



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 15-02408
)
 Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances beyond his control, Applicant experienced financial difficulties, but mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on July 20, 2014. On October 21, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR on November 23, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 8, 2016, and the case was assigned to me on March 14, 2016. On March 23, 2016, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 13, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A through I and AX K, which were admitted without objection.¹ DOHA received the transcript (Tr.) on April 22, 2016.

Procedural Issues

On Department Counsel's motion, and without objection, I amended the SOR by striking ¶¶ 1.i through 1.l: SOR ¶¶ 1.i and 1.j are the same as the debt alleged in SOR ¶ 1.e; SOR ¶ 1. k is same as the debt alleged in ¶ 1.d; and SOR ¶ 1.l is the same as the debt alleged in ¶ 1.b.

Findings of Fact

The amended SOR alleges eight delinquent debts totaling approximately \$18,615. The delinquent debts include two vehicle loans, three medical bills, a cellular telephone bill, and, two cable service bills. In his Answer, Applicant admitted each of the allegations. His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) dated February 2015 and December 2012. (GX 2; GX 3.)

Applicant is a 57-year-old information technology (IT) security specialist being sponsored by a defense contractor. The job he has been offered requires a security clearance. Currently, he does not have an active clearance, however, he previously held a clearance while employed by a different defense contractor. He served honorably in the U.S. Army from August 1978 until September 1980. He received his associate's degree in 1997 and bachelor's degree in education in 2004. He received a certificate of completion in computer security in 2013. (GX 1.) He taught career technology in a public middle school, and was an IT coordinator for another school, from 2002 until 2006, when he was laid off due to budget cutbacks. (GX 1; Tr. 32.) He married in 1985, separated in 2006, and he and his wife divorced in 2009. He has one adult daughter, who is currently attending medical school, and is financially independent from Applicant. (GX 1; Tr. 27.) He was an active participant in a fraternal organization and in his church for many years. (Tr. 46-49.) He is deeply trusted by his family and friends. (AX K.)

Applicant's financial difficulties arose in 2006, as a result of his separation from his wife, and his loss of employment from the public school system. (Tr. 29.) While still employed by the school system, he financed the purchase of a vehicle. After losing his job, he was unable to make the requisite monthly payments. He maintained contact with the lender, promising to resume payments as soon as he found employment. Ultimately, the vehicle was repossessed and sold at auction. The \$8,945 debt in SOR ¶ 1.a is owed to the collection agency for the deficiency balance. (GX 2; Tr. 33.)

¹ I inadvertently skipped the letter "K" when marking and admitting Applicant's exhibits.

The \$5,582 debt alleged in SOR ¶ 1.b is for a vehicle loan that Applicant took out on behalf of a friend in 2006. The friend was a homebuilder, who, at the time, had three houses on the market, all of which were later foreclosed. The friend was unable to repay the loan, and Applicant became solely responsible for the debt. (GX 2; Tr. 33-34.)

The \$1,691 debt alleged in SOR ¶ 1.c is a medical debt. (GX 2.) Applicant's medical care is covered by the Veteran's Administration (VA), and he usually seeks care at the VA hospital. In this instance, he was treated at a local hospital. Usually, under such circumstances, the hospital submits the bill to the VA for payment. Applicant called the VA to inquire about this bill and was informed that the VA never received the bill. He called the hospital to request that the hospital resubmit the bill to the VA, and was informed that the hospital would not do that. (Tr. 34-35.) He was treated for cancer at the VA approximately four or five years ago, and continues to have follow-up examinations. (Tr. 43.)

The \$818 debt alleged in SOR ¶ 1.d is owed to a cellular telephone company. (GX 2.) This debt was incurred by Applicant when he prematurely terminated his two-year contract. He was working as a contractor and had bid and won a contract on a project that was funded by the state and federal governments. He purchased two cellular telephones, one for himself and one for his employee, and signed a two-year contract. The funding for his program was cut, and his contract was not funded. He contacted the cellular telephone company, explained the circumstances, and asked to cancel the contract, and pay on a month-to-month plan. The company did not agree to Applicant's request, and charged him approximately \$700 as an early termination fee. (Tr. 35-36.)

The \$672 debt alleged in SOR ¶ 1.e is an unresolved medical debt. (GX 3.) Applicant will resubmit this bill to the VA for payment. The \$525 debt alleged in SOR ¶ 1.f is for a cable service contract that Applicant entered on behalf of one of his brothers, who lives in another state, and, due to his own financial woes, was unable to secure the account in his own name. His brother then failed to make the required payments. The \$119 debt alleged in SOR ¶ 1.h is also for a cable service contract that Applicant entered on behalf of his brother. The \$263 debt alleged in SOR ¶ 1.g is for an unpaid medical bill incurred by Applicant's ex-wife prior to their divorce. (GX 2; Tr. 37-39.)

Prior to his separation from his wife and his period of unemployment in 2006, Applicant lived within his means and had good credit. (Tr. 29.) Since 2006, he has been unable to secure full-time employment. (GX 1; Tr. 29; Tr. 41-42.) He works sporadically, and only part-time hours, for another Government contractor, when the company has work for him. (Tr. 44.) There are few full-time IT-related jobs available near his home, and the potentially positions available require a security clearance. (Tr. 29-30.) Despite his very limited and unreliable income, Applicant has not incurred any significant delinquent debt in nearly 10 years. (Tr. 41; GX 3.) As part of the divorce settlement, he quit-claim deeded his interest in the house to his wife. (Tr. 41.) In an effort to minimize his expenses, he moved in with his mother in 2013. (GX 1.) He inherited his father's 2003 truck, which is paid off, and his only truck-related monthly bills are for gasoline and

insurance. (Tr. 44.) He has a month-to-month cellular phone with no contract, he uses his brother's computer and internet service, and he no longer participates in the fraternal organization because he cannot afford the dues. (Tr. 46.)

Applicant testified candidly and sincerely about his financial circumstances and his eagerness and willingness to resolve each of his debts, stating that he "was raised up...to do the right thing." (Tr. 30.) He has maintained his account numbers for each of his delinquent accounts and the contact information for each of the creditors. He will pay his delinquent accounts as soon as his income permits. (Answer; Tr. 34; Tr. 52.) He accepts responsibility for each of the debts, including the debt he incurred for a friend, those he incurred for his brother, and the medical bill owed by his ex-wife. (Answer; Tr. 30-31.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. 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." See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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 testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

However, an individual may mitigate concerns about his ability to handle and safeguard classified information raised by his financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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

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.

AG ¶ 20(a) is established. Applicant's debts are not recent. Given that Applicant has been without reliable income for about 10 years, and has managed not to incur any significant debt in that timeframe, his delinquent accounts do not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is established. Through no fault of his own, Applicant has experienced extensive periods of unemployment and underemployment. The medical debts arose from circumstances beyond his control. Approximately \$2,363 of his medical debt is owed for treatments that should have been covered by the VA, and \$263 is owed for a medical debt incurred by his ex-wife. He acted responsibly by contacting his creditors and trying to negotiate with them, and by maintaining the account numbers and his creditors' contact information, to enable him to resolve his debts as soon as he is gainfully employed. He also acted responsibly by not incurring any additional debt, and by taking extreme measures to reduce his monthly expenses.

AG ¶ 20(d) is established. Applicant acted in good faith by contacting his creditors and informing them of his unemployment and resulting financial circumstances, before he defaulted on payments. His efforts to negotiate with these creditors were made in good faith. Applicant did not intentionally stop paying his creditors, he simply was unable to continue. Even with his very limited income, he is current on all his ongoing financial obligations. He plans to pay each of the delinquent debts alleged in the SOR as soon as his income permits.

“Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to 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. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

AG ¶ 20(e) is established. Applicant contacted both the VA and the treating hospital in an effort to resolve the medical debt alleged in SOR ¶ 1.c.

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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the U.S. Army. Despite the unpredictability of his income, Applicant lives within his means. He will have the ability to pay his delinquencies once he is gainfully employed, and was sincere in his determination to do so. I am confident that Applicant will continue his good-faith efforts to resolve his delinquent debts.

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. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.h: For Applicant

Subparagraphs 1.i – 1.l Withdrawn

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge