



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01618
)	
Applicant for Security Clearance)	

Appearances

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

11/08/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on May 4, 2017. On June 22, 2018, 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 July 30, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 15, 2018, and the case was assigned to me on August 16, 2018. On August 27, 2018, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 26, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I kept the record open until October 12, 2018, to enable him to submit additional documentary evidence. He timely submitted AX I through O, which were admitted without objection. DOHA received the transcript (Tr.) on October 4, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 45-year-old senior principal engineer employed by a defense contractor since November 2012. He served on active duty in the U.S. Air Force from July 1991 to August 2012, when he retired. He worked in the private sector for three months after retiring and then was hired by his current employer. He received an associate's degree in May 2007 and a bachelor's degree in September 2009, while on active duty. He has held a security clearance since November 1991.

Applicant married in November 1991, separated in December 2014, and divorced in June 2016. (AX H, Stipulation and Agreement at 1.) Applicant and his wife have four children, ages 26, 21, 18, and 15. When they divorced, Applicant's wife was not employed outside the home. She was a student, using Applicant's GI Bill benefits.

The divorce proceedings were lengthy, contentious, and expensive. Applicant's ex-wife was the plaintiff, and the stated grounds were "unreconcilable differences." Applicant declined to describe the specific basis for it, explaining, "I would like to leave it at that. I don't want to paint a bad image of anybody on this, especially my ex-wife." (Tr. 36.) The divorce decree required Applicant to pay spousal support of \$1,000 per month for three years or until she received her associate's degree, and thereafter to pay \$500 per month for three years or until she received her bachelor's degree; and thereafter to pay \$250 per month for four years. The decree required Applicant to pay child support of \$1,500 per month for their two minor children. The stipulation and agreement regarding property settlement awarded Applicant's ex-wife 50% of his military retired pay. Applicant's ex-wife agreed to accept the GI Bill living-expense stipend in lieu of the spousal support payments. She remarried in October 2016, nullifying the provision for spousal support in the separation agreement, but not her entitlement to 50% of his retired pay. (Tr. 41; AX H, Stipulation and Agreement at 3.)

Applicant fell behind on his child-support payments in 2015, after his father passed away and Applicant incurred some of his father's burial expenses as well as travel expenses to attend the funeral. He and his nine siblings shared the burial expenses, and

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

each paid about \$1,000. His travel expense to and from the funeral was about \$1,200. (Tr. 44.) His pay was garnished to collect the child-support arrearage. The payments are now current. (Tr. 22; AX D; AX E.)

Applicant also fell behind on the monthly payments of \$1,975 on the mortgage loan for the marital residence. The June 2017 credit report reflected that his payments were 60 days past due for \$3,935. (GX 2 at 3.) The May 2018 credit report reflected that his payments were past due for \$5,825. (GX 3 at 1.) Applicant testified that he contacted the lender, who was unwilling to accept partial payments but agreed to set up an escrow account for partial payments, in which Applicant could accumulate sufficient funds to constitute a full payment. He testified that he had about \$900 in the escrow account. He is making his regular payments, plus an additional \$80 per month for the escrow account. (Tr. 36-37.) He testified that the lender agreed to not foreclose unless he was more than 90 days delinquent. He provided documentary evidence of payments of \$1,975 by automatic withdrawal in May, June, and July 2018. (AX N.) The past-due loan payments are not alleged in the SOR.

Applicant testified that he intends to sell or rent out his home to reduce his living expenses. (Tr. 39.) The May 2018 credit report reflects that his balance on the loan is \$319,502. (GX 3 at 1.) The market value of his home is about \$361,400. (AX O.)

Applicant also fell behind on his car payments. He contacted the lender, who has agreed to not repossess the car as long as his payments are not more than 60 days past due. (Tr. 45-45.) The delinquent car payments are not alleged in the SOR.

Applicant borrowed \$3,600 from his 401(k) account to pay several credit-card debts. The loan is being repaid by payroll deductions of \$55 per two-week pay period. (AX A; Tr.47.)

The evidence concerning the seven delinquent debts alleged in the SOR is summarized below.

SOR ¶¶1.a and 1.b: judgments filed in December 2016 and October 2017 for unpaid rent (\$1,279 and \$2,252). These judgments were satisfied by garnishment of Applicant's pay. (AX F) The credit reports in the record do not reflect any delinquent debts to this creditor or any unsatisfied judgments. (GX 2; GX 3.)

SOR ¶ 1.c: pending lawsuit for legal fees. Applicant incurred substantial legal fees in connection with his divorce. Contrary to the allegation of a "pending lawsuit," there are no documents in the record reflecting a pending lawsuit or any judgments. An invoice from the law firm reflects payments of \$3,500 in January 2015; \$2,500 in December 2015; \$6,100 in January 2016; \$300 in April 2016; \$1,000 in April 2016; and \$100 in October 2017; with a balance due of \$10,120. (AX L.)

SOR ¶ 1.d: unsecured loan charged off for \$17,196. Applicant obtained this loan to defray the expenses of maintaining two homes beginning in December 2014, when he

and his wife separated. (Tr. 25, 34.) He incurred expenses of about \$2,000 per month to maintain a separate residence while his then wife resided in the marital home. (Tr. 35.) He now resides in the marital home. He testified that he contacted the creditor for unsecured loan, but was unable to make payment arrangements. He has made no payments on this debt. (Tr. 25-26.)

SOR ¶ 1.e: credit-card debt charged off for \$13,977. This account was opened in June 2012 and charged off for \$13,977 in October 2016. Pursuant to a payment agreement, Applicant made a \$135 payment in June 2017 and monthly \$100 payments from July 2017 through September 2018. (AX B; AX K.)

SOR ¶ 1.f: credit-card debt charged off for \$2,600. This account was opened in April 1998 and charged off in November 2016. Pursuant to a payment agreement, Applicant made two \$200 payments in June 2017 and monthly \$200 payments from July 2017 through September 2018. (AX B; AX J.)

SOR ¶ 1.g: credit-card debt charged off for \$1,208. Applicant has not yet taken any action to resolve this debt. (Tr. 55.)

Applicant's net pay per two-week pay period is \$3,970. Deductions from his gross pay include child support. (AX A.) One of his children just turned 18, and he intends to ask the court to reduce his child-support payments, but he had not done so as of the date the record closed. (Tr.29.) He maintains a spread sheet showing all his monthly obligations and expenses, including the debt payments and unresolved debts discussed above. He estimates that his net monthly income, which includes his salary, his share of his military retirement, and disability pay, is about \$6,600. His net monthly remainder after debt payments and living expenses is about \$495. (AX C.)

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 during and after the hearing establish the following potentially disqualifying conditions: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). 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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous and recent. Because he declined to provide any details about the circumstances of his separation and divorce, there is no evidence showing that the financial problems attributable to his divorce were incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. The death of Applicant's father and his financially devastating marital break-up were conditions beyond his control. He has acted responsibly by maintaining contact with his creditors, including those not alleged in the SOR, negotiating payment agreements when possible, and formulating a comprehensive overall plan for resolving his debts.

AG ¶ 20(d) is established. Applicant is making payments on his mortgage loan and his car loan, which are not alleged in the SOR. The two judgments for unpaid rent were satisfied by garnishment. Payment of a debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26,

2010). However, payment by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006).

Applicant has been paying his legal fees when he is able. He is making payments under payment plans for the two credit-card debts alleged in SOR ¶¶ 1.e and 1.f. He has not yet reached payment agreements for the unsecured loan in SOR ¶ 1.d and the credit-card debt in SOR ¶ 1.g. However, the adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's spread sheet reflects a detailed plan to resolve his debts, and he has taken substantial steps to implement it.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant served honorably in the U.S. Air Force for 21 years and has held a security clearance since 1991. Except for three months working in the private sector, he has spent his entire adult life in support of national defense. He was candid, sincere, and credible at the hearing. I am confident that he will continue his efforts to be financially responsible.³ 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 mitigated the security concerns raised by his delinquent debts.

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.

³ In the unlikely event that Applicant deviates from his current course of responsible conduct, the Government will have the right to reconsider the security significance of his past conduct in light of more recent conduct having negative security significance. ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012).

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations); FOR APPLICANT

Subparagraphs 1.a-1.g:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge