



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-03164
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2018

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Although Applicant's financial issues arose from conditions largely beyond his control, the majority of his debt remains unresolved and his financial issues are recent and ongoing. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on March 21, 2013. On April 9, 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 and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 24, 2016, and the case was assigned to another administrative judge who scheduled the hearing for November 14, 2016. The hearing was continued, and the case was assigned to me on January 24, 2017. On May 4, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 24, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 12 were admitted in evidence without objection. Applicant testified, and at the close of the hearing I left the record open until June 7, 2017, to allow Applicant to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on June 2, 2017.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017.

Findings of Fact

The SOR alleges 35 debts totaling \$38,082; \$22,600 of which is owed for 11 delinquent student loan debts. It also alleges that: Applicant filed Chapter 7 bankruptcy in January 2001; filed Chapter 13 bankruptcy in July 2010; filed Chapter 13 bankruptcy in October 2011; and, made \$9,000 worth of unauthorized personal charges on his corporate credit card. In his Answer, Applicant admits 19 of the debts, including all of the student loans, and denies the remaining 16. He admits the bankruptcies, but denies the unauthorized use of his corporate credit card. He also discusses the status of each of the alleged debts. Applicant's admissions are incorporated in my findings of fact. The debts are corroborated by Applicant's October 2015, March 2015, April 2013, January 2011, and October 2010 credit bureau reports (CBR) (GX 8; GX 7; GX 6; GX 5; GX 4) and discussed in Applicant's April 2013 and February 2011 personal subject interviews (PSI). (GX 2; GX 3.)

Applicant is a 41-year-old systems administrator currently employed by a federal contractor since January 2011. He has been employed as a federal contractor since July 2009. Applicant served honorably on active duty in the U.S. Army from May 1995 until February 2002. He attended college from approximately 2003 until 2005, and holds several information technology certificates. Applicant and his wife married in 1997, and they have two children, ages 20 and 13. Applicant has held his current security clearance since January 2009, and was previously granted a clearance in May 1995 while on active duty. (GX 1.)

Applicant attributes his financial difficulties to several things. He was unemployed from February 2003 until October 2003; from August 2004 until March 2005 while in college; and, from December 2009 to February 2010. He paid for his mother-in-law's

funeral expenses, and helped financially support his mother. He also believes that at least one of the SOR debts (SOR ¶ 1.e), and possibly other debts, is attributable to a family member who misused Applicant's personal information to take out a payday loan.

In about 2005, Applicant placed his student loans in deferment. Applicant testified that he believed at the time his student loans were deferred, that the period of deferment was indefinite. He does not recall receiving notices that indicated that the loans were no longer in deferment, or that payment was required. After leaving college, Applicant moved several times, however he has been in his current home since October 2006. (Tr. 48-50.) Applicant believes his student loans became delinquent at some point in 2009. (GX 2.)

Regarding his 11 student loans, in his Answer, Applicant stated that he contacted the Department of Education in September 2015 to start making payments. He was told he needed to contact the collection agency, which he did. The collection agency informed Applicant that the loans had been sold to another agency, the name of which they could not disclose. Applicant stated, "I am and have been researching this account to find out what I need to do to make payments." He testified that his last contact with any entity regarding repayment of the student loans was in October 2016. Since that time, he has been waiting to be contacted by a collection agency. He has never directly made a payment on any of the loans to any loan-servicing entity. (Tr. 47-52.) The delinquent student loans alleged in SOR ¶¶ 1.r through 1.bb are not resolved.

Between May and June 2016, Applicant paid the following medical debts alleged in the SOR: ¶ 1.b - \$150; ¶ 1.j - \$150; SOR ¶ 1.k - \$300; and ¶ 1.m - \$150. (AX B; Tr. 23-25.) Applicant credibly testified that he has resolved the \$767 past-due mortgage-loan account (SOR ¶ 1.q), and that his mortgage loan is now current. These debts are resolved.

Applicant testified that he paid the \$147 internet-provider debt (SOR ¶ 1.a), the \$75 internet-provider debt (SOR ¶ 1.hh), and the \$377 internet-provider debt (SOR ¶ 1.o). He stated that since July 2016, he has been making \$200 monthly payments on the \$5,685 (SOR ¶ 1.p) balance owed for a vehicle that was totaled. (Tr. 23-24; Tr. 41-43.) (Tr. 44-46.) Applicant did not provide any documentary evidence in support of these assertions.

Applicant stated that he disputed the \$116 cellular-telephone debt (SOR ¶ 1.c), the \$1,244 credit-card debt (SOR ¶ 1.dd), the \$339 cellular-telephone debt (SOR ¶ 1.ee), and the \$912 collection account (SOR ¶ 1.ii). He stated that he disputed and filed a police report regarding the fraudulently obtained \$406 payday loan alleged in SOR ¶ 1.e. Applicant did not provide any documentary evidence in support of these assertions.

Applicant denies owing the \$30 medical debts alleged in SOR ¶¶ 1.f, 1.g, 1.i, 1.l, and 1.n, and the \$36 medical debt alleged in SOR ¶ 1.h, stating that these appear to be

medical co-pays that he always pays at the time of treatment. (Tr. 39-40.) He does not recognize the \$4,075 charged-off account alleged in SOR ¶ 1.gg. These debts are unresolved.

Applicant filed Chapter 7 bankruptcy in 2001 at the advice of an attorney. He believes this was a mistake, and that debt consolidation would have resolved his financial issues at that time. He does not recall the amount discharged in the bankruptcy. Applicant filed Chapter 13 bankruptcy in 2010 to consolidate his debt, which was due, in part, to helping his mother pay her bills. The bankruptcy was dismissed for failure to make payments. Applicant testified that on the erroneous advice of his attorney, he was making payments of approximately \$900 a month, and that the actual required monthly payment was approximately \$1,200 per month. Applicant re-filed Chapter 13 bankruptcy in 2011, and made \$785 automatic payments every two weeks until the bankruptcy was voluntarily dismissed in 2014. (Tr. 57-59.) Applicant stated in his 2013 PSI that he was uncertain which accounts were delinquent prior to filing for bankruptcy, that he did not know the amount of the delinquencies, and did not know if any of the debts were reaffirmed. His mortgage loan and student loans were included in the 2011 bankruptcy. (GX 2.)

Applicant and his wife have separated on several occasions, including in May 2017. Applicant's wife does not have an income, and during periods of separation, Applicant is responsible for his wife's living expenses. (Tr. 65-67.) In response to the allegation that Applicant violated company policy by using his corporate credit card for personal use (SOR ¶ 1.mm), Applicant stated that his wife took the card from his wallet and incurred unauthorized personal charges of \$9,000, without his permission or knowledge. This event led to one of their separations. The debt was included in the 2011 Chapter 13 bankruptcy and is resolved. Applicant stated that he and his wife will divorce following the outcome of his security clearance adjudication. (AX A.)

In his May 2016 Answer, Applicant stated that it was his plan to "work overseas for one year in order to get [his] past and current bills paid in full." He further stated that he had planned many times to "set things right but something would always come up." He concluded his Answer by stating that he had a "plan in place to remediate these [financial] issues" and that he was prepared to finally "take control of [his] finances."

At his May 2017 hearing, Applicant reiterated his intention to resolve his delinquent debts. He stated that he will be seeking overseas employment to alleviate his financial stresses. He also stated that he would be taking a 401(k) loan in July 2017 to resolve his student loans and other debts. (Tr. 22; AX A.) Applicant is currently making \$200 monthly payments through an installment agreement with the Internal Revenue Service (IRS) on a \$2,400 tax debt for tax year 2016. He is current on his ongoing financial obligations, has not incurred any other recent delinquent debt, and contributes to his 401(k). (Tr. 60-65.)

Applicant's coworker since September 2015, considers Applicant to be conscientious and trustworthy, and recommends him for a security clearance. Another of Applicant's coworkers, who has worked with Applicant since November 2015, considers Applicant to be a professional of impeccable character, who should be trusted with classified information. (AX C.) Applicant received a positive performance evaluation for the period of July 2015 through June 2016. (AX D.)

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).

The record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): individual initiated and is adhering to 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 problems are recent and ongoing. While the conditions that contributed to Applicant's financial problems, including several periods of unemployment, unanticipated funeral expenses for his mother-in-law, financial support for his mother during her illness, and periods of separation from his wife, were largely beyond his control, he did not act responsibly under the circumstances. Applicant's filing Chapter 13 bankruptcy in 2011, completing the mandatory financial counseling, and making payments until 2014 were reasonable efforts to consolidate and resolve his outstanding debt and to better manage his finances. Applicant's wife made the \$9,000 unauthorized charges on Applicant's company credit card without his permission, and the debt was resolved through the Chapter 13 bankruptcy. However, his voluntary dismissal of the bankruptcy was not responsible under the circumstances. Applicant's 11 student loan debts, totaling over \$22,000, were included in the bankruptcy, and were arguably scheduled for repayment through the bankruptcy process. He has never made a direct payment on his student loans, either before or after the bankruptcies, and he has not contacted any loan-servicing company since October 2016. Instead, he is awaiting contact from a collection agency. The four SOR debts, totaling \$750, for which Applicant provided proof of payment, were paid after Applicant received the SOR in April 2016.

Applicant did not provide any documentary evidence to support his assertions that he paid, is paying, or has disputed any of the other SOR debts. Applicant has been planning to seek employment abroad to resolve his financial delinquencies since at least May 2016. He also planned to borrow money from his 401(k) in July 2017 to resolve his debts. However, there is no record evidence indicating that he has taken any actions in furtherance of these plans. Although Applicant has paid several of the smaller SOR debts, he has not made a good-faith effort, or established a viable plan, to resolve the majority of his debts. 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 that guideline, but I have also considered the following:

Applicant served honorably in the military for almost six years, and continues to serve in the defense industry. He is trusted and well-regarded by his employer and trusted by his coworkers. He has continuously held a security clearance for more than eight years.

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 finances. 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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n through 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r through 1.ll:	Against Applicant
Subparagraph 1.mm:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge