applicant does not continue his recent pattern of financial responsibility, he will be subject to reconsideration and possible revocation of his clearance.

Conclusion

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

LeRoy F. Foreman
Administrative Judge