



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-03597

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient information about his efforts to resolve debts resulting from two repossessed vehicles, a telecommunications account, and his federal income tax debt. He did not provide documentation showing payments or the current status of these four debts. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 17, 2013, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). Item 3. On November 23, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (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*, effective on September 1, 2006 (Sept. 1, 2006 AGs). Item 1.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security 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. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). Item 1.

On January 11, 2016, Applicant provided a response to the SOR. Item 2. On September 20, 2017, Department Counsel was ready to proceed. On December 18, 2017, the case was assigned to me. On July 26, 2017, Department Counsel completed a File of Relevant Material (FORM) including six exhibits (Items 1-6). On August 1, 2017, Applicant acknowledged receipt of the FORM. Applicant did not object to the evidence in the FORM, and Items 1-6 are admitted into evidence.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which are applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective on June 8, 2017. I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact²

In Applicant's SOR response, he admitted the SOR allegations in SOR ¶¶ 1.a and 1.i. Item 2. He denied the remainder of the SOR allegations. His admissions are accepted as findings of fact.

Applicant is 46 years old, and he has been employed with a DOD contractor as a system administrator since July 2012.³ In 1990, he graduated from high school. From August 2010 to July 2012, he worked for a different DOD contractor as a system administrator. From June 1997 to July 2010, he worked for a non-DOD contractor as a central office technician. He also worked as a help desk specialist for four months in 2009. He has never served in the military. In 2000, he married, and his children were born in 1993 and 2000. There is no evidence of criminal activity, abuse of alcohol, use of illegal drugs, or violations of employer's rules.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

² Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³ The source for the information in this paragraph is Applicant's June 17, 2013, Questionnaire for National Security Position (SF 86) or security clearance application (SCA). Item 3.

Financial Considerations

Applicant indicated he had insufficient income to keep all of his debts in current status. He gave a higher priority to paying for his son's private school education than to paying some of his other debts, including his delinquent tax debt. Item 4.

The SOR alleges nine delinquent debts, and their status is as follows:

SOR ¶ 1.a alleges a charged-off vehicle loan for \$23,905. On July 3, 2013, an Office of Personnel Management investigator interviewed Applicant about his delinquent debts. Item 4. Applicant admitted that he had a vehicle loan for \$23,905; however, he said he paid the debt in full in May or June 2013, and he is waiting for paperwork regarding the final pay off. Item 4. There is also an indication a debt for \$25,845 could be for a previous truck; however, he had no knowledge of the \$25,845 debt. Item 4.

SOR ¶ 1.b alleges a delinquent debt resulting from a vehicle loan for \$4,461. In 2012, Applicant's vehicle was repossessed. Item 4. In 2013, the delinquent debt from a vehicle loan for \$4,461 was being addressed through garnishment of his or his spouse's pay. Item 4.⁴ He disclosed this debt on his June 17, 2013 SCA. Item 3. Applicant contested the amount of the debt because he believed he should have received more for his vehicle when it was repossessed. Item 4. He did not provide documentation showing the garnishments.

SOR ¶¶ 1.c and 1.d allege two telecommunications debts placed for collection for \$439.⁵ His March 30, 2015 credit report shows the telecommunications collection account with an outstanding balance of \$439 and a past-due amount of \$439. Item 6 at 2.

SOR ¶¶ 1.e, 1.f, and 1.g allege three delinquent medical accounts for \$50, \$50, and \$35. In Applicant's OPM interview, he said he did not recognize the three medical debts. Item 4. His June 29, 2013 credit report shows the three delinquent medical debts with balances of \$50, \$50, and \$37 and past-due amounts of \$50, \$50, and \$37. Item 5 at 4. His March 30, 2015 credit report shows the three medical collection accounts with outstanding balances of \$50, \$50, and \$35; however, no past-due amounts are shown. Item 6 at 2.

⁴ Of course, Applicant loses some mitigating credit because some debt payments were made through garnishment. Payment of a debt "though garnishment rather than a voluntary effort diminishes its mitigating force." *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns). *See also* ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011) (garnished payments towards delinquent tax debts are not mitigating information in light of other factors); ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) (remanding the case to the administrative judge and stating when addressing an Internal Revenue Service garnishment, "On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.").

⁵ SOR ¶¶ 1.c and 1.d are verbatim duplications of each other. SOR ¶ 1.d is found for Applicant as a duplication. Different debt numbers in credit reports are not necessarily a reliable indication that different debts are involved.

SOR ¶ 1.h alleges a telecommunications debt placed for collection for \$34. Item 2. His March 30, 2015 credit report shows the telecommunications collection account with an outstanding balance of \$34; however, no past-due amount is shown. Item 6 at 2.

SOR ¶ 1.i alleges Applicant failed to file his federal income tax return for tax year 2010 and to pay in full his federal income taxes. In 2013, he owed the IRS about \$20,000 in delinquent federal income taxes. Items 2, 3. He disclosed his failure to file his tax return and his tax debt on his June 17, 2013 SCA. Item 3. He told the OPM investigator that his tax debt for tax year 2010 was about \$20,000, and in June 2013, he contacted the IRS to try to negotiate a settlement. In 2012, the IRS garnished \$70 monthly from his salary to address this debt. Item 4.

In the FORM, Department Counsel noted the absence of corroborating or supporting documentation of resolution of the SOR debts. FORM at 2-3. Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the SOR debts. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM informed Applicant that he 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. He did not respond to the FORM.

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, Secretary of Defense, and Director of National Intelligence 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 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." 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). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

Seven financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,⁶ 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

⁶ 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. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;⁷

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The DOHA 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).

⁷ 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)).

Applicant failed to timely file and pay his federal income taxes for tax year 2010 when due. In ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016), the Appeal Board reversed the grant of a security clearance and commented as follows:

Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. . . . By failing to [comply with tax laws], Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

SOR ¶ 1.d is mitigated as a duplication of the debt in SOR ¶ 1.c. Applicant is also credited with mitigating the debts in SOR ¶¶ 1.e, 1.f, 1.g, and 1.h, which are for \$50, \$50, \$35, and \$34. Applicant consistently denied responsibility for these four debts. His March 30, 2015 credit report does not show any outstanding balance owed. These four debts total \$169 and are not of sufficient magnitude to cause a security concern.

Applicant did not provide documentation relating to the SOR debts in ¶¶ 1.a, 1.b, 1.c, and 1.i. such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact;⁸ (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve this debt; or (5) other evidence of progress or resolution.

Applicant did not provide documentation showing the specific amounts currently owed on the debts in SOR ¶¶ 1.a, 1.b, 1.c, and 1.i. There is insufficient evidence about why Applicant was unable to make greater documented progress resolving these four debts. There is insufficient assurance that his financial problem is being resolved and will not recur in the future. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

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(d):

⁸ "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.

(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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 46 years old, and he has been employed with a DOD contractor as a system administrator since July 2012. In 1990, he graduated from high school. From August 2010 to July 2012, he worked for a different DOD contractor as a system administrator. From June 1997 to July 2010, he worked for a non-DOD contractor as a central office technician. He also worked as a help desk specialist for four months in 2009. He has never served in the military. In 2000, he married, and his children were born in 1993 and 2000. There is no evidence of criminal activity, abuse of alcohol, use of illegal drugs, or violations of employer's rules.

The evidence against grant of a security clearance is more substantial. Applicant owes delinquent federal income taxes from tax year 2010, and he has not paid the debts resulting from two repossessed vehicles and a telecommunications debt. There is no evidence of the current status, payments, or payment plans addressing these four debts. His actions raise 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 granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. 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. Financial consideration security concerns are not mitigated. It is not clearly consistent with the interests of national security 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, 1.b, and 1.c:	Against Applicant
Subparagraphs 1.d through 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge