



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00339

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

09/14/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant settled and paid 9 of 12 delinquent debts listed on his statement of reasons (SOR). The creditors for two SOR debts are not seeking payment, and one SOR debt for \$794 is in the process of being settled. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On April 30, 2016, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On March 2, 2018, 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); 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) (June 8, 2017). The SOR set forth security concerns arising under the financial considerations guideline. (Hearing Exhibit (HE) 2)

On April 5, 2018, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On May 10, 2018, Department Counsel was ready to proceed. On May

15, 2018, the case was assigned to me. On May 23, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 13, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; Applicant offered seven exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 12-16; GE 1-6; Applicant Exhibit (AE) A-AE G) On June 21, 2018, DOHA received the hearing transcript. The record was held open until September 14, 2018. (Tr. 47, 55) On September 10, 2018, Applicant provided nine additional exhibits, which were admitted without objection. (AE H-AE P)

Findings of Fact¹

In Applicant's SOR response, he denied all of the SOR allegations. He also provided mitigating information. His admissions are accepted as findings of fact.

Appellant is a 32-year-old maintenance technician who has been working for the government contractor since April 2016. (Tr. 7-8, 17) In 2004, he graduated from high school. (Tr. 6) In 2013, he received two associate's degrees. (Tr. 6) He has never served in the military. (Tr. 7) In 2016, he married, and his child is one month old. (Tr. 7, 17)

Financial Considerations

Applicant has not been unemployed in the last five years. (Tr. 19) For several years until 2014, he was underemployed. (Tr. 21-22) His debts became delinquent while he was earning his associate's degrees. (Tr. 24) His monthly net income without overtime is about \$3,600. (Tr. 36) He has not received financial counseling. (Tr. 48)

The status of the 12 debts totaling \$45,371 alleged in the SOR is as follows:

SOR ¶ 1.a alleges a telecommunications debt placed for collection for \$320. On March 22, 2018, Applicant paid this debt. (Tr. 26-27, 46; AE B)

SOR ¶ 1.b alleges a medical debt placed for collection for \$157. On March 23, 2018, Applicant paid this debt. (Tr. 26-27, 46; AE B)

SOR ¶ 1.c alleges a judgment for \$2,283. On May 17, 2018, the law firm handling the judgment wrote that the payment of \$752 satisfied the judgment. (Tr. 35, 46; AE A)

SOR ¶ 1.d alleges a debt for furniture placed for collection for \$2,401. On August 24, 2018, Applicant settled this debt for \$720. (AE H) On August 28, 2018, the creditor acknowledged receipt of the payment and resolution of the debt.

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

SOR ¶ 1.e alleges a charged-off debt for furniture for \$794. Applicant said he is working on a settlement of this debt.

SOR ¶ 1.f alleges a bank debt placed for collection for \$27,588. On August 24, 2018, Applicant paid \$6,904 and settled this debt. (AE I) On August 28, the creditor wrote the debt was “settled in full.” (AE I)

SOR ¶ 1.g alleges a debt placed for collection for \$7,562. On August 17, 2018, the creditor wrote Applicant “We have closed your account and ceased collections. You have no further obligation regarding his account.” (AE J)

SOR ¶ 1.h alleges a debt placed for collection for \$1,403. On August 27, 2018, Applicant settled the debt for \$500. (AE K)

SOR ¶ 1.i alleged an automotive debt placed for collection for \$1,196. On August 22, 2018, Applicant settled the debt for \$300. (AE L)

SOR ¶ 1.j alleges a debt placed for collection for \$742. On August 9, 2018, Applicant settled the debt for \$594. (AE M)

SOR ¶ 1.k alleged a store debt placed for collection for \$679. On August 22, 2018, the creditor wrote that the account is closed. (AE N)

SOR ¶ 1.l alleges a utility debt placed for collection for \$246. On August 14, 2018, Applicant settled the debt for \$100. (AE O)

In April 2017, Applicant hired a credit-repair company (CRC) to “repair and clean up” his credit report by seeking validation or removal of derogatory information from his credit report. (Tr. 28-29, 38; AE C) From March to August 2017, he paid the CRC about \$2,000. (Tr. 39) CRC did not pay any of his creditors. (Tr. 39) On April 4, 2018, CRC wrote that Applicant’s credit report was repaired and only two delinquent accounts with balances remained, that is, the debts in SOR ¶¶ 1.a and 1.b. (AE C) On May 29, 2018, CRC wrote to Applicant and explained the debts removed from his credit report were “past the federal statute of limitations for reporting and so they are not owed and are deleted off of your credit report.” (AE D) Applicant believed CRC’s representations that his debts in SOR ¶¶ 1.d through 1.l were resolved. (Tr. 40) Applicant admitted that he owed the SOR debts before CRC began helping him with his credit. (Tr. 32-33)

In sum, Applicant settled and paid nine delinquent SOR debts totaling \$36,336. The creditors for two SOR debts are not seeking payment, and one SOR debt for \$794 is in the process of being settled.

Applicant’s vehicle loan and student loans are current. (Tr. 41) He loves his job and wants to support his family. (Tr. 43, 49) He uses a budget. (Tr. 49) He said he wanted to resolve his SOR debts even though they are not legally enforceable. (Tr. 42-43, 47) After his hearing, he resolved the debts in SOR ¶¶ 1.d, 1.f, 1.h-1.j, and 1.l.

Character Evidence

Applicant's brother-in-law described Applicant as very trustworthy, ethical, reliable, honest, and reliable. (Tr. 52-53) He is proud that Applicant is his brother-in-law. (Tr. 54) Two supervisors where he is employed said Applicant is diligent, trustworthy, responsible, and highly motivated to be successful. (AE E; AE F)

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 [or her] 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,² 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

² 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)).

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).

The CRC advised Applicant that the debts in SOR ¶¶ 1.d through 1.i were dropped from his credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.³ Debts may be dropped from a credit report upon dispute when the creditor believes the debt is not going to be paid, the creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off. “Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved.” ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) (citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015)).

Applicant settled all of the debts, except the debts in SOR ¶¶ 1.e, 1.g, and 1.k. The creditors for the debts in SOR ¶¶ 1.g and 1.k advised Applicant that the accounts were closed and collection was not being sought. He is working with the creditor in SOR ¶ 1.e (\$794) to resolve this debt. Applicant’s financial problems were caused by underemployment and lack of income while he was attending college. Underemployment is a circumstance beyond his control.

Applicant showed due diligence and good faith by contacting his creditors and settling nine SOR debts totaling \$36,336. Applicant’s vehicle loan and student loans are current. There are clear indications that his financial problem is resolved, and his finances are under control. Future financial problems are unlikely to occur. AG ¶¶ 20(a), 20(b), 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):

³Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

(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.

Appellant is a 32-year-old maintenance technician who has been working for a government contractor since April 2016. In 2013, he received two associate's degrees. In 2016, he married, and his child is one month old. Applicant's brother-in-law and two managers at his place of employment described Applicant as very trustworthy, ethical, reliable, honest, and reliable.

Applicant paid and settled 9 out of 12 SOR debts. The creditors for two SOR debts are not seeking payment, and one SOR debt for \$794 is in the process of being settled. His vehicle loan and student loans are current. 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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has . . . established a plan to resolve his [or her] 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 [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his [or her] 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 has established a track record of paying his debts.

Applicant's 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 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.l: 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