



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-06645
)	
Applicant for Security Clearance)	

Appearances

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

04/20/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond his control, Applicant experienced financial difficulties, 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 April 2, 2014. On April 13, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. 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 the DOD on September 1, 2006.

Applicant answered the SOR on May 19, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 13, 2016, and the case was assigned to me on August 3, 2016. On August 23, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 14, 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 Exhibit (AX) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on September 22, 2016.

Findings of Fact

The SOR alleges nine delinquent debts totaling \$35,417. It also alleges that Applicant was arrested in 2007 for issuing a worthless check, and in 2014 for failure to pay child support. In his Answer, Applicant denies six of the debts, and admits three of the debts and the two arrests. He also explains the status of each debt and the circumstances of his arrests. His admissions are incorporated in my findings of fact. The delinquent accounts are corroborated by the July 2015 and May 2014 credit bureau reports (CBR) (GX 4; GX 2.)

Applicant is a 59-year-old self-employed carpenter, currently sponsored by a defense contractor for a construction management position. He served honorably in the U.S. Army from January 1976 to September 1979, and from August 1980 until he was given early retirement in September 1994. He held a security clearance while in the military. (GX 1; Tr. 26-27.) He graduated from high school and completed one year of technical college. He married his first wife in 1980, they divorced in 1994, and have two adult children. He married his second wife in 1996, they divorced in 1999, and have a 17-year-old son. He married his third wife in 2010, they separated in 2013, and have an 11-year-old son who resides with Applicant's mother. (GX 1; Tr. 25-28.)

Applicant's financial difficulties arose due to the combination of several factors. Applicant owns two houses, one is his primary residence and the other is a rental property. He worked overseas from about 2011 to 2013. During this period, his daughter was living in Applicant's primary residence, and was supposed to be paying the mortgage and utilities, but was not doing so. As a result, Applicant became delinquent on his mortgage and several utility accounts. (SOR ¶¶ 1.a and 1.d.) (Tr. 31; Tr. 39-40.) Additionally, the rental property was unoccupied in 2013, requiring Applicant to pay the mortgage, and depriving him of any rental income profit. (Tr. 35-36.) Further, he and his third wife separated in 2013, and Applicant started paying \$500 a month in child support for their son, as well as all of the household expenses. (Tr. 28-29.)

While overseas, Applicant's income was significantly higher than it had been as a carpenter, and his child-support obligation was increased to reflect his higher earnings.

This had an impact on Applicant in two significant ways. First, while working overseas, Applicant earned about \$97,000 a year and paid monthly child support of \$1,100. When he returned in 2013, he resumed work as a carpenter, earning about \$25,000, but still paying \$1,100 a month in child support. He hired an attorney and successfully petitioned the court for a reduction, but it took several months for the order to go into effect. (Tr. 21-23.) The high child support costs and the attorney's fees strained Applicant's finances and contributed to his inability to meet his financial obligations.

Second, Applicant erroneously thought that the court order reducing his child support to \$438 a month took effect immediately. However, the order was not immediately effective, and when Applicant made a payment of the reduced amount, an arrest warrant was issued against him for the unpaid balance of \$662. In March 2014, Applicant was stopped for a routine traffic violation, and was then arrested on the warrant. (SOR ¶ 1.k.) He paid cash for the balance and was released. He has remained current with his child support payments since that time. (Tr. 21-23; Answer.)

In an effort to obtain greater control of his finances, Applicant hired a credit-repair law firm that investigated his credit history. As of July 2016, the firm has successfully disputed and had removed from his CBR, 19 derogatory credit account entries, including the accounts alleged in SOR ¶¶ 1.g and 1.i. The other removed accounts are paid collection accounts and duplicate entries. (Tr. 51; AX B; AX A.)

The \$2,400 past-due mortgage account alleged in SOR ¶ 1.a was due to Applicant's daughter's failure to pay the account. Applicant paid the past-due balance and the account is current. (AX C; AX A.) He paid the \$202 charged-off credit card account alleged in SOR ¶ 1.e, and the \$180 credit-card debt alleged in SOR ¶ 1.f. (AX A; Tr. 48-49.) Applicant paid the \$1,236 judgment alleged in SOR ¶ 1.g the day it was entered in 2007. It has been removed from his CBR. (AX A; AX B; Tr. 50.)

The \$11,802 charged-off account alleged in SOR ¶ 1.b is for a vehicle loan. Applicant purchased a used vehicle in 2013, just prior to returning to the United States. As a result of the previously delineated financial strains he was experiencing, Applicant fell behind on the payments. The account is now current with a balance of \$6,450 as of September 2016. (AX A; Tr. 33-43.)

The \$4,800 delinquent mortgage account alleged in SOR ¶ 1.i has been paid and removed from Applicant's CBR. In about January 2008, Applicant opened this second mortgage account. In about May 2009, the house sold in a foreclosure sale, and the proceeds satisfied both the first and second mortgage loans. (GX 2; GX 3; AX A; AX B; Tr. 58-60.)

The \$1,796 charged-off credit-card debt alleged in SOR ¶ 1.c is for purchases and interest. Applicant used a store-issued credit card, which was supposed to be no interest

for one year, to purchase some appliances. He made monthly payments on the existing balance, then made some additional purchases. The creditor charged interest on the total balance, which Applicant disputed, and the balance was reduced to \$340. The account has been sold, and Applicant will pay the debt when he identifies the new creditor. (Tr. 37-38.)

The \$958 natural gas utility bill alleged in SOR ¶ 1.d was incurred by Applicant's daughter. Applicant erroneously thought this account was resolved. However, he confused this natural gas utility account with a power utility account that he recently paid and had removed from his CBR. He will pay this account. (Tr. 39-47.)

The \$12,043 judgment alleged in SOR ¶ 1.h has not been resolved. In about 2007, Applicant was hired to perform remodeling work by the judgment holder, a homeowner. The work was not completed to her satisfaction, and she hired a second contractor to complete the job. Applicant testified that he and the homeowner had a dispute about the scope of work Applicant was obligated to perform. The homeowner sued Applicant and the hearing was held while he was not in town. Applicant's then-wife appeared on his behalf, but a default judgment was entered against Applicant. He testified that the homeowner paid \$5,000 to another contractor to complete the work, and that he does not understand the higher amount of the judgment. He has contacted a mutual friend to act as a negotiator in order to reach a settlement agreement. Applicant will settle this debt. (Tr. 51-56; Tr. 71.)

Applicant's 2007 arrest for issuing worthless checks (SOR ¶ 1.j) was an anomaly. Applicant received a check for work he performed drawn on an out-of-state bank. He deposited the check in his business account and issued payroll and expense checks. The deposited check was not honored, and neither were the checks that Applicant had issued. As a result, he was arrested and charged with issuing worthless checks. Applicant paid the checks and he no longer maintains a business checking account. (Tr. 61; Answer.)

Applicant has continuously worked to resolve his financial issues, he lives within his means, he maintains his child support obligations, and he has not incurred any recent delinquent debt. He paid a number of delinquent debts prior to receiving the SOR. (GX 2; GX 4; AX A.) He is currently working on a large construction project from which he will earn about \$30,000, and will use this income to satisfy his remaining debts. (Tr. 69.) At the time of the hearing, Applicant was in the process of selling his rental property, and had a scheduled closing date of October 16, 2016. He expects to make a profit from the sale. (Tr. 47.) His demeanor while testifying was straight-forward and credible.

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”). 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.

Applicant's financial difficulties arose under circumstances that were largely beyond his control. Specifically, in 2013, he and his wife separated, his rental property was unoccupied, his existing child support obligation was too high for his decreased income and he incurred a second child support obligation, his income was drastically reduced, and his daughter failed to maintain Applicant's mortgage and utility accounts. However, Applicant has acted responsibly by steadily making efforts to retake control of his finances. He paid a number of delinquent accounts before the SOR was issued. He fully resolved six of nine SOR debts. He hired a credit-repair firm and has had 19 derogatory entries removed from his CBR. He disputed SOR debt 1.c and the balance was reduced to \$340. His failure to pay the \$958 debt alleged in SOR ¶ 1.d was unintentional and he will pay it. He is actively trying to settle the judgment alleged in SOR ¶ 1.h. He is selling his rental property. Applicant lives within his means and has not incurred any recent delinquent debt. His two arrests were not due to intentional malfeasance on Applicant's part. The circumstances that led to Applicant's indebtedness and the two arrests are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant acted in good faith by paying numerous delinquent debts and successfully disputing others. He will pay his remaining delinquent accounts with the income from his current project and the proceeds from the sale of his rental property. "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).

Although Applicant's finances are not perfect, he has established a sufficient track record of debt resolution. AG ¶¶ 20(a) through 20(e) 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 that guideline, but I have also considered the following:

Applicant began addressing his debt in a responsible manner before it had any potential impact on his security worthiness. He served honorably in the military for over 17 years. He has not incurred any recent delinquent debt, he lives within his means, and provides for his children. I am confident that Applicant will continue his good-faith efforts to resolve his remaining debt and maintain his financial stability.

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.k: For Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge