



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



In the matter of:

ISCR Case No. 17-02282

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant resolved all of the delinquent debts listed on his statement of reasons (SOR). Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 18, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On July 21, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (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 Security Executive Agent Directive 4, Appendix A, *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), June 8, 2017. The SOR set forth security concerns arising under the financial considerations guideline. (Hearing Exhibit (HE) 2).

On August 18, 2017, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On November 27, 2017, Department Counsel was ready to proceed. On December 4, 2017, the case was assigned to me. On March 1, 2018, the Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 14, 2018. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Transcript (Tr.) 5-6) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 19-20, 23; GE 1-4) On March 23, 2018, DOHA received the hearing transcript. Applicant provided five exhibits after his hearing, which were admitted without objection. (Applicant Exhibit (AE) A-AE E) The record closed on June 18, 2018. (Tr. 44)

Findings of Fact¹

In Applicant's SOR response, he admitted the allegations in SOR ¶ 1.b, and he denied the other SOR allegations. (HE 3) He also provided extenuating and mitigating information. (HE 3)

Applicant is 54 years old, and he has been employed in simulations on a military installation for the previous eight years. (Tr. 7, 9; GE 1) In 1981, Applicant graduated from high school. (Tr. 7) He attended college for three years; however, he did not receive a bachelor's degree. (Tr. 7-8, 18) He served in the U.S. Army Reserve and National Guard as a field artillery officer for 28 years, and he honorably retired as a major. (Tr. 8) He has five years of active duty service. (Tr. 8) In 1985, Applicant married, and in 1987, he divorced. (Tr. 9) In 1989, he married, and his children are ages 21 and 25. (Tr. 10)

Financial Considerations

Appellant's current annual salary is about \$75,000, and his spouse's annual salary is about \$52,000. (Tr. 24-25) He and his spouse have about \$1,000 available each month to address their debts. (Tr. 25) He and his spouse use a budget, and all of their debts are current. (Tr. 26) He provided his budgets for the previous three years. (AE B-AE D) Applicant was unemployed from November 2009 to April 2010. (Tr. 18, 27, 36) In 2010, he received credit counseling. (Tr. 41-42)

The SOR alleges eight delinquent debts totaling \$102,956 and a mortgage foreclosure, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off debt for \$95,363. In 2003, Applicant moved; he rented out his home in one city; and he purchased a home in another city. (Tr. 29-30) A tenant destroyed his residential property. (Tr. 30) After the tenant destroyed the property, it was vacant. (Tr. 31) It received additional damage in a flood. (Tr. 32) Applicant sold the house for \$1,200, and the purchaser paid the taxes. (Tr. 32-33) Applicant believed his mortgage debt was resolved. (Tr. 33) He was surprised to learn the property went through foreclosure, and there was a deficiency. (Tr. 33) The creditor was seeking \$60,000 from

¹ Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant. (Tr. 33) On June 8, 2018, the creditor wrote Applicant and advised him that on May 22, 2018, the creditor received “full payment for the account” in the amount of \$33,374, and “[t]here is no remaining balance on the account.” (AE A)

SOR ¶ 1.b alleges one of Applicant’s mortgages was foreclosed in about 2011. The debt related to a different rental property than the debt alleged in SOR ¶ 1.a. (Tr. 34-35) Applicant said there was no deficiency after the foreclosure. (Tr. 35, 37) There is no evidence of a deficiency or balance owed to the creditor. (GE 3; GE 4)

SOR ¶¶ 1.c, 1.e, and 1.g allege three delinquent medical debts for \$2,037, \$509, and \$356. On May 15, 2017, Applicant paid the medical debt for \$2,037. (SOR response at 77) On August 10, 2017, he paid the medical debts for \$509 and \$356. (SOR response at 78)

SOR ¶ 1.d alleges a telecommunications debt placed for collection for \$695. Applicant paid the debt, and the negative information about the delinquent debt was removed from his credit report. (Tr. 38-39)

SOR ¶ 1.f alleges a charged-off bank debt for \$411. Applicant said he contacted the creditor, and the creditor informed him that the debt was paid in 2011. (Tr. 39-40; SOR response at 78A)

SOR ¶ 1.h alleges a charged-off debt for \$2,785. (Tr. 40) On May 12, 2012, Applicant paid \$1,212 and settled this debt. (SOR response at 79)

SOR ¶ 1.i alleges a department store debt placed for collection for \$830. On September 9, 2010, the creditor wrote that Applicant owed \$698. (SOR response at 80) Applicant believes he paid this debt. (Tr. 39-40) The debt does not appear on his March 24, 2017 credit report. (GE 3)

Applicant’s May 27, 2018 credit reports indicate his scores for Experian, TransUnion, and Equifax, are 736, 717, and 735. (AE E)² His senior rater in his final officer evaluation report indicated, “Incredible performance. [Applicant] is the best Major that I senior rate in this command and is among the top 10% of Majors with whom I’ve served.” (SOR response at 83) His performance evaluation from the government contractor lauds his dedication and diligence. (SOR response at 84-85)

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

² Credit ratings from 700 to 749 are considered “good.” See Experian website, https://www.google.com/search?source=hp&ei=MF8mW866JoOc5wLTsYrADw&q=credit+rating+score+chart&oq=credit+rating+score&gs_l=psy-ab.1.1.0i10.6377.10857.0.12822.19.15.0.4.4.0.150.1237.9j4.13.0....0...1c.1.64.psy-ab..2.17.1289...0i131k1.0.CWNboMa_Nsl.

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 eight delinquent debts totaling \$102,956 and a mortgage foreclosure. Applicant left the Army, transferred to a different city, and was unemployed for several months. A tenant and a flood destroyed one of his rental properties. These are circumstances beyond his control that adversely affected his finances.

The foreclosure alleged in the SOR did not result in a deficiency. Applicant paid or settled all of the debts alleged in the SOR, and he does not have any delinquent debts. He has a good credit score. He received financial counseling, and he uses a budget. Future financial problems are unlikely to occur. AG ¶¶ 20(a), 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 54 years old, and he has been employed in simulations on a military installation for the previous eight years. He attended college for three years. He served in the U.S. Army Reserve and National Guard as a field artillery officer for 28 years, and he honorably retired as a major. He provided an excellent officer evaluation report and contractor employee evaluation.

Applicant paid or settled all of the debts alleged in the SOR, and he does not have any delinquent debts. He received financial counseling, and he uses a budget. His actions show financial responsibility and judgment and favorably resolve questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. Future financial problems are unlikely to occur.

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 consideration concerns are mitigated, and it is clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility. 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
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Subparagraphs 1.a through 1.i:	For Applicant
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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