



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



In the matter of:

)
)
)
)
)

ISCR Case No. 15-08262

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges 13 delinquent debts totaling \$37,602. Four SOR debts are mitigated: he disputed one debt; one debt is a duplication; and his two student loans are in deferment status. He did not make any payments to any of his SOR creditors. Applicant did not make sufficient progress resolving the debts alleged in his SOR. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On April 17, 2015, Applicant completed and signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On April 28, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

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 Applicant, and recommended referral to an administrative judge to determine whether

a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

On June 6, 2016, Applicant responded to the SOR and requested a hearing. On August 8, 2016, Department Counsel was ready to proceed. On September 8, 2016, the case was assigned to me. On November 18, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 8, 2016. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered four exhibits; and all proffered exhibits were admitted without objection. (Tr. 19-23; GE 1-4; AE A-D) On December 16, 2016, DOHA received a copy of the hearing transcript.

Findings of Fact¹

In Applicant's SOR response, he admitted responsibility for the debts in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, and 1.g, and he denied the remaining SOR allegations.

Applicant is a 26-year-old assembly mechanic, who has worked for his employer since June 2015. (Tr. 5, 27-28; GE 1) In 2007, he graduated from high school. (Tr. 5) He attended a technical college, and in 2008, he received a diploma. (Tr. 6) He attended Army basic training; however, he received a medical discharge during basic training. (Tr. 7) He has never married; however, he has been living with his partner for nine years. (Tr. 8) They have one nine-year-old child. (Tr. 7) They live with Applicant's mother. (Tr. 26) Applicant contributes to the household expenses. (Tr. 26) There is no evidence of violations of his employer's rules, drug abuse, alcohol abuse, or criminal infractions.

Financial Considerations

Some of the negative entries on Applicant's credit report are from his father, who has the same name as Applicant. (Tr. 23-24, 40) His father was released from prison two years ago after more than 20 years in prison. (Tr. 23-24, 40, 48-50) Applicant was successful in disputing several negative entries on his credit report. (Tr. 49-50)

Applicant's hourly salary is \$13.36. (Tr. 25) He has filed his state and federal income tax returns for the last five years. (Tr. 25) He owes the state tax authority \$312 for tax year 2015, and he recently made his second payment to the state tax authority. (Tr. 25) He did not describe receipt of financial counseling, and he does not use a written budget. (Tr. 26) Applicant does not necessarily have a remainder after his monthly bills are paid, and he has no savings. (Tr. 27) He has about \$4,000 in a 401(k) account. (Tr. 27) Applicant has had periods of unemployment, and he lived off welfare. (Tr. 28) Applicant is considering how and when he will start paying his SOR debts. (Tr. 47) He

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

acknowledged that he made poor choices in the past, and he promised to get his finances under control and to pay his debts. (Tr. 53-62)

Applicant's SOR alleges 13 delinquent debts totaling \$37,602. His SOR debts are documented in his July 29, 2015 Office of Personnel Management personal subject interview (OPM PSI), credit reports, and hearing record, and their status is as follows:

SOR ¶ 1.a alleges a \$1,014 judgment filed in 2012, which resulted when Applicant became unemployed and broke a lease for an apartment. (Tr. 30; GE 4 at 2) The creditor in SOR ¶ 1.c, which alleges a collection debt for \$3,389, is attempting to collect on the judgment. (Tr. 32) Applicant contacted the creditor; the creditor wanted payment in full; and Applicant did not make any payments to address this debt. (Tr. 33-36)

SOR ¶¶ 1.b, 1.d, and 1.e allege three medical debts placed for collection for \$863, \$863, and \$569. Applicant admitted responsibility for these debts; the debts are about three years old; and the creditor offered a \$50 monthly payment plan to Applicant for each debt. (Tr. 33-36; SOR response; AE D at 2) Applicant did not make any payments. (Tr. 33-34)

SOR ¶ 1.f alleges a medical debt placed for collection for \$980. Applicant admitted responsibility for the debt; he has not contacted the creditor; and he has not made any payments to address this debt. (Tr. 36-37; AE C at 2; AE D at 3)

SOR ¶ 1.g alleges a medical debt placed for collection for \$885. Applicant admitted responsibility for the debt; he contacted the creditor; the creditor wanted \$100 monthly payments; and Applicant did not make any payments to address the debt. (Tr. 38; AE D at 3)

SOR ¶ 1.h is a medical debt placed for collection for \$13,261. Applicant said the debt was for inpatient treatment at a hospital in 2012. (Tr. 38, 40; AE C at 2) Applicant denied responsibility for the debt because he was never a patient at a hospital. (Tr. 38-39) He disputed the debt's presence on his credit report. (Tr. 39) He believes the debt is his father's debt. (Tr. 39, 45-46) He contacted the creditor the week before his hearing, and the creditor was unable to locate information connecting the debt to Applicant. (Tr. 39)

SOR ¶ 1.i is a telecommunications debt placed for collection for \$497. Applicant admitted responsibility for the debt; the debt has been delinquent for several years; he agreed with the creditor to pay \$50 monthly for seven months; however, he has not made his first payment. (Tr. 40-41)

SOR ¶¶ 1.j and 1.k are two student loans placed for collection for \$6,176 and \$7,676. The debts were generated in 2007. (Tr. 42-43) His mother made some payments to the creditor, and then she stopped making payments several years ago. (Tr. 43-44) Applicant did not make any payments. (Tr. 44) Applicant said the two debts were transferred and consolidated. (Tr. 41-42) On September 29, 2015, the new creditor wrote

that Applicant's payments were deferred because his income was low, and he will need to make payments when his income increases. (Tr. 42; AE A)

SOR ¶ 1.l alleges a medical debt placed for collection for \$295. Applicant admitted responsibility for the debt; he contacted the creditor; and he has not made any payments to address this debt. (Tr. 44; GE 4 at 8)

SOR ¶ 1.m alleges a parking ticket debt or debts placed for collection for \$684. Applicant admitted responsibility for the debt; the debt was generated in 2012; he has not contacted the creditor; and he has not made any payments to address this debt. (Tr. 44-45)

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 in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) explained the scope and rationale for the financial considerations security concern 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 could 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.” Applicant’s history of delinquent debt is documented in his credit reports, SOR response, and hearing record. The Government established 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, 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;

(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;² 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.

²The 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)).

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 presented some important mitigating information. Several circumstances beyond his control adversely affected his finances. Applicant had some periods of unemployment or underemployment. He did not provide enough specifics about how these circumstances adversely affected his finances, and he did not show that he acted responsibly to address his delinquent SOR debts during his current employment. Three SOR medical creditors offered to accept \$50 monthly payments, and he did not establish he was unable to make \$50 payments to even one creditor.

Four SOR debts are mitigated: he credibly disputed the medical in SOR ¶ 1.h (\$13,261); the debt in SOR ¶ 1.a (\$1,014) is a duplication of the debt in SOR ¶ 1.c (\$3,839); and his two student loans in SOR ¶¶ 1.j (\$6,176) and 1.k (\$7,676) are in deferment status.

Applicant is not credited with mitigating the other SOR debts because he did not provide sufficient documentation showing progress paying the debts, a reasonable dispute of any debts, or an inability to make monthly payments on at least one of the SOR debts.

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving the SOR debts. 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 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 a 26-year-old assembly mechanic, who has worked for his employer since June 2015. He attended a technical college, and in 2008, he received a diploma. He has never married; however, he has been living with his partner for nine years. They have one nine-year-old child, and they live with Applicant's mother. There is no evidence of violations of his employer's rules, drug abuse, alcohol abuse, or criminal infractions.

Applicant is credited with mitigating SOR ¶¶ 1.a (\$1,014), 1.h (\$13,261), 1.j (\$6,176), and 1.k (\$7,676); however, the financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems as several debts became delinquent in 2012, and there is no evidence of any payments over the previous four years. He was reminded of his delinquent debts during his OPM interview, and progress addressing his delinquent debts has been minimal. He did not describe receipt of financial counseling, and he does not use a written budget. He did not provide enough specifics about how the circumstances beyond his control adversely affected his finances, and he did not show that he acted responsibly to address his delinquent debts. His failure to make greater progress resolving his SOR debts shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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 v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Unmitigated financial considerations security concerns 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 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 or reinstate Applicant's 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraphs 1.l and 1.m:	Against Applicant

Conclusion

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

MARK HARVEY
Administrative Judge