



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-07941
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

08/31/2018

Decision

HESS, Stephanie C., Administrative Judge:

While Applicant mitigated the potential security concerns raised by his 2011 arrest, he failed to mitigate the security concerns raised by his financial delinquencies. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 22, 2014. On October 13, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 submitted his Answer to the SOR, through counsel, on December 8, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 1, 2017, and the case was assigned to me on May 26,

2017. On November 13, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 30, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted into evidence without objection. Applicant testified, called one witness, and submitted Applicant's Exhibits (AX) A through HH, which were admitted without objection. I left the record open until December 13, 2017, to allow Applicant to submit additional documentary evidence. Applicant's submitted AX II through AAA, which I admitted into the record without objection. DOHA received the transcript (Tr.) on December 11, 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 is based on the amended AG effective June 8, 2017.

Findings of Fact

Applicant, 55, is a systems engineer currently employed by a defense contractor since June 2017. He served for various periods in the Army National Guard and the Air National Guard, where he was mobilized to active duty multiple times, including war zone deployments, from May 1984 until he retired in April 2015. He served honorably on active duty in the U.S. Army from September 1985 until September 1989. Applicant received multiple awards and commendations during his service. He earned a bachelor's degree in 1993, and a master's degree in 1996. He married in 1998 and separated in 2014. He was granted his first security clearance in 1985. (GX 1; Tr. 24-27.)

Under Guideline F, the SOR alleges 11 debts totaling \$36,022. Applicant admits 10 of these allegations and denies the other. The delinquent debts are reflected in Applicant's September 2015 and September 2014 credit bureau reports (CBR). (GX 4; GX 3.) Under Guideline E, the SOR alleges that Applicant was arrested in July 2011 for solicitation of a prostitute. Applicant admits this allegation. His admissions are incorporated in my findings of fact.

Applicant attributes his financial difficulties to his unemployment from March 2009 until February 2010 after retiring from the Army, his 11-month unemployment from September 2013 until August 2014, and subsequent underemployment. Additionally, Applicant opened his own business in 2009, in which he invested approximately \$30,000, and incurred business and personal credit card and loan debts. The business was unsuccessful and Applicant closed it in December 2016. (Tr. 26; Tr. 46.)

Applicant and his wife purchased a home in August 2008 and were listed as co-owners on the deed and on the mortgage loan. When they refinanced the house in 2013, the refinanced mortgage loan was solely in Applicant's wife's name because of Applicant's poor credit. After Applicant and his wife separated in 2014, Applicant remained in the home and paid the \$880 monthly mortgage-loan payments. In 2016, Applicant's disability compensation was administratively withheld and used to reimburse overpayment of drill pay for a period of six months, and Applicant stopped making the mortgage-loan payments. Applicant attempted to negotiate with the mortgage lender to

resume payments, but Applicant's wife was uncooperative and the mortgage lender began foreclosure proceedings. From 2016 when Applicant stopped making mortgage-loan payments until the house was foreclosed in October 2017, Applicant did not pay for his housing. (Tr. 70-72.)

On his 2014 e-QIP, Applicant listed a number of delinquent accounts including several of the SOR debts and stated that he was currently in the process of negotiating and filing Chapter 13 bankruptcy, and listed the law firm with which he was working. However, Applicant thought the law firm charged too much and did not file bankruptcy. (Tr. 89.) In his Answer, Applicant stated that he would resolve the SOR accounts through filing Chapter 13 bankruptcy, and that he had engaged a law firm to file bankruptcy on his behalf. At the hearing, Applicant stated that upon learning that he could not protect the marital home through filing bankruptcy, and because he was concerned about the impact bankruptcy could potentially have on his security clearance and ability to purchase a house, in May 2017 he decided not to file. (AX J; Tr. 88-90.)

The status of the SOR debts is as follows:

SOR ¶ 1.a – \$14,505 delinquency balance for repossessed vehicle – unpaid (Tr. 39.) Applicant initially denied this debt, and provided documentation which he believed showed the debt was paid in March 2014. (AX K.) However, a judgment was filed for the full amount of the debt in June 2014 and was entered against Applicant in February 2015. (GX 5; GX 6; AX L.) All court proceedings ceased when the judgment was entered. (AX Y; AX Z.) The debt is listed as charged-off on Applicant's November 2017 CBR and the judgment appears on his June 2016 CBR. (AX U; AX L.) He did not pay the judgment and this debt remains unresolved.

SOR ¶ 1.b – \$6,072 charged-off credit card – unpaid. Applicant testified that he received an Internal Revenue Service (IRS) form 1099-C cancellation of debt from this creditor, which is the same creditor as the unpaid \$4,532 charged-off credit card alleged in SOR ¶ 1.c. However, he is uncertain whether the cancellation of debt was for the account alleged in SOR ¶ 1.b or the account alleged in SOR ¶ 1.c, and did not provide a copy of the IRS form. (Tr. 39.) There is no evidence that either of these debts has been resolved.

SOR ¶ 1.d – \$3,854 delinquent credit card – Applicant reached a settlement agreement with the creditor in July 2017. For unexplained reasons, Applicant entered a new settlement agreement with the creditor on November 30, 2017. Applicant made an initial payment of \$317, and is scheduled to make monthly payments of \$313. (Tr. 63-65; AX OO; AX QQ; AX HH.)

SOR ¶ 1.e – \$2,765 delinquent credit card – Applicant entered a payment plan with the creditor with the first payment of \$648 due on November 22, 2017, and a second payment of \$659 due on December 22, 2017, then monthly payments of \$250. (Tr. 39.)

SOR 1.f – \$813 – delinquent cell phone account – Applicant states that he disputed this debt for two years, and reached \$488 settlement agreement with the creditor on December 12, 2017, and will make two payments of \$244. (Tr. 40; Tr. 50-51; AX SS.)

SOR ¶ 1.g – \$808 delinquent credit card – Applicant had no contact with the creditor since 2010, then reached \$422 settlement agreement on December 11, 2017, with three payments of \$141. (Tr. 40-41; AX JJ; AX HH.)

SOR ¶ 1.h – \$684 charged off credit card – Applicant testified that he paid this debt in August 2017, but did not provide any documentary evidence. (Tr. 42.) AX AAA shows two other paid accounts with this creditor, but not this account. This account remains unresolved.

SOR ¶ 1.i – \$111 past-due bank-debt with a total balance \$564 – Applicant contacted the bank on November 29, 2017, and the bank had no record of the debt. Applicant testified that he does not recognize the debt and disputes it. However, he subsequently submitted documentation showing a settlement offer from April 2013 and payment of the account in April 2013. (AX LL; Tr. 42-43.) This account is resolved;

SOR ¶ 1.j – \$872 delinquent credit card – Applicant entered a payment agreement with this creditor in December 2013, and made the final payment in July 2017. (Tr. 43-44; Tr. 63-65; AX W; AX XX.) This account is resolved;

SOR ¶ 1.k – \$553 delinquent electronic-payment debt – charged off. Applicant states that he paid this account and that he contacted the collection bank and the original creditor on November 29, 2017, and was told he did not owe the collection bank or the original creditor. However, the account is listed as charged off on Applicant's November 2017 CBR and remains unresolved. (Tr. 44; AX HH; AX AAA; AX U.)

Applicant only fully paid the \$564 bank debt that was past-due for \$111 alleged in SOR ¶ 1.1 and the \$872 credit-card debt alleged in ¶ 1.j prior to the hearing. Despite submitting 53 documents, and asserting that many of them showed proof of payment of the SOR debts, only 3 of the documents actually show payment of the 2 paid SOR debts. (AX W, AX LL, and AX XX.)

In June 2014 a \$2,944 judgment was entered by one of the SOR creditors for a debt not alleged in the SOR. Applicant became aware of this debt when he was preparing to file Chapter 13 bankruptcy. The judgment is listed on Applicant's June 2016 CBR, and remains unpaid. (Tr. 67-68; AX L.)

Applicant received a \$20,000 raise in June 2017 and now earns approximately \$90,000 a year. He receives approximately \$12,500 year in disability compensation. (Tr. 25.) Applicant testified that the reason he did not begin addressing most of the SOR debts until November 2017 was because after he received his raise in June 2017 he began paying other, smaller debts. (Tr. 88.) He has approximately \$1,000 in his checking account and \$200 in a savings account. (Tr. 54.) Applicant has an individual retirement account worth approximately \$1,800, and a whole-life insurance policy valued at approximately \$1,600. (Tr. 72-73.)

Applicant's colleague of two years states that Applicant is honest, trustworthy, and a hard worker. Applicant served on the board of a non-profit land trust and the land trust's executive director, who is aware of the SOR allegations, highly recommends Applicant for a security clearance. Applicant's friend of 10 years states that Applicant is honest and trustworthy and recommends him for a clearance. (AX A.) Applicant volunteers in the community and has received several awards for his service. (AX B; AX F.) He received numerous awards and citations during his military service. (AX N; AX EE; AX FF; AX VV.) He has received multiple certificates of completion for professional training. (AX O.)

Applicant submitted a personal financial statement that he completed approximately one year prior to the hearing, which shows a monthly net remainder of \$2,549. Applicant testified that although there are some differences in his current expenses, the personal financial statement is overall accurate. He further testified that he spends most of his monthly net remainder on various smaller costs that add up. (Tr. 75-76.) He lives within his means and limits his credit-card use. (Tr. 54.) He has not incurred any significant recent delinquent debt. (AX L.)

Applicant was arrested and charged with solicitation of a prostitute in July 2011. Prosecution of the charge was deferred, the charge was ultimately dismissed, and Applicant's arrest record was expunged. He disclosed this information on his 2014 e-QIP.

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 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.

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 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 or her 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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 only paid two of the SOR debts totaling \$983 of the \$36,022 of total SOR debt prior to the hearing. Applicant began contacting the SOR creditors right before the hearing, despite having received the SOR in October 2016, more than one year earlier. There is no record evidence that Applicant maintains or adheres to a written budget, and he does not have a clear picture of the status of his delinquent accounts. Additionally, for part of 2016 until October 2017, Applicant did not pay the \$880 mortgage on his marital home. However, he also did not use this money to pay any of the SOR debts. He did not provide any documentation showing that he successfully disputed any of his outstanding debts. Applicant previously stated in his 2014 e-QIP and his 2016 Answer that the debts were imminently going to be resolved through bankruptcy. While it is Applicant's prerogative to change his mind about filing bankruptcy, his choice not to do so does not excuse his failure to otherwise address his delinquent debts. Further, as Applicant has only recently entered repayment agreements with many of the SOR creditors, it is too soon to conclude that he has developed a track record of repayment. Finally, Applicant's last-minute attempt to address his debts does not constitute a good-faith effort to resolve

his financial issues. See ISCR Case No. 10-05909 at 4 (App. Bd. Sep. 27, 2012). Applicant incurred delinquent debts due to periods of unemployment and underemployment, and operating his own business that ultimately failed. However, Applicant did not act responsibly under the circumstances and his delinquent accounts remain primarily unresolved. None of the mitigating conditions applies,

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Conditions that could raise a security concern and may be disqualifying include:

AG ¶ 15(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

The following mitigating condition applies:

AG ¶ 16(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant was arrested and charged with solicitation of a prostitute in June 2011, over seven years ago. There is no record evidence of any pattern of criminal conduct. Despite the fact that the record had been expunged, Applicant properly reported it on his 2014 e-QIP. This potential security concern is mitigated.

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(d):

(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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but I have also considered the following:

Applicant has worked for his current federal contractor employer for more than seven years. Applicant served honorably in the military on active and reserve duty, including several war zone deployments, from 1985 until 2015. He is considered to be trustworthy by his colleagues and friends and volunteers in his community. However, while he has not incurred any significant recent delinquent debt, he has a 2014 \$2,944 judgment that was entered against him which he was not aware of until 2017. He does not have command over his finances. Applicant's unresolved delinquent SOR debts remain a concern.

After weighing the applicable disqualifying and mitigating conditions under Guidelines F and E, 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 – 1.h and 1.k: **Against Applicant**

Subparagraphs 1.i – 1.j: **For Applicant**

Paragraph 2 Guideline E (Personal Conduct): **FOR APPLICANT**

Subparagraph 2.a: **For 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