



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



In the matter of:

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ISCR Case No. 15-07047

Applicant for Security Clearance

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges three delinquent debts totaling \$27,905. He disputed one debt; however, he did not show sufficient progress towards resolution of the other two SOR debts. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On April 11, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3) On May 14, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006. (Item 1)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Item 1) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On June 19, 2016, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 2) On July 20, 2016, Department Counsel completed the File of Relevant Material (FORM). On August 20, 2016, Applicant provided a response to the FORM. On May 22, 2017, the case was assigned to me. The case file consists of four Government exhibits and Applicant's response to the FORM. (Items 1-4; FORM response) There were no objections to any of the exhibits, and they were admitted into evidence.

Findings of Fact¹

In Applicant's SOR response, he admitted all of the SOR allegations. (Item 2) He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is 52 years old, and he has been employed as a systems engineer for a defense contractor from June 2009 to the present.² In 1999, he received an associate's degree. From 1984 to 1986, he served on active duty in the Marine Corps. In 2006, he honorably retired from the Air Force Reserve as a master sergeant (E-7). From 2006 to 2009, he worked for another defense contractor as a systems engineer. In 1984, he married, and in 2015 or 2016, he divorced. (SOR response; FORM) There is no evidence that he violated security rules, abused alcohol, or used illegal drugs.

Financial Considerations

The status of his delinquent SOR debts is as follows:

SOR ¶¶ 1.a and 1.b allege two charged-off credit card debts for \$6,536 and \$2,767. Applicant said his spouse opened the two credit cards without his knowledge. She used the funds to help her disabled brother. Applicant briefly employed a credit repair company to help him with his debts; however, that company was unsuccessful in resolving the two debts. (Item 2, FORM response) He concluded his SOR response stating, "I am now working to resolve [these debts] with the collections. [I am taking corrective] action for these two accounts, to set up a payment plan I can afford," and to pay these debts. He concluded his FORM response with the statement, "I'm working out a payment plan with [the] collector to pay down [these debts]. Currently [I am working] to resolve."

SOR ¶ 1.c alleges an account originating from a time share for \$18,603 that has been placed for collection. Applicant said he succumbed to high-pressure sales tactics and signed a contract with a resort time-share company. (SOR response) He was unable to sell his time share, and he contacted the creditor. (SOR response) On March 23, 2016, he wrote the creditor and indicated he wanted the amount of his debt "corrected" because

¹ Some details have been excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

² Unless stated otherwise, the source of the information in this paragraph is Applicant's April 11, 2015 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3)

he was told the maintenance fee would not increase, the timeshare was a “great investment,” and it would appreciate in value over time. (SOR response) He concluded his SOR response with the following statement, “I am working to resolve this matter quickly, [my] goal is to be released from debt or have property sold on my behalf.” (SOR response) He noted that the time-share was charging his account maintenance fees. (SOR response) In his FORM response, he said that he would “resume making payments.”

The FORM states, “Absent compelling documentation that Applicant has made, and then carried out arrangements to resolve his delinquent accounts, the evidence in this record precludes finding that he has the good judgment and reliability to grant him access to classified information.” FORM at 3. There is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the debts in SOR ¶¶ 1.a and 1.b. He did not describe financial counseling. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems, reasons for lack of significant financial progress, and other mitigating information.

The FORM indicated that Applicant had 30 days from the receipt of the FORM “in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely” on the evidence set forth in this FORM. (FORM at 3) In response to the FORM, he provided a statement, but no evidence that he made any payments to his SOR creditors.

Four coworkers provided letters supporting Applicant’s access to classified information. (SOR response) They described Applicant as trustworthy, reliable, conscientious, responsible, diligent, honest, and productive. (SOR response)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides two disqualifying conditions that raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, and SOR response. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago,³ 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;

(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;

³ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁴ and

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant described his divorce, which is a circumstance beyond his control that adversely affected his finances. He said his wife generated the debts in SOR ¶¶ 1.a and 1.b; however, he did not act responsibly when he failed to make greater progress resolving the debts in SOR ¶¶ 1.a and 1.b.

⁴ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

I have credited Applicant with mitigating the debt in SOR ¶ 1.c. He wrote the creditor and complained about the creditor's failure to comply with the terms of the sale. He has taken the first step in the negotiated resolution of this debt.

Applicant did not provide enough details with documentary corroboration about what he did to address the debts in SOR ¶¶ 1.a and 1.b. He failed to provide: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the two creditors to establish consistent maintenance of contact;⁵ (3) credible debt disputes indicating he did not believe he was responsible for the debts, why he held such a belief, and proof of communication of the basis of the dispute to the creditor; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution.

There is insufficient evidence about why Applicant was unable to make greater progress resolving the debts in SOR ¶¶ 1.a and 1.b. He has been consistently employed since 2006. While some debts may have been dropped from his current credit report, this occurrence does not necessarily establish mitigation.⁶ There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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

⁵"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁶The Appeal Board noted in ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017):

There is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debts due to the passage of time, and the absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate an overall history of financial difficulties or constitute evidence of financial reform or rehabilitation. See, e.g., ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) and ISCR Case No. 03-05197 at 3 (App. Bd. Oct. 14, 2004).

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.

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. 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 is 52 years old, and he has been employed as a systems engineer since 2006. In 1999, he received an associate's degree. In 2006, he honorably retired from the Air Force Reserve as a master sergeant (E-7). From 1984 to 1986, he served on active duty in the Marine Corps. Four coworkers provided letters supporting Applicant's access to classified information and describing Applicant as trustworthy, reliable, conscientious, responsible, diligent, honest, and productive. There is no evidence that he violated security rules, abused alcohol, or used illegal drugs.

Applicant's finances were adversely affected by a circumstance beyond his control, that is, his divorce. He did not explain why he did not make greater progress resolving his SOR debts in light of his consistent employment since 2006.

The record establishes two delinquent debts totaling \$9,302. Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for these two SOR debts. He did not provide a detailed plan about how he intended to resolve these two delinquent SOR debts. His actions show lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration security concerns are not mitigated. It is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge