



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03871

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

07/14/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges eight collection or delinquent accounts totaling \$49,864 and discharge of his nonpriority unsecured debts under Chapter 7 of the Bankruptcy Code in 2005. Applicant paid or successfully disputed all of his SOR debts, except for student loans in SOR ¶¶ 1.d and 1.e. He disclosed he had six federal student loans, which are in an established payment plan. He also has four state student loans, which were in forbearance until May 2015. He promised to establish a payment plan to keep his four state student loans current. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On January 24, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1) On January 23, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On February 8, 2015, Applicant responded to the SOR allegations, and on February 26, 2015, he requested a hearing. (HE 3) On May 4, 2015, Department Counsel was prepared to proceed. On May 7, 2015, the case was assigned to me. On May 27, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for June 10, 2015. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and place of his hearing. (Tr. 17-18) The hearing was held as scheduled on June 10, 2015, using video teleconference. Department Counsel offered three exhibits into evidence, and Applicant offered three exhibits into evidence. (Tr. 22-25; Government Exhibits (GE) 1-3; Applicant Exhibits (AE) A-C) On June 18, 2015, the transcript was received. On June 22, 2015, Applicant provided 19 exhibits. There were no objections, and all exhibits were admitted into evidence. (Tr. 22-25, 29; GE 1-3; AE A-X)

Findings of Fact¹

In his Answer to the SOR, Applicant admitted responsibility for the SOR debts in ¶¶ 1.b, 1.c, and 1.e, as well as his bankruptcy in ¶ 1.i. (HE 3) He denied responsibility for the other SOR debts, and he provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 46-year-old administrator for an information technology system, and he has worked for a defense contractor since June 2014.² (Tr. 6) In 1986, he graduated from high school. (Tr. 6-7) He has completed some college courses in information technology; however, he has not been awarded a bachelor's degree. (Tr. 7) He served in the Army National Guard from 1986 to 1992, and he received an honorable discharge. (Tr. 9-10) In 1989, he married, and in 1995, he divorced. (Tr. 8) In 1995, he married his current spouse. His children are 22 and 24 years old. (Tr. 8) His 30-year-old stepson lives in Applicant's household. (Tr. 9) His stepson has mental health problems. (Tr. 73) There is no evidence of disciplinary problems with his employer or illegal drug use.

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

²Unless stated otherwise, the source for the information in this paragraph is Applicant's January 24, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1)

Financial Considerations

In 2014, Applicant's annual salary was \$79,488. (Tr. 27; AE G) He was a data base administrator from 2001 through 2007 for a defense contractor. (Tr. 29) He has not been unemployed since 2001. (Tr. 30) Applicant and his spouse had multiple surgeries, which resulted in financial problems. (Tr. 30-31) Applicant's most recent surgery was in November 2014, and he lost two weeks of pay. (Tr. 69) Applicant spouse was a manager for a department store, and she earned about \$50,000 a year. (Tr. 30-32) Since 2007, his spouse has been unable to work outside their home because of back pain, nerve damage, and surgeries. (Tr. 30-32) In 2014, she received \$11,411 in Social Security disability benefits. (Tr. 32; AE G)

Applicant's nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code in 2005. On January 30, 2006, a DOHA administrative judge determined "[h]is divorce in 1995, periods of unemployment, a series of short-term or low-paying jobs, and medical bills caused him to be delinquent on his financial obligations. . . . He pays his current monthly financial debts on time. Applicant mitigated the financial considerations security concern. Clearance is granted." ISCR Case No. 03-27073 at 1 (A.J. Jan. 30, 2006). (SOR response)

Applicant's SOR alleges eight collection or delinquent accounts totaling \$49,864, and the status of the eight SOR accounts is as follows:

¶¶ 1.a for \$200 and 1.f for \$728 describe the same credit-card collection debt. (Tr. 37) On June 10, 2014, Applicant paid \$633, and the creditor wrote that the debt was paid. (Tr. 37-38; SOR response)

¶¶ 1.b, 1.c, and 1.h are medical collection debts for \$198, \$112, and \$54. These three debts originated from Applicant's spouse's medical treatment. (Tr. 39, 49; SOR response) In November 2014, he paid the debt in SOR ¶ 1.h. (Tr. 49-50) In February 2015, Applicant paid the debts in SOR ¶¶ 1.b and 1.c using money orders. (Tr. 40-42; SOR response)

¶¶ 1.d and 1.e are student loan accounts for \$20,611 and \$26,707. The two accounts are duplications of each other. (Tr. 43) Applicant provided documentation showing he currently has six Stafford and Federal Family Education Loans totaling \$40,222, and he has consistently made \$334 monthly payments on his student loan accounts since March 2015 using automatic withdrawals from his bank account. (Tr. 44-46, 70-72; AE F, H-K) Applicant has four state student loans, totaling about \$12,000, which were under forbearance from July 2014 through May 2015. (AE T, X) Applicant intends to start making payments to address his state student loan debts. (Tr. 50-51, 68, 70-72; AE T)

¶ 1.g is a medical collection debt for \$1,254. The debt in SOR ¶ 1.g originated from Applicant's spouse's medical treatment. (Tr. 46; SOR response) Applicant referred the medical bill to his medical insurance company for payment. (Tr. 46; SOR response) In February 2015, the creditor advised Applicant that this debt was resolved and the

negative entry would be removed from his credit report. (Tr. 46-47; SOR response) In addition to the SOR medical debts, Applicant documented hundreds of medical copays over the last eight years. (AE D, U-W)

Applicant received credit counseling during the bankruptcy process, and he uses a budget and credit reports to monitor his expenses, payments, and credit. (Tr. 66; SOR response; AE D) His vehicle loan and taxes are current. (Tr. 56-66) He does not use any credit cards. (Tr. 62)

Character Evidence

Applicant's coworker (contracting officer), supervisor, and program executive officer positively described Applicant's character and work performance.³ He is intelligent, capable, thoughtful, mature, dedicated, and professional. He has excellent integrity and is conscientious about safeguarding classified and sensitive information. He made important contributions to his company and mission accomplishment.

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 revised 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.

³Applicant provided three statements about his character from colleagues who worked with him from two to ten years, which are the basis for the facts in this paragraph. (AE A-C)

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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, 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 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. 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. Sep. 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 relating to financial problems:

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.

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).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, SF 86, SOR response, and hearing record. His SOR alleges eight collection or delinquent accounts totaling \$49,864 and discharge of his nonpriority unsecured debts under Chapter 7 of the Bankruptcy Code in 2005. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁴ 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

⁴The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The 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).

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) through 20(e). His financial problems were affected by circumstances largely beyond his control. Applicant, his spouse, and his stepson have had medical problems and significant medical debts. These medical conditions were largely beyond Applicant's control, and he acted responsibly under the circumstances by paying, disputing, or resolving all of his medical debts.

Applicant's delinquent debts "occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on [his] current reliability, trustworthiness, or good judgment." He established a payment plan for his six federal student loan debts, and will soon start making payments on his four state student loan debts. Applicant has learned from his experience; there are clear indications that his financial problem is being resolved; his finances are under control; he received financial counseling; and he showed good faith in resolving his debts.

Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts. He does not have debts that are currently delinquent. His efforts are sufficient to mitigate financial considerations security concerns.

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(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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 46-year-old administrator for an information technology system. He has completed some college courses in information technology; however, he has not been awarded a bachelor's degree. He served in the Army National Guard from 1986 to 1992, and he received an honorable discharge. His 30-year-old stepson lives in Applicant's household, and his stepson has mental health problems. Applicant and his spouse had medical problems and generated substantial medical bills. These mental health and medical problems resulted in substantial medical expenses and loss of income when his spouse was unable to work outside their home. There is no evidence of disciplinary problems with his employer or illegal drug use.

Three statements of coworkers or colleagues support Applicant's continued access to classified information and laud his good character and work performance. He is conscientious, capable, thoughtful, mature, dedicated, and professional. He made important contributions to his company and mission accomplishment.

Applicant paid or resolved his medical debts through his insurance company. He established payment plans for his six federal student loans. He promised to establish a payment plan for his four state student loans as soon as possible. All of his debts are now in or will be in current status once he establishes a payment plan for his state student loans.

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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 actions in evaluating the extent to which that applicant's plan for the reduction of his 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 understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a “meaningful track record” of debt repayment. I am confident he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

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 to 1.i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge