



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-01225
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and J (Criminal Conduct). Applicant has mitigated the concern raised by his criminal conduct, but he has not mitigated the concern raised by his delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 30, 2015. On May 12, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and J. The DOD CAF acted under Executive Order (Exec. 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, 2006.¹

Applicant answered the SOR on June 9, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 5, 2017, and the case was assigned to me on July 19, 2017. On August 15, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 12, 2017. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) 1 through 15, which were admitted without objection. I kept the record open until September 27, 2017, to enable him to submit additional documentary evidence. He timely submitted AX 16 through 21, which were admitted without objection. DOHA received the transcript (Tr.) on September 20, 2017.

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, and 1.n. He denied the allegations in SOR ¶¶ 1.d-1.m, 1.o-1.s, and 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 52-year-old armed security officer employed by a defense contractor since January 2015. He served on active duty in the U.S. Marine Corps from November 1982 to February 1997 and in the Army National Guard from January 1999 to February 2003, receiving honorable discharges from each service. He received a security clearance in March 1983, while he was in the Marine Corps. He was employed continuously in the private sector and in state youth programs from at least 2005 until he was hired for his current job. He is still employed but has been suspended without pay since June 2017. (Tr. 41.)

Applicant was enrolled in an online university from January 2011 to January 2012. He received an associate's degree in 2010 and a bachelor's degree in 2011. He has about 180 college credits toward a master's degree. (Tr. 34; AX 12.)

Applicant married in 1984 and divorced in 1994. He married again in 2004 and divorced after about a year. Most recently, he married in November 2011, separated in August 2013, and divorced in February 2016. (AX 11.) He has two adult children. (Tr. 33.)

The SOR alleges 19 delinquent debts totaling about \$52,000 that are reflected in his credit reports from April 2015 and March 2017. (GX 2 and 3.) Around May 2017, Applicant hired a law firm to assist him in resolving his debts. He pays the firm \$90 per

¹ Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for 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.

² Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

month, but the fee was reduced to \$59 per month when Applicant was suspended in June 2017. The law firm does not disburse funds to creditors. Its mode of operation is to dispute all the debts that Applicant has not admitted and to negotiate settlements of the debts that are not disputed or after the disputes have been resolved against Applicant. (Tr. 50-53, 56.) The law firm disputed almost every debt reflected on his credit report, except the debts alleged in SOR ¶¶ 1.a-1.c and 1.n. The basis for most of the disputes is not reflected in the record. Applicant presented several pages of documents showing debts held by collection agencies that were deleted from his credit record, but the documents do not identify the specific debts that were disputed and deleted. (AX 1, 2, and 3.) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: child-support arrearage of \$17,893. In his answer to the SOR, Applicant stated that he has been paying child support by payroll deduction, but the state records did not reflect his payments because they were made directly to the recipient. He initiated a payroll deduction that began in 2012 and was still in effect in 2017. (Answer to SOR; AX 13; AX 14.) He is paying \$355 per month. (Tr. 45.) Since his pay was stopped in June 2017, he has been withdrawing funds from his retirement account to make the payments. (Tr. 46.) The debt is being resolved.

SOR ¶ 1.b: car loan charged off for \$12,858 in December 2013. Applicant admitted this debt in his answer to the SOR. He testified that his law firm is negotiating with the creditor but no agreement has been reached. (Tr. 52.) The debt is not resolved.

SOR ¶ 1.c: unpaid rent referred for collection of \$5,201. A judgment for \$4,138 was entered against Applicant in August 2015. (GX 4.) The debt was incurred when Applicant and his wife separated. His income was insufficient to pay the rent for the former marital residence, and he was evicted. In July 2017, the creditor obtained another judgment for \$5,490. (AX 7.) Applicant's August 2017 credit report reflects this debt as charged off for \$16,206. (AX 15.) He testified that his law firm is negotiating with the creditor, but no agreement has been reached. (Tr. 52.) The debt is not resolved.

SOR ¶ 1.d: online university tuition debt referred for collection of \$2,200 in August 2014. Applicant began attending this university in 2010, using his veteran's educational benefits. (AX 18.) He denied owing this debt, on the ground that he did not enroll in the course for which he was billed. His law firm disputed the debt and it is reflected in the law firm's report to Applicant as "unlisted" on by one credit reporting agency, "removed" by another credit reporting agency, and "in queue" by the third agency. (AX 2; Tr. 57.) I conclude that the dispute probably has been resolved in Applicant's favor.

SOR ¶¶ 1.e, 1.f, 1.h, and 1.i: medical bills referred for collection of \$1099, \$305, \$70 and \$51. These bills were covered by Applicant's medical benefits from the Department of Veterans' Affairs. They have been resolved. (AX 4; AX 5.);

SOR ¶ 1.g: utility bill referred for collection of \$231 in January 2015. Applicant claimed that this was his son's debt. (AX 16.) He and his son have the same name, except that his son is a "Jr." (GX 5.) This debt is not listed among the debts being handled by

Applicant's law firm. (AX 2.) Applicant submitted no evidence reflecting that he disputed the debt with the original creditor, the collection agency, or the credit bureaus. It is not resolved.

SOR ¶ 1.j-1.l and 1.s: state tax liens for \$1,509; \$3,675; and \$554; judgment for \$2,428. Judgments were entered against Applicant for these amounts in March 2013, March 2014, July 2014, and January 2015. (GX 5, 6, 7, and 9.) In his answer to the SOR, Applicant stated that these were his son's debts. His law firm contacted the state comptroller and disputed the debts. (AX 17.) The \$554 lien is not reflected in the March 2017 credit report. None of the liens are reflected in the August 2017 credit report. (AX 15.) They are resolved.

SOR ¶ 1.m: judgment for \$3,000. This judgment was entered against Applicant in April 2011 for unpaid rent. (GX 8; Tr. 69.) It was satisfied by garnishment of Applicant's wages. (AX 20; AX 21.)

SOR ¶ 1.n: cellphone debt referred for collection of \$983. This debt was incurred when Applicant terminated a cellphone contract. He admitted this debt in his answer to the SOR, but at the hearing he referred to it as a "disputable debt." (Tr. 69-70.) The collection agency for this debt is listed among the accounts being handled by his law firm, but it is listed as "in queue" and no dispute has been filed. (AX 2.) The August 2017 credit report reflects that this debt is unresolved. (AX 15.)

SOR ¶¶ 1.o-1.r: medical bills referred for collection of \$154, \$152, \$145, and \$117. Applicant testified that he "Googled" the collection agencies, called the telephone numbers on their websites, and heard an advertising message. (AX 16; Tr. 71-72.) Applicant has not articulated a factual basis for disputing the debts in SOR ¶¶ 1.o-1.r. He produced no evidence that he or his law firm sent written disputes to the addresses listed in the April 2015 credit report. (GX 3 at 7-8.) The collection agencies for the medical debts alleged in SOR ¶¶ 1.o, 1.p, and 1.r are not listed among the accounts being disputed by Applicant's law firm. The debt in SOR ¶ 1.p was referred for collection in September 2008, and would have "aged off" the March 2017 credit report, but the others are less than seven years old.³ These debts are not resolved.

Before Applicant was suspended from his job, his take-home pay was about \$2,000 per month, and he had a net monthly remainder of about \$300 after paying all his bills. He has about \$1,200 in savings. He had about \$7,000 in his retirement account, but he borrowed \$4,000 for living expenses and payment of his child-support obligation. (Tr. 39-43.)

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 these debts. 15 U.S.C. § 1681c.

In September 2015, Applicant was arrested for driving while intoxicated (DWI) after he ran into a stopped vehicle that already had been in an accident. (Tr. 74.) In January 2016, he pleaded guilty and was sentenced to 30 days in jail, suspended. A charge of refusing to take blood test or breathalyzer was dismissed. His driver's license was restricted for one year, and he was placed on unsupervised probation for two years. He was required to complete an Alcohol Safety Action Program (ASAP). (GX 10.) He testified that he stopped drinking on the day he was arrested for DWI. (Tr. 32.) He completed 12 weeks of substance-abuse treatment in September 2016. (AX 10.) His probation will end in January 2018.

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).

Applicant's admissions, his testimony at the hearing, and the documentary evidence submitted by both sides 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"). 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 delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's marital breakup in 2013 was a condition largely beyond his control, but he has not acted responsibly. He has been employed continuously since at least 2005, and most of his financial problems arose after his separation in 2013. Except for the child-support arrearage, he presented no evidence of significant actions to resolve his delinquent debts until May 2015, when he hired a law firm to assist him.

AG ¶ 20(c) is not established. The services provided by Applicant's law firm do not constitute the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established for the child-support arrearage alleged in SOR ¶ 1.a, but it is not established for the other debts alleged in the SOR. Applicant presented no evidence of payment plans for any of the undisputed debts. The satisfaction of the judgment alleged in SOR ¶ 1.m by garnishment does not constitute a good-faith effort within the meaning of this mitigating condition. Payment by involuntary garnishment, "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009).

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.d, 1.e, 1.f, 1.h, 1.i, 1.j-1.l, and 1.s. It is not established for the debts alleged in SOR ¶ 1.a-1.c, 1.g, 1.m, and 1.n-1.r.

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.” Applicant's arrest and conviction for DWI and sentence including two years of probation establish the disqualifying conditions in AG ¶ 31(b): “evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted”; and AG ¶ 31(c): “individual is currently on parole or probation.”

The following mitigating conditions are potentially relevant:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Both mitigating conditions are established. Applicant does not have a history of criminal conduct or excessive alcohol consumption. He stopped drinking on the day of his arrest for DWI. He has complied with the terms of his probation, which will be completed in less than two months. He was remorseful, candid, and sincere about the DWI incident at the personal appearance.

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

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)

I have incorporated my comments under Guidelines F and J in my whole-person analysis and applied the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his criminal conduct, but 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**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h-1.l:	For Applicant
Subparagraphs 1.m-1.r:	Against Applicant
Subparagraphs 1.s:	For Applicant

Paragraph 2, Guideline J (Criminal Conduct): **FOR APPLICANT**

Subparagraph 2.a:	For Applicant
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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

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.