



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01219

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/07/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant resolved all of the debts alleged to be delinquent in his statement of reasons (SOR). Financial considerations security concerns are mitigated. On April 8, 2016, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA), and he unintentionally failed to disclose a \$19,000 delinquent debt on his SCA. (Government Exhibit (GE) 1) Eligibility for access to classified information is granted.

Statement of the Case

On June 19, 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, 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), effective June 8, 2017. (Hearing Exhibit (HE) 2)

On August 3, 2017, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On September 25, 2017, Department Counsel was ready to proceed. On October 30, 2017, the case was assigned to another administrative judge, and on

January 24, 2018, the case was transferred to me for administrative means. On April 3, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 19, 2018 using video teleconference. (HE 1) Applicant waived any issue regarding insufficient notice of the date, time, and place for his hearing. (Tr. 13) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 16-17; GE 1-6) On May 3, 2018, DOHA received the hearing transcript.¹ Applicant provided eight exhibits after his hearing, which were admitted without objection. (Applicant Exhibit (AE) A-AE I) I did not receive any evidence after June 14, 2018. The record closed on August 3, 2018. (Tr. 42; AE I)

Findings of Fact²

In Applicant's SOR response, he admitted the debt in SOR ¶ 1.a, and he denied the other SOR allegations. (HE 3) He also provided mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is 52 years old, and he oversees the government contract department for a government contractor. (Tr. 5, 8; GE 1) The government contractor has employed him since July 2015. (Tr. 8) In 1983, Applicant graduated from high school, and in 2002, he received a bachelor's degree in aeronautical science. (Tr. 5-6) He served in the Air Force from 1984 to 2012, and he honorably retired as a senior master sergeant (E-8). (Tr. 6, 19-20) His Air Force specialty was air transportation. (Tr. 6) He has a 100 percent disability rating from the Department of Veterans Affairs (VA). (Tr. 7) In 1991, he married, and his children are ages 25, 27, 31, and 32. (Tr. 7)

Financial Considerations

Applicant's monthly VA disability pay is currently \$3,300. (Tr. 24) When he retired from the Air Force, his monthly VA disability pay was \$3,100 approved retroactively; it was \$1,500 monthly for a time; and he began receiving \$3,300 monthly in October 2014. (Tr. 24-25) From October 2013 to present, his annual salary has been from \$75,000 to \$83,000. (Tr. 21-22) He was unemployed for six months immediately after he retired from the Air Force, and he was unemployed for two months in the summer of 2015 when he was between jobs. (Tr. 21-22) His monthly Air Force retirement pay is \$3,700. (Tr. 23) His spouse is a GS-12, and her annual income is about \$79,000. (Tr. 37) She is also receiving disability pay of \$1,400 from the VA. (Tr. 37-38) Their monthly take home income from all sources is about \$15,400. (Tr. 38) He has never had financial counseling. (Tr. 43)

¹ The transcript incorrectly indicates the Administrative Judge for the hearing was Judge Murphy.

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

Applicant and his spouse's 2014, 2015, and 2016 federal income tax returns show adjusted gross income of \$190,209, \$179,820, and \$196,123 respectively. (AE C-AE E) His adjusted gross income for each year does not include his and his spouse's VA disability payments because they are tax free. His tax returns show a substantial deduction for unreimbursed employee expenses. (AE C-AE E)

The SOR alleges four delinquent debts, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off credit union debt for \$19,218. Applicant borrowed money from the credit union in 2007 to restore an antique BMW. (Tr. 25) The debt became delinquent in 2013 after he retired from the Air Force when Applicant was unemployed. (Tr. 26) Applicant said the creditor agreed for a time to freeze the account. (Tr. 28) In May or June 2013, he was notified that the account went to collections. (Tr. 28) The next time he contacted the creditor was in 2014, and he was informed the account was transferred. (Tr. 29) He did not make any effort to resolve the account until after receipt of the SOR. (Tr. 29) He received a settlement agreement from the creditor involving making monthly payments; however, when he tried to make a payment, the creditor said the debt was transferred. (Tr. 31) At the time of his hearing, he was aware that the debt could be settled for \$16,500. (Tr. 32) Applicant said he had the funds to pay the debt, and he said he planned to pay it in the next few weeks. (Tr. 32, 41) On June 12, 2018, the creditor wrote the balance owed was \$27,980. (AE B) The creditor offered to settle the debt for \$16,500 provided payment was received "within 30 days of this letter." (AE B) On August 3, 2018, the creditor wrote the debt was paid in full. (AE I)

SOR ¶¶ 1.b and 1.c are medical debts placed for collections for \$197 and \$4,863. Applicant said the debts were supposed to be paid by TRICARE, and when TRICARE was informed of the debts, they were paid. (Tr. 33-34) On May 3, 2018, the creditor wrote that the debts were resolved, and the balance owed is zero. (AE A)

SOR ¶ 1.d alleges a bank debt placed for collection for \$5,074. Applicant purchased a television, and it ceased to function during the warranty period. (Tr. 35) He also used the funds to purchase an alarm system for a vehicle. (Tr. 35) On May 1, 2018, the law firm collecting the debt wrote that on July 28, 2017, \$4,100 was received, and the account was settled in full. (Tr. 36; AE F)

On June 13, 2018, Applicant said in an email, "My 2017 tax transcript is not available due to receiving an IRS approved 6-month extension. When I did my 2017 taxes I owed \$9,000 so I am seeking professional assistance." (AE A) His tax situation as presented does not raise a security concern because he and his spouse are earning substantial incomes and should be able to pay his taxes when his extension expires.

Personal Conduct

Applicant's April 8, 2016 SCA asks whether Applicant had any debts in the previous seven years placed for collection, charged off, or over 120 days delinquent. (GE 1) Applicant answered, no, and did not disclose the debts in SOR ¶¶ 1.a through 1.d.

Applicant acknowledged that he was aware that the debt in SOR ¶ 1.a met the reporting criteria in his SCA. (Tr. 40) Applicant said “in my haste in filling out the e-QIP . . . I mismarked it.” (Tr. 40) He said he did not intend to deceive the government about his delinquent debt. (Tr. 41) He made other errors on his SCA such as information about his relatives and addresses. (Tr. 41) He suggested his error might be related to his medical problem of “visual sight tracking” and he provided a supporting statement from a Professor in a Department of Ophthalmology and Visual Sciences and Neurology. (Tr. 43-44; AE G)

During Applicant’s November 7, 2016 Office of Personnel Management (OPM) personal subject interview (PSI), he told the OPM investigator that in the last seven years he had debts in collection and debts delinquent more than 120 days. (OPM PSI at 8 (GE 2 at 10)) When he reviewed his credit report, he discovered that several debts went to collections including the debts in SOR ¶¶ 1.a and 1.d. *Id.* at 9. He discussed his delinquent debts in detail during his OPM PSI.

Character Evidence

Applicant’s DD Form 214 lists the following awards: Defense Meritorious Service Medal; Meritorious Service Medal; Joint Service Commendation Medal; Air Force Commendation Medal with 4 oak leaf clusters; Joint Service Achievement Medal with 1 oak leaf cluster; Air Force Achievement Medal; Joint Meritorious Unit Award with 3 oak leaf clusters; Meritorious Unit Award; AF Outstanding Unit Award with 2 oak leaf clusters; AF Organizational Excellence Award; AF Good Conduct Medal with 9 oak leaf clusters; National Defense Service Medal with 1 service star; Armed Forces Expeditionary medal; Southwest Asia Service Medal with 1 service star; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; Armed Forces Service Medal; Humanitarian Service Medal; Military Outstanding Volunteer Service Medal; AF Overseas Ribbon Short; AF Overseas Ribbon Long with 2 oak leaf clusters; Air Force Expeditionary Service Ribbon with Gold Border; AF Longevity Service with 6 oak leaf clusters; USAF NCO PME Graduate Ribbon with 3 oak leaf clusters; Small Arms Expert Marksmanship Ribbon (Pistol); and AF Training Ribbon. (AE H) He completed numerous Air Force training courses. (AE H)

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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so"; 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), 19(b), 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)).

Applicant was unemployed at times after retiring from the Air Force. His VA disability pay varied until he was designated 100 percent disabled. These are circumstances beyond his control that adversely affected his finances. He did not receive financial counseling. I have credited Applicant with resolution of all of the SOR debts. There are clear indications that his financial problems are resolved and under control. He has ample financial resources, and future financial problems are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. Under all the circumstances, he established that financial considerations security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.⁴

Applicant failed to disclose debts over 120 days delinquent on his April 8, 2016 SCA in the previous seven years. Applicant knew the debt in SOR ¶ 1.a was delinquent over 120 days when he completed his SCA.

⁴ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant said “in my haste in filling out the e-QIP . . . I mismarked it.” (Tr. 40) He said he did not intend to deceive the government about his delinquent debt. He made other errors on his SCA such as information about his relatives and addresses. During Applicant’s November 7, 2016 OPM PSI, he told the OPM investigator that in the last seven years he had debts in collection and debts delinquent more than 120 days. He discussed his delinquent debts in detail during his OPM PSI. Applicant credibly stated he did not intend to deceive the government about his delinquent debt. He refuted the allegation that he intentionally falsified his April 8, 2016 SCA. Personal conduct security concerns are not substantiated.

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 Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 52 years old, and he oversees the government contract department for a government contractor. In 2002, he received a bachelor’s degree in aeronautical science. He served in the Air Force from 1984 to 2012, and he honorably retired as a senior master sergeant. His Air Force specialty was air transportation. He has a 100 percent disability rating from the VA. His spouse is also receiving disability payments from the VA.

Applicant is credited with having a generally good credit report with a solid record of financial responsibility. He resolved all of the debts alleged in the SOR. He received numerous Air Force awards, and he completed numerous Air Force training courses.

Applicant failed to disclose a \$19,000 delinquent debt on his April 8, 2016 SCA. This error was unintentional. He did not intend to deceive the government about this debt. He disclosed the delinquent debt to the OPM investigator in his follow-up OPM PSI.

The protection of national security relies on applicants to self-report conduct that jeopardizes security, even when that disclosure might damage the applicant's career. Applicant can be trusted to disclose potentially derogatory information related to security issues. He established his reliability, trustworthiness, and ability to protect classified information.

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, and personal conduct security concerns are refuted or unsubstantiated.

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.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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