



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-07118
)	
Applicant for Security Clearance)	

Appearances

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

05/31/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due in part to circumstances largely beyond his control, but failed to act responsibly. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on May 28, 2015. On March 27, 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 April 28, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 1, 2016, and the case was assigned to me on September 26, 2016. On December 20, 2016, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 10, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on January 19, 2017.

Findings of Fact

Under Guideline F, the SOR alleges six delinquent debts totaling \$66,722. In his Answer, Applicant admits each of the allegations, explains the status of and the circumstances giving rise to the each of the debts, and discusses the applicability of disqualifying and mitigating conditions from the Directive. Applicant's admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from December 2016, June 2016, and June 2015. (AX A; GX 4; GX 3.)

Applicant is a 44-year-old systems engineer currently employed by a defense contractor since May 2015, and employed in the defense industry since 2003. He enlisted in the U.S. Air Force in June 1990 at age 17, and served honorably until June 1999. He received an associate's degree in 1998, a bachelor's degree in 1999, and a master's degree in 2003. He and his wife married in 1992, and they have two children, ages 19 and 7. (GX 1; Tr. 69.)

Applicant's financial difficulties are the result of several contributing factors. In 2009, Applicant and his wife were both gainfully employed, and, confident about their financial status, purchased a larger, more expensive home, selling their existing home for a \$17,000 loss, which Applicant paid out-of-pocket. (Tr. 42-43; Tr. 54.) They opened and used several credit cards with initial interest rates of 0%, and racked up high balances. They purchased a new vehicle in 2011 for over \$46,000, with monthly payments of \$757. (GX 2; GX 3; Tr. 57.) Applicant also took out a \$10,000 personal loan in November 2011. (GX 3; GX 2.)

Applicant's wife has a lifelong medical condition that worsened in about 2012, causing increased medical costs, and an inability for her to work. After several months out of work, she received short-term disability compensation. She returned to work in a part-time capacity, which resulted in a loss of monthly household income of \$1,000 to \$1,200. (Tr. 44; GX 2.) In May 2012, Applicant bought a new car for his daughter for approximately \$28,000, with monthly payments of \$430 for 72 months. (GX 2; GX 3.)

At some point in 2013, Applicant recognized that he had amassed significant debt and, with his daughter's college costs only a few years off and his 0% interest rates on his credit cards ending, he needed to address his debts. He researched debt-consolidation companies but decided to resolve his debts on his own. He stopped making payments on his credit cards for six to eight months, with the intention of forcing the creditors to accept settlements on the accounts for less than the balances. (Tr. 44; GX

2.) Applicant settled: a \$10,197 debt for \$3,455; an \$11,918 debt for \$5,364; and, a \$13,011 debt for \$6,506. (GX 1; GX 3.)

Applicant and his wife separated in early 2013. Applicant paid for furniture for her apartment and paid the rent and her expenses for four months, until she moved back to the marital residence. Applicant was required to pay the remainder of the lease, and estimates the total cost of this episode was \$25,000. (Tr. 45.) The couple separated again in late 2013, with Applicant moving into an apartment. He paid his wife \$1,600 a month in support, and \$100 to \$300 a month in child support, as well as his own rent and expenses. (Tr. 46; GX 2.) Applicant's wife filed for divorce in October 2014, and they each engaged attorneys at a significant cost to Applicant. He and his wife entered a separation agreement wherein they each agreed to pay one of their two credit cards with balances of about \$15,000, and Applicant agreed to continue to pay his wife \$1,600 a month in support. However, the divorce was not finalized and the couple reunited in October 2015. (Tr. 47-48; Tr. 68.)

In about January 2013, Applicant stopped making mortgage payments in order to force a mortgage modification. After eight to ten months of non-payment, the mortgage loan was restructured and Applicant's monthly payment was reduced from \$2,100 to about \$1,800 or \$1,900. (Tr. 55-56.) After less than six months, Applicant determined that even with the modification, he was unable to sustain the mortgage payments, and stopped making them. In early 2015, Applicant's wife moved out of the house, and the house sold in a short sale in September 2015, with a remaining past-due amount of \$41,431. (Tr. 57; Tr. 52-53; GX 3.)

During the separation, the vehicles Applicant purchased in 2011 and 2012 were repossessed, leaving a balance of \$8,073 on the 2011 vehicle. (Tr. 49; GX 4.) After the 2012 vehicle was repossessed, Applicant bought an inexpensive used car for his wife and one for himself. Following their reunion in 2015, Applicant borrowed from his 401(k) to purchase a new vehicle for his family. (Tr. 49.) Applicant paid \$600 for his daughter's college expenses in 2015-2016, but no longer has that obligation. (Tr. 76.)

The \$15,300 credit-card debt (SOR ¶ 1.a) is the account that Applicant's wife agreed to pay when they separated. She did not make any payments, and Applicant paid for several months until he was unable to do so. The account has been charged off. (Tr. 51.) The \$6,417 delinquent personal loan (SOR ¶ 1.b) has been charged off.

The \$2,272 debt alleged in SOR ¶ 1.d was the past-due amount for the 2011 vehicle. The vehicle was repossessed and the deficiency is now \$8,073. The \$482 past-due credit-card account alleged in SOR ¶ 1.e has been charged off for \$3,902. (AX A.)

Applicant's mortgage loan was guaranteed through the Department of Veterans Affairs (VA), thereby alleviating Applicant from responsibility for the past-due \$41,431. (SOR ¶ 1.c), and his recent CBR shows a \$0 balance due. (AX A; GX 4; Tr. 53.) The \$820 past-due account alleged in SOR ¶ 1.f was owed on the 2011 vehicle. However, the

vehicle was resold after it was repossessed and there was no deficiency owed by Applicant. (GX 4; 57-58.)

Applicant's unpaid, charged-off SOR debts now total \$33,692, and he does not intend to take any action to pay or otherwise resolve them. He testified repeatedly and unequivocally that his "intent is not to reconcile the write-offs," stating that any such potential repayment could jeopardize his current financial stability. (Tr. 71-72; 60-61; Tr. 75-76; Tr. 85-86.) He stated the following specifically regarding the \$15,300 credit-card debt alleged in SOR ¶ 1.a:

I have spoken with [the creditor] on -- they have called on the settlement and I am -- I have not engaged on that. They are inquiring but I'm waiting for it to be written off. At the risk of sounding of saying the wrong thing I will be honest. I have not taken it upon myself to come clean and pay as much as I can. I mean with the debt consolidation I knew that I had a problem and something had to fix it. With all of this financial, you know, I messed up. I mean I know I've defaulted. I'm not trying to, you know, go and rise above and pay as much as I can and go pay [the creditor], you know, \$5,000, \$10,000 for the write-off. I'm letting it run its course. I don't -- I know my credit is impacted. I'm okay with that. I know it's bad for issues like this I know. But I don't want to go into debt. I don't want to rely on my credit. So, I haven't, you know, I haven't said okay, here's a check for the \$4,000 or \$6,000 that they want. That isn't the course that I've chosen to take.

Applicant earns \$141,000 a year, and receives \$500 a month of disability compensation from the Air Force. He currently lives in a rental property, and does not have a vehicle loan. (Tr. 70-75; AX A.) He maintains two credit cards: a department store card with a \$300 credit limit and a \$0 balance; and, a consumer card with a \$14,000 limit and a \$14,522 balance. (AX A.) Applicant pays as much as he can each month on the consumer card, which is usually at least \$1,000. (Tr. 77-78.) His wife recently started a new job and is working two days per week, with the intention of gaining full-time employment. (Tr. 78.) His checking account balance is less than \$1,000. (Tr. 74.) He has two 401(k) accounts of \$34,000 and \$12,000. (Tr. 75.) He has a delinquent cell phone account for \$840 and two unpaid medical accounts totaling \$66, incurred in 2016. (AX A.) He maintains an electronic budget. (Tr. 80-81.) When asked if he could afford to repay his delinquent accounts, Applicant stated:

So, am I capable in a very pure sense? I mean is there money? Yes. I do make a good salary. Is it what I feel like I need to be doing for my sustainable and my productivity for my house and stability and so the stress and everything what I went through by keeping myself broke and, you know. I said, no, I don't think there's enough funds to do that activity. (Tr. 73.)

Applicant has received an Internal Revenue Service Form 1099-C, which requires that Applicant report the charged-off debt amount as income, for each of the charged-off SOR debts except the \$15,300 consumer-card debt alleged in ¶ 1.a. (Tr. 80.)

Applicant's current supervisor and friend of 11 years testified that Applicant "exercises extremely good judgment" when handling sensitive information, that he surrounds himself with positive influences, and that he recommends Applicant for a security clearance. (Tr. 22-23.) Applicant's friend since about 2000, a former supervisor and current co-worker, testified that he has observed Applicant's strict adherence to policies and procedures when handling classified information, that Applicant is trustworthy, and that he supports a security clearance for Applicant. He further testified that Applicant has become more financially responsible. (Tr. 30-35.)

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 problems are recent and ongoing. He has not paid any of the delinquent SOR debts, and has no intention of doing so. He has adopted the position that since the debts have been charged off, he is absolved of any further obligation. While some of the factors that contributed to Applicant's indebtedness arose from circumstances largely beyond his control, specifically his wife's ongoing health issues and unemployment and underemployment, and his periods of separation and the associated costs, he did not act responsibly under the circumstances. Applicant stopped paying his mortgage and successfully forced a modification. He then determined that the mortgage payments remained too high, and defaulted with more than \$41,000 past due. He had two vehicles repossessed, and defaulted on over \$25,000 of personal-loan and credit-card debts. While Applicant has filed 1099-Cs for most of the charged off SOR debt, and he is not liable for the balance of the VA-guaranteed mortgage loan, he did not take affirmative steps to resolve these debts in good faith. "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).

Further, Applicant admits that he is capable of repaying his delinquent accounts, but has made the calculated decision to simply walk away from his debts, and focus his financial resources on his current and future obligations. However, in doing so, he violated his contractual obligations with his creditors and demonstrated an overall lack of judgment, trustworthiness, and self-control. He considers the charged-off or non-collectable status of his debts as resolved. However, merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). "[R]eliance upon the non-collectibility of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive." ISCR Case No. 07-06841 at 4. Bd. Dec. 19, 2008). None of the mitigating conditions 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 Air Force for nine years, and has worked in the defense industry since 2003. He is respected and supported by his supervisor and co-worker. However, Applicant has demonstrated a pattern of financial irresponsibility. In 2013 to 2014, he settled \$35,126 of credit-card debt for \$15,325. Yet, he defaulted on additional credit-card debt and his mortgage loan, and had two vehicles repossessed. He then withdrew from his 401(k) to purchase a new vehicle. He currently owes more than the \$14,000 credit-limit on his credit card, and he incurred three delinquent accounts in 2016. While Applicant stated that he has a budget and is not incurring any new debt, he has failed to establish a sufficient track record of financial stability and responsibility that is consistent with those granted access to classified information.

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 not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude 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.

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): AGAINST APPLICANT

Subparagraphs 1.a through 1.f: Against Applicant

Conclusion

I conclude that 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.

Stephanie C. Hess
Administrative Judge