



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



In the matter of:

ISCR Case No. 17-00794

Applicant for Security Clearance

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant mitigated security concerns arising under Guideline F (financial considerations). His statement of reasons (SOR) lists 11 delinquent debts. He paid six debts; four debts are in payment plans; and one debt is under good-faith settlement negotiations. Eligibility for access to classified information is granted.

Statement of the Case

On October 23, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On May 5, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an 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). (Hearing Exhibit (HE) 2) The SOR set forth security concerns arising under Guideline F.

On June 2, 2017, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On July 3, 2017, Department Counsel was ready to proceed. On December 5, 2017, the case was assigned to me. On January 10, 2018, the Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 15, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered nine exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 15-20; GE 1-4; Applicant Exhibit (AE) A-AE I). On February 26, 2018, DOHA received the hearing transcript.

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 he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact²

In Applicant's SOR response, he admitted that he owed the debts in SOR ¶¶ 1.a through 1.d, 1.f, 1.i, and 1.k. He also provided mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 37-year-old security guard, and a government contractor has employed him for 30 months. (Tr. 6-7, 37; GE 3) In 2000, he graduated from high school. (Tr. 7) He served in the Air Force from 2005 to 2014; he left active duty as a staff sergeant; and he received an honorable discharge. (Tr. 8-9; GE 1) In 2016, he joined the Air Force Reserve. (Tr. 21) In 2002, he married, and his children are ages 3, 6, and 13. (Tr. 9) Applicant and his spouse's total annual salary is about \$100,000. (Tr. 33-34) After paying all of their debts, his family has a monthly remainder of about \$400. (Tr. 34)

Financial Considerations

After Applicant left active duty in 2014, he was unemployed, and his spouse was unable to work for about one year because of pregnancy and the birth of their baby. (Tr. 14, 21) Due to lack of income, some debts became delinquent. The SOR alleges 11 delinquent debts totaling \$21,416, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a past-due debt for \$7,299. This debt resulted from a vehicle repossessed in November 2016. (Tr. 23-24) Applicant's payments after the repossession were delayed because the creditor failed to provide information on the sale price of the vehicle after it was repossessed and sold. (Tr. 24) Applicant made some payments, and

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/SEAD4_20170608.pdf.

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

his most recent payment was in December 2017. (Tr. 23; AE D) The current balance owed is \$6,640. (AE D) He is discussing a payment plan with the creditor, and he plans to pay this debt. (Tr. 23) He is focused on paying his other SOR debts before he resumes payments on this debt. (Tr. 23)

SOR ¶ 1.b alleges a charged-off debt owed to a financial institution for \$5,858. Applicant is paying this debt through a commercial debt resolution plan (CDRP). (AE F; AE G)

SOR ¶ 1.c alleges a debt placed for collection for \$2,269. On December 12, 2017, the creditor wrote the debt was settled in full on December 8, 2017. (Tr. 26; AE A; AE B)

SOR ¶¶ 1.d and 1.f allege two debts owed to the same financial institution. One is a charged-off debt for \$1,902, and the other is a charged-off debt of unspecified amount. The two debts are being paid through a CDRP. (Tr. 27; AE F; AE G)

SOR ¶ 1.e alleges a charged-off debt owed to a financial institution for \$393. Applicant paid this debt. (Tr. 27; AE F)

SOR ¶ 1.g alleges a charged-off debt owed to a bank for \$2,321. On January 2, 2018, the creditor wrote the debt was settled in full on May 31, 2017. (Tr. 29; AE B)

SOR ¶ 1.h alleges a charged-off debt of unspecified amount. Applicant paid this debt. (Tr. 29-30; AE I)

SOR ¶ 1.i alleges a charged-off debt owed to a financial institution for an unspecified amount. Applicant is paying this debt through a CDRP. (Tr. 30; AE F)

SOR ¶ 1.j alleges a charged-off store debt of unspecified amount. On January 10, 2018, the creditor wrote the debt is paid, and the balance is zero. (Tr. 31; AE C)

SOR ¶ 1.k alleges a judgment for \$1,374, which resulted when a landlord evicted Applicant from a townhouse he was renting. (Tr. 31) Applicant satisfied this SOR debt; however, he disclosed that he plans to start making payments on another non-SOR debt owed to the creditor for about \$5,000. (Tr. 31-32)

In December 2015, Applicant enrolled in a CDRP. (Tr. 35) From December 2015 to present, he has paid at least \$428 monthly into the plan, which currently includes six debts. (AE F) He intends to continue making payments until all debts are resolved. (Tr. 38) He expects to have all debts resolved in 2019. (Tr. 35) He received financial counseling. (Tr. 35) His February 10, 2017 credit report indicates he has numerous paid and current accounts.

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 DNI 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. Sept. 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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” 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) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

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

- (a) the behavior happened so long ago,³ 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;
- (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; and
- (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.

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).

³ 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)).

The SOR alleges 11 delinquent debts totaling \$21,416. Applicant's debts resulted from Applicant's and his spouse's unemployment and their resulting lack of income. This is a circumstance largely beyond his control.

Applicant paid or settled the six SOR debts in ¶¶ 1.c, 1.e, 1.g, 1.h, 1.j, and 1.k. The four SOR debts in ¶¶ 1.b, 1.d, 1.f, and 1.i are in payment plans. He is negotiating a settlement and payment plan for the debt in SOR ¶ 1.a.⁴ He is also negotiating a payment plan to address a \$5,000 non-SOR debt owed to the creditor in SOR ¶ 1.k.

Applicant made sufficient progress resolving his delinquent debts. He has numerous paid or current accounts listed in his February 10, 2017 credit report. He received financial counseling, and he has made enough progress resolving his delinquent debts to show his good faith. There are clear indications that his financial problem is being resolved, and his finances are under control. Future financial problems are unlikely to occur. AG ¶¶ 20(b), 20(c), and 20(d) are established, and financial considerations security concerns are mitigated.

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):

(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 a 37-year-old security guard, and a government contractor has employed him for 30 months. He served in the Air Force from 2005 to 2014; he left active

⁴ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). A promise to pay debts is given greater weight when there is a track record of paying other debts.

duty as a staff sergeant; and he received an honorable discharge. In 2016, he joined the Air Force Reserve. He is married, and his children are ages 3, 6, and 13.

Applicant's SOR alleges 11 delinquent debts totaling \$21,416. Applicant paid or settled six SOR debts; four SOR debts are in payment plans, and he is negotiating a settlement and payment plan for one debt. He is also negotiating a payment plan to address a \$5,000 non-SOR debt. His current delinquent debt total is about \$20,000. Applicant is enrolled in a CDRP. From December 2015 to present, he has paid at least \$428 monthly into this plan, which currently includes six debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant's actions show financial responsibility and judgment, and he has established his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. 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. I conclude that financial considerations security concerns are mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge