



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-08528
)	
Applicant for Security Clearance)	

Appearances

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

03/01/2018

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant's financial issues arose from conditions largely beyond his control, are not recent, and do not cast doubt on his current reliability, judgment, or trustworthiness. Applicant mitigated the security concern raised by his finances by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 19, 2015. On June 14, 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 August 24, 2016, and the case was assigned to me on April 25, 2017. On May 5, 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 3 were admitted in evidence without objection. Applicant testified and I left the record open until July 7, 2017, to permit Applicant to submit documentation. He timely submitted Applicant's Exhibits (AX) A through C, 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 three SOR debts, totaling \$11,371, are comprised of a charged-off credit-card debt, and a credit-card debt and medical debt in collection. Applicant admits the two credit-card debts, and denies the medical debt. He explains the history and status of each of the three SOR debts. His admissions are incorporated in my findings of fact. The debts are corroborated by Applicant's August 2015 credit bureau report (CBR) (GX 2) and discussed in Applicant's September 2015 personal subject interview (PSI) (GX 3).

Applicant is a 57-year-old test design and analysis engineer currently employed by a federal contractor since March 1984. He was previously employed as a federal civilian employee from January 1980 until approximately April 1983. He received a bachelor's degree in December 1982. Applicant married in 1985, and divorced in 2004. He has two children, ages 27 and 19. He has held a security clearance since April 2006. (GX 1.)

Applicant incurred the credit-card debts alleged in SOR ¶¶ 1.a and 1.b during his marriage. Applicant retained the debts, and continued to make small payments on the cards for several years following his divorce in 2004. Within a couple of years, he stopped using the credit cards altogether because the interest rates were very high, but continued to make the payments. Applicant also retained several other marital debts, but was able to resolve them. (Tr. 20-21.)

In 2007 or 2008, Applicant's employer began issuing notices of what was anticipated to be a large lay-off. Concerned that he would be among the people laid off, Applicant contacted his creditors, including the credit-card creditors of SOR debts 1.a and

1.b, to explain his potential change in financial circumstances and to try to pay or settle his accounts (Tr. 19-20.)

Applicant reached a \$6,000 installment-settlement agreement for a credit-card account with the same creditor of SOR ¶ 1.a, and made his final payment on that account in April 2009. (AX B.) He received a cancellation of debt form from the Internal Revenue Service (IRS), which he properly filed with his taxes. (Tr. 28-29.) Applicant testified that he only ever had one account with his creditor, and believes that the account he paid off through the installment-settlement agreement is the same account in SOR ¶ 1.a. However, the account number listed is not the same account number as the delinquent account alleged in SOR ¶ 1.a, and the account is listed on the CBR as having been charged off in December 2009. (GX 3.) However, there are no accounts from this creditor listed on Applicant's most recent CBR. (Tr. 14; Tr. 27.)

Despite Applicant's efforts to reach a settlement agreement with the creditor of SOR ¶ 1.b, he was unable to do so. After his negotiation attempts failed, he made one or two more payments, then began to miss payments. He received several letters from the creditor, and Applicant again tried unsuccessfully to reach a settlement agreement. At some point, Applicant noticed that the account was reported as negative on his credit report. He again contacted the creditor, and was offered a settlement agreement that he found to be acceptable. He discovered at that time that the account had been turned over to a collection agency. He contacted the original creditor to set up a payment arrangement, because he wanted a release letter from the original creditor when his debt was resolved. The original creditor informed Applicant that he had to deal with the collection agency. Applicant agreed to do so, but only if he received a release letter from the original creditor. The original creditor could not agree to those terms. Applicant was unwilling to settle with the collection agency without the guarantee of a documented release from the original creditor. Ultimately, Applicant ceased communications with the original creditor and the collection agency. (Tr. 22-24; Tr. 36.)

Several of Applicant's credit-card accounts went to collection agencies. Applicant reached an agreement with one of the collection agencies which permitted the collection agency to debit his bank account for one payment. Without Applicant's permission, the collection agency debited Applicant's bank account for an additional amount. Applicant is uncertain which collection agency debited his account, and about which collection agency is collecting for which credit-card company. (Tr. 16-19; Tr. 20-28.) The unauthorized debiting of Applicant's bank account, and the unwillingness of the collection agencies to work with him, have resulted in Applicant's distrust of collection agencies. Unless the collection agency for SOR ¶ 1.b will assure Applicant that he will be released from the responsibility of the debt, he is not willing to pay the collection agency. He would resolve the debt directly with the original creditor. (Tr. 22- 24; Tr. 31.) This \$4,679 debt is the only delinquent account remaining on Applicant's most recent CBR. (Tr. 14; Tr. 27.)

Applicant incurred the \$815 medical debt alleged in SOR ¶ 1.c in January 2012, and paid it in February 2012. (AX C.) SOR ¶ 1.c is resolved.

Applicant has held a security clearance for almost 12 years. He was not laid off from his employment, and has not incurred any delinquent debt since 2012. He purchased his current home in 2005, is current on all his ongoing financial obligations, and is financially stable. Applicant's testimony was straight-forward and sincere.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to

satisfy debts”), and, AG ¶ 19(c) (“a history of not meeting financial obligations”). 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; and

AG ¶ 20(d): individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems arose during his marriage, and he retained the debts following his divorce, including the \$10,520 of credit-card debt alleged in SOR ¶¶ 1.a and 1.b. Applicant initially acted responsibly by making required payments on the cards, and not incurring new charges on the accounts due to the high interest rates. Faced with the possibility of being laid off, Applicant initiated a good-faith effort to repay his overdue creditors by contacting them and attempting to reach settlement agreements. Applicant settled an account for \$6,000 with the creditor for SOR ¶ 1.a, with which he recalls only ever having had one account. He believes the account he settled is the same account as SOR ¶ 1.a. He received a cancellation of debt form from the IRS which he properly filed with his taxes. The debt alleged in SOR ¶ 1.a does not appear on Applicant's most recent CBR. Applicant timely paid the medical debt alleged in SOR ¶ 1.c in 2012.

Despite multiple good-faith efforts over a period of years to resolve SOR ¶ 1.b, Applicant was unable to reach an agreement with which he was comfortable. Due to the actions of several collection agencies, Applicant distrusts collection agencies. Applicant would resolve SOR ¶ 1.b directly with the creditor, or with the collection agency with a release from the original creditor, but not with the collection agency without the guarantee of a release. Applicant's unwillingness to resolve the \$4,679 debt alleged in SOR ¶ 1.b with the collection agency is not unreasonable given the circumstances and does not cast doubt on his current judgment, reliability, and trustworthiness. Applicant has not incurred any delinquent debt since 2012, he is current on his ongoing financial obligations including his taxes, and lives within his means.

“Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an

individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The conditions that led to Applicant's financial problems were largely beyond his control, are not recent, and are unlikely to recur. Applicant initiated a good-faith effort to resolve his delinquent debts, and acted responsibly under the circumstances. AG ¶¶ 20(a), 20(b), and 20(d) 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 has continuously held a security clearance for more than 12 years. He has not incurred any recent debt. He was straight-forward and sincere in his testimony.

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 mitigated the security concerns raised by his finances.

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): FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge