



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-02885
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2018

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.

History of the Case

Applicant submitted a security clearance application on August 30, 2016. On September 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on October 3, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 23, 2017, and the case was assigned to me on January 16, 2018. On February 7, 2018, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 28, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until March 31, 2018, to enable him to submit documentary evidence. He timely submitted AX A through G, which were admitted without objection. DOHA received the transcript (Tr.) on March 7, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.e, 1.g-1.q, 1.s, and 1.u. He denied the allegations in SOR ¶¶ 1.f, 1.r, and 1.t. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old training systems operator employed by a defense contractor since November 2015. He served on active duty in the U.S. Navy from June 2006 to March 2014, when he was involuntarily discharged, with an honorable discharge, because of failure to meet physical fitness standards. He married in June 2009 and has a seven-year-old son. (Tr. 18.) He held a security clearance in the Navy and retained it as an employee of a defense contractor.

Applicant had not experienced fitness problems until 2013, when he failed to meet the Navy's weight standards. (Tr. 55.) He was notified in late 2013 that he would be discharged for failure to meet fitness requirements. He received \$14,000 in severance pay. (Tr. 53.) He was unemployed until April 2015, when he was hired for a job that paid only about \$1,200 per month. (Tr. 43.) When he was hired by his current employer in November 2015, his annual pay increased to about \$55,000. (Tr. 49.) In September 2016, his employer began working on a new contract and Applicant's duty station was changed to a location that requires a commute of about two and a half hours each way, causing him to incur fuel expenses of \$600-\$800 per month. (Tr. 51-52.)

Applicant's wife is employed as a certified nursing assistant. (Tr. 21.) Their combined family income is between \$3,500 and \$4,000 per month. (Tr. 22.) Applicant is currently enrolled at a community college, pursuing an associate's degree in information technology. When he is in school, he receives a GI Bill housing stipend of about \$1,200 per month.

Applicant's wife recently suffered a neck injury at work and was unable to work for a short period. She returned to work in February 2018 but was restricted to light duty. She incurred copayments for physical therapy and medications. The record does not reflect whether she lost any pay as a result of her injury. (Tr. 45; AX E; AX F.)

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

Applicant's son suffers from scoliosis. Most of his treatment is covered by insurance, but each treatment incurs a copayment of \$20 or \$40 about four times a year. His son requires special braces that have been replaced three times as his son grows. Applicant has paid \$500-\$600 for each set of braces. (Tr. 18-19; AX D; AX G.)

The SOR alleges 21 delinquent debts totaling about \$40,000, which are reflected in credit reports from September 2016 and August 2017. (GX 2 and 3.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: default judgment for \$18,698 filed in January 2015, for an automobile repossession deficiency. The vehicle was purchased in 2011, and Applicant was unable to make the payments after he was discharged. (Tr. 24-25.)

SOR ¶¶ 1.b and 1.c: unsecured loans charged off for \$3,359 and \$2,751. Applicant made payments on these loans by military allotment until he was discharged. Since his discharge, he has not contacted the creditors or attempted to resolve the debts. (Tr. 25-27.)

SOR ¶ 1.d: cellphone account placed for collection of \$1,499. Applicant admitted this debt in his answer to the SOR, but he testified that it was incurred when he disconnected a Wi-Fi device on his cellphone, but it continued to transmit data, for which he was charged. He discussed the charges with the service provider several times, but he has not disputed the debt with the original creditor, collection agency, or credit bureau. (Tr. 28.)

SOR ¶ 1.e: collection account for \$1,304. At the hearing, Applicant was unable to provide any information about this debt. (Tr. 28.)

SOR ¶ 1.f: indebtedness to Department of Veterans Affairs placed for collection of \$913. This debt was incurred by overpayment of educational benefits and was paid by diverting a tax refund. (Tr. 29.) It is reflected in the September 2016 credit report as a paid collection. (GX 2 at 10.)

SOR ¶¶ 1.g and 1.h: charge accounts charged off for \$776 and \$688. Applicant stopped making payments on these accounts because he could not afford them. He has not contacted these creditors or made any attempt to resolve these debts. (Tr. 31.)

SOR ¶¶ 1.i-1.k: unsecured loans from a credit union charged off for \$639, \$609, and \$590. Applicant contacted the credit union but was unable to reach any payment agreements. (Tr. 32.)

SOR ¶ 1.l: medical debt placed for collection of \$542. This debt was incurred when Applicant went to an emergency room for reasons not reflected in the record. He has not contacted the creditor or made any effort to resolve this debt. (Tr. 33.)

SOR ¶¶ 1.m and 1.n: loan placed for collection of \$378 and medical debt placed for collection of \$50. Applicant could not provide any information about these debts at the hearing. (Tr. 33-34.)

SOR ¶ 1.o: vacuum cleaner purchase placed for collection of \$3,286. Applicant could not afford the payments after his discharge. He contacted the creditor, who was not interested in any payment arrangements. (Tr. 36.)

SOR ¶ 1.p: cable-service debt placed for collection of \$899. Applicant testified that he was unaware of this debt, incurred at a previous duty station. He has not contacted the creditor or made any effort to resolve this debt. (Tr. 37.)

SOR ¶ 1.q: telecommunications debt placed for collection of \$514. This debt was for a cellphone. Applicant has not contacted the creditor or made any effort to resolve this debt. (Tr. 37-38.)

SOR ¶ 1.r: cable-service debt placed for collection of \$439. Applicant denied this debt. He reestablished his account after a move and is a current customer of the provider. He does not know why his previous account is reflected on his credit report as delinquent. He has not contacted the provider or disputed the debt. (Tr. 40.)

SOR ¶ 1.t: federal tax debt of \$1,754 for tax year 2014. This debt was incurred when Applicant made an early withdrawal from his retirement account. (Tr. 42.) The debt was satisfied by applying the federal tax refund for a subsequent tax year. (AX B.)

SOR ¶ 1.s: medical debt placed for collection of \$306. Applicant did not recognize the debt at the hearing, but he had not contacted the creditor or taken any action to resolve it. (Tr. 41.)

SOR ¶ 1.u: unpaid traffic ticket for \$570 (failure to stop for school bus). Applicant disagreed with the violation and was scheduled to appear in court. He was unable to attend the court hearing on the scheduled date. He testified that he contacted the court and was informed that he would be required to pay the amount of the fine ahead of time in order to reschedule his hearing. He has taken no action to resolve the ticket. (Tr. 43-45.)

In October 2017, Applicant retained an attorney to file a Chapter 7 bankruptcy petition. (SOR Answer; AX A.) His attorney will not file the petition until her \$1,800 fee is paid. Applicant hoped to generate sufficient funds to pay her fee within two months, but he presented evidence of only one \$100 payment. (Tr. 46; AX A.)

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. . . . 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 and the evidence submitted at the hearing establish the following potentially 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;

AG ¶ 19(c): a history of not meeting financial obligations; and

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.

The following mitigating conditions are potentially applicable:

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;

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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

AG ¶ 20(b) is not fully established. The uninsured medical expenses incurred by Applicant's family members were conditions largely beyond his control. Applicant has not established that his involuntary discharge from the Navy and subsequent periods of unemployment and underemployment were conditions beyond his control. He served on active duty from 2006 to 2013, with no issues about his weight. He provided no medical evidence or other explanation showing that his weight gain in 2013 was beyond his control. In any event, he has not acted responsibly. He had ample warning of his impending discharge from the Navy, but he presented no evidence showing that he prepared for the financial impact of his discharge. For the most part, his response to his delinquent debts has been passive. He has not contacted the creditors regarding the debts alleged in SOR ¶¶ 1.a-1.c, 1.e-1.h, 1.l-1.n, 1.p-1.r, 1.s, or 1.u or made any effort to resolve them. He has contacted a bankruptcy attorney, but he has made only one \$100 payment toward her fee of \$1,800, and date for filing the bankruptcy petition is uncertain.

AG ¶ 20(c) is not established. Applicant presented no evidence of financial counseling and his financial situation is not under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.f and 1.t, but not for the other debts. Even if Applicant follows through with a bankruptcy petition, a bankruptcy discharge does not constitute a good-faith effort resolve debts. See ISCR Case No. 11-08274 (App. Bd. May 2, 2013).

AG ¶ 20(e) is not established. At the hearing, Applicant questioned the legitimacy of the debts alleged in SOR ¶¶ 1.d, 1.r, and 1.u, but he has taken no action to dispute them.

AG ¶ 20(g) is established for the federal tax debt alleged in SOR ¶ 1.t. It is not relevant to the other debts alleged in the SOR.

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).²

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant 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-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.r:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant

² 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