



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 16-00698
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 17, 2014. On June 29, 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 (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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, 2006.¹

¹ Security Executive Agent Directive 4 (SEAD 4), was issued on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 guidelines apply to all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on September 17, 2016, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on October 17, 2016. On October 18, 2017, a complete copy of the file of relevant material (FORM), consisting of Items 1 through 6, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 1, 2016, and did not respond. The case was assigned to me on October 1, 2017.

The FORM included Item 3, a summary of a personal subject interview (PSI) conducted on September 3, 2015. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

I reopened the record on October 18, 2017, because a list of debts referred to in Applicant's answer to the SOR was not in the record. Applicant submitted additional documents, which were admitted as Applicant's Exhibits (AX) A through D, without objection from Department Counsel. Department Counsel's comments regarding AX A through D are attached to the record as Hearing Exhibits I and II.

Findings of Fact²

In Applicant's answer to the SOR, he did not specifically admit or deny any of the allegations, but he provided explanations for the debts alleged in the SOR. His explanations are included in my findings of fact.

Applicant is a 50-year-old retired Army officer. He graduated from college in June 1990 with a bachelor's degree in economics. He served on active duty in the U.S. Army from February 1992 to July 2014 and retired as a lieutenant colonel. (Item 3 at 5.) Since August 2014, he has been employed by a defense contractor as a training integrator. He has held a security clearance since October 1992.

Applicant married in January 1995 and divorced in January 2014. He and his ex-wife had four children, now ages 21, 20, 19, and 14. Applicant was awarded custody of the children when they separated in 2010.

When Applicant submitted his SCA, he disclosed numerous debts related to his marital breakup. The SOR alleges 12 delinquent debts totaling about \$163,926. The

² Applicant's personal information is extracted from his security clearance application (Item 2) unless otherwise indicated by a parenthetical citation to the record.

largest debt is a delinquent mortgage loan on the marital home, which is alleged to be past due in the amount of \$151,496.

In Applicant's answer to the SOR, he attributed his divorce to his ex-wife's infidelity, excessive consumption of alcohol, and failure to pay the family debts while he was deployed to Iraq in 2008-09. He states that his ex-wife was arrested twice for driving under the influence (DUI) while the custody of the children was in binding arbitration. She was arrested for DUI two more times and spent eight months in jail before the divorce was granted.

The delinquent debts alleged in SOR ¶¶ 1.a-1.k are reflected in credit reports from January 2015, January 2016, and October 2016. (Items 4, 5, and 6.) The unpaid property taxes alleged in SOR ¶ 1.l are not reflected in the credit reports, but Applicant disclosed them in his SCA. (Item 2 at 36-37.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: real estate mortgage loan, past due for \$151,496, with a loan balance of \$265,067. Applicant purchased the marital family home in 2005, and it was in Applicant's name only because his wife had a poor credit record. While he was deployed in Iraq, his family moved to another state, and the marital home was rented. While he was deployed, his wife failed to make the mortgage loan payments on the marital home, which were delinquent for about \$12,000 when he returned from deployment.

After Applicant and his wife separated in 2010, he moved back into the marital home with his children, and his wife remained in the other state, living in a home that Applicant also owned. He could not afford to maintain two households, and he fell behind on his debt payments. In 2013, after his application for a loan modification was denied, and the lender refused to approve a short sale, he was advised by a real estate agent to allow the property to go into foreclosure. He moved out of the marital home to a rental property in July 2014, where he now lives with his fiancée and one of his children. (Item 2 at 7; Item 3 at 5.) There is no evidence that he made any further attempts to resolve the delinquent mortgage loan for the marital home.

As of the date of Applicant's answer to the SOR, the marital home was vacant. He had made no payments, and the lender had not foreclosed. The record does not reflect whether he was prohibited from living in the marital home instead of incurring the additional expense of renting another home.

After I reopened the record, Applicant stated that the marital home had been sold, and he and his ex-wife each received about \$14,000 from the sale, which he used to pay other debts. (AX A.) He submitted no documentation regarding the sale or disbursement of the proceeds. He learned about the sale in early 2017, when one of his children noticed that the property was being renovated, and it was listed as a rental property about two months later. (AX B.)

SOR ¶ 1.b: joint credit-card account, charged off for \$4,475. When Applicant and his then wife separated, an arbitrator allocated responsibility for several debts incurred during the marriage. The arbitrator's decision reflects that the parties agreed to equally split five joint debts, including this debt, and one individual debt in Applicant's name only. (AX A at 3.) Applicant and his wife agreed on which joint debts each party would settle. According to Applicant, his then wife reneged on her agreement to resolve this debt, and he has not resolved it even though he remains legally liable for it. (Item 6 at 2.)

SOR ¶ 1.c: debt for satellite television service, placed for collection of \$1,180. This debt was for unreturned equipment. In Applicant's answer to the SOR, he stated that he returned the equipment in 2015. The October 2016 credit report reflects that the debt is resolved. (Item 6 at 2.)

SOR ¶ 1.d: telecommunication debt, placed for collection of \$325. In Applicant's answer, he states that this was his ex-wife's debt from her residence, but she refused to pay it. The credit report from October 2016 reflects that it is an individual debt in Applicant's name. (Item 6 at 2.) It is not resolved.

SOR ¶¶ 1.e and 1.f: satellite television service debt, placed for collection of about \$293. These debts are duplicates. Applicant states that this debt was for television service in his ex-wife's apartment. He states that he cosigned for the apartment but not for the television service. His ex-wife refuses to pay the bill. The January 2015 credit report reflects that both accounts were individual accounts in his name. (Item 4 at 7.) The October 2016 credit report reflects that both debts are unpaid (Item 6 at 1-2.).

SOR ¶ 1.g: copayment for dental bill of \$156. Applicant states that this debt was incurred by his ex-wife after they separated. It is listed in the January 2015 credit report as an individual debt in Applicant's name that was referred for collection in December 2014. (Item 4 at 9.) The January 2016 credit report lists the debt as past due but does not reflect a past-due amount. (Item 5 at 2.) It is not listed in the October 2016 credit report. Since less than seven years have elapsed since the debt was referred for collection, it apparently was resolved.³

SOR ¶ 1.h: credit-card account, charged off for \$154. Applicant states that he closed this account in 2010 and was never been informed of the delinquency. He suspects that any correspondence was sent to his old address, where his ex-wife resided. The January 2015 credit report reflects that the debt was charged off in March 2009, and it would have "aged off" his credit record after seven years. He presented no evidence that he contacted the creditor or disputed the debt. It is not resolved.

³ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

SOR ¶ 1.i: water bill for \$57. This delinquent debt was for service at the family residence alleged in SOR ¶ 1.a. It is unresolved.

SOR ¶ 1.j: collection account for \$81. Applicant states that he has been unable to identify this debt. The January 2015 credit report lists the address of the collection agency, but Applicant presented no evidence of any efforts to identify the debt or dispute it with the collection agency or the credit bureau.

SOR ¶ 1.k: collection account for \$2,417. The credit report from January 2015 reflects that this is a medical debt. (Item 4 at 9.) However, Applicant states it was a debt for a security service in the residence alleged in SOR ¶ 1.a. He states that he cancelled the service and stopped the automatic bank withdrawals for payment, but the company changed hands and the new owners had no record of the service cancellation. The service could not function after the contract was cancelled because the electricity was turned off. Applicant has not disputed this debt with the creditor or the credit bureau. The debt is not resolved.

SOR ¶ 1.l: unpaid property taxes for \$3,000. This debt is related to the residence alleged in SOR ¶ 1.a. Applicant's payments on the mortgage loan included an escrow account for payment of property taxes. He did not address this debt in his answer to the SOR. It is unresolved.

Applicant has not submitted any information about his current income and expenses. Thus, it is not possible to realistically assess whether he is financially able to resolve the debts alleged in the SOR. He contacted a credit counseling firm in November 2014, but he decided that the firm "was not a good fit," and he did not receive any counseling. (Item 3 at 9.)

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 § 2.

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, 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.” 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

Analysis

Guideline F, Financial Considerations

The security 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. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 same debt is alleged in SOR ¶¶ 1.e and 1.f. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved the debt in SOR ¶ 1.f in Applicant's favor.

Applicant's admissions and the documentary evidence in the record establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); and AG ¶ 19(c) ("a history of not meeting financial obligations"). AG ¶ 19(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") is not established, because the debt in this case is for state property taxes, not income taxes. However, the tax debt is encompassed in AG¶¶ 19(a), 19(b), and 19(c). The following mitigating conditions are potentially relevant:

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): the 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.

AG ¶ 20(a) is not established. Applicant's debts are recent, unresolved, and numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant marital breakup and his ex-wife's financial irresponsibility were conditions beyond his control, but he has not provided evidence of responsible conduct. There is no evidence that he contacted the lender for the former family home, alleged in SOR ¶ 1.a, after his application for a loan modification was denied in 2013, and no evidence of any efforts to resolve the debts related to the home, alleged in SOR ¶¶ 1.i and 1.l. He provided no evidence of efforts to resolve the debts in SOR ¶¶ 1.b, 1.d, 1.e and 1.f (duplicates), 1.h, and 1.i-1.k. Even if the home was sold as Applicant states in AX B, the fact remains that he took no action to resolve the delinquent loan after 2013.

AG ¶¶ 20(c), 20(d), and 20(e) are not established. Applicant submitted no documentary evidence of counseling, payment plans, payments, or disputes regarding any of the unpaid debts. In his SCA, he stated that he was working with a credit specialist to resolve his delinquent debts. (Item 2 at 37.) In the September 2015 PSI, he told an investigator that he contacted a credit counselor in November 2014, but he took no further action after the initial contact. There is no evidence of counseling and his financial situation is not yet under control.

A security clearance adjudication is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) It is an evaluation of an individual's judgment, reliability, and trustworthiness. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant walked away from the marital home in 2013. He had no plan and took no actions to resolve the debt alleged in SOR ¶ 1.a or the related debts in SOR ¶¶ 1.i and 1.l. Even though he is jointly liable for the debt alleged in SOR ¶ 1.b, he has no plan and has taken no steps to resolve it. He is individually liable for the debts alleged in SOR ¶¶ 1.d, 1.e and 1.f (duplicates), 1.g, 1.i, and 1.j, but he has taken no steps to resolve them.

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 and applying the adjudicative factors in AG ¶ 2(d).⁴

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have noted Applicant's long record of honorable military service and his years of holding a security clearance without incident. He presented no evidence regarding his performance in his current position.

Applicant was responsive to my inquiries after I reopened the record. However, because he requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude he has not mitigated the security concerns raised by his delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant

⁴ The factors are: (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.

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge