



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 14-04013
)
 Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2015

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.

Statement of the Case

Applicant submitted a security clearance application on December 20, 2013. On February 24, 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; Department of Defense 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 March 28, 2015; and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on June 4, 2015. On June 12, 2015, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. He

received the FORM on June 18, 2015, and did not respond. The case was assigned to me on August 4, 2015.

Findings of Fact

Applicant is a 39-year-old naval designer employed by a defense contractor since June 1996. He has held a security clearance since July 1996.

Applicant married in May 1999 and divorced in March 2005. They had one child, now 12 years old. Applicant's SCA reflects that their daughter lives with his ex-wife. The record does not reflect whether he pays child support.

In March 2010, Applicant was diagnosed with dystonia, a neurological disorder that causes uncontrollable muscle spasms and extreme pain. He moved in with his mother because he was unable to take care of his daily needs and personal affairs. In August and September 2011, he underwent two brain surgeries, which were sufficiently successful to enable him to return to work. The medical bills attached to his answer to the SOR reflect that he continues to receive medical treatment and incur medical expenses. (Item 4 at 9.)

The SOR alleges 31 delinquent debts, of which 27 are medical debts, reflected on credit bureau reports (CBRs) dated February 18, 2015 (Item 6) and January 30, 2014 (Item 7). The SOR alleges that 13 debts totaling \$2,153 were owed to a medical provider, 10 debts totaling \$2,153 were owed to a collection agency, and three debts totaling \$877, including one judgment for \$763, were owed to unidentified creditors.

In Applicant's answer to the SOR, he submitted evidence that the medical debts in SOR ¶¶ 1.m, 1.n, and 1.o, reflected in the February 2015 CBR (Item 6 at 2-3), had been paid. (Item 4 at 9-10.) He stated that all the medical debts were now being collected by the same collection agency, and he submitted a statement from the collection agency, dated February 24, 2015, acknowledging receipt of a payment and reflecting a balance of \$2,463. The statement from the collection agency does not identify individual accounts; it simply lists the accounts as "various creditors." (Item 4 at 8.) The balance of \$2,463 corroborates Applicant's statement that additional medical debts have been referred to the collection agency, because the SOR and the CBRs on which the SOR is based reflect a total of \$2,153 referred to the collection agency. If all alleged medical debts are now in the hands of the collection agency, they would total about \$7,062, and the balance of \$2,463 would reflect significant progress in resolving the medical debts.

The non-medical debts are SOR ¶ 1.a, a utility bill charged off for \$295 in October 2011 (Item 7 at 5); SOR ¶ 1.aa, a cell phone account referred for collection for \$500 in August 2012 (Item 7 at 9); SOR ¶ 1.bb, a satellite television service referred for collection for \$305 in July 2013 (Item 7 at 10); and SOR ¶¶ 1.dd and 1.ee, two judgments for \$8,763 and \$4,689 filed in January 2008 for delinquent credit-card

accounts (Item 7 at 4). The January 2014 CBR reflects that the date of last activity on the utility bill was September 2010 and that the account was closed by the consumer. (Item 7 at 5.) Applicant's SCA reflects that in September 2010 he was not living with his mother. (Item 5 at 9.) Garnishment orders were filed in February 2012 to satisfy the two judgments on the credit card accounts, but the record does not reflect the amounts being collected by garnishment, and neither judgment is reflected as satisfied. (Items 8 and 9.)

In a personal subject interview (PSI) in February 2014, Applicant stated that he and his ex-wife had obtained the credit cards together, that he became solely responsible for them after the divorce, but that he could not afford to pay them because of the legal debts he had incurred as a result of the divorce. He stated that he was unaware of the delinquent utility bill, cell phone account, and satellite television account, but that, if he found that he was responsible for them, he would make arrangements to pay them. (Item 10.)¹

In his answer, Applicant stated that the utility bill and cell phone bill had been paid in full, but he submitted no documentary evidence of payment. He stated that he had payment plans for the two credit card accounts reduced to judgments, but he submitted no evidence of a payment plan or any payments pursuant to a plan. Department Counsel commented on the lack of documentary evidence in her submission, which was included in the FORM, but Applicant did not respond to the FORM. Applicant has submitted no evidence of his current financial situation.

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 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

¹ The PSI summary is not authenticated as required by Directive ¶ E3.1.20. In the FORM, Department Counsel informed Applicant that he was entitled to comment on the PSI summary and make corrections, additions, deletions, and updates. She also informed him of his right to object to the PSI summary as unauthenticated and inadmissible. She cautioned Applicant: "If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case." Based on Applicant's failure to respond to the FORM, I have determined that he has waived any objection based on lack of authentication.

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 admissions, corroborated by his CBRs, establish 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"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

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 not established. Applicant's delinquent debts are recent and numerous. The medical debts are the result of his debilitating disease, but the record does not reflect whether the effects of the disease are ongoing or likely to recur.

AG ¶ 20(b) is established for the medical debts, but not the other debts alleged in the SOR. Applicant's marital breakup and his debilitating disease were conditions largely beyond his control. The evidence reflects that he has acted responsibly by making payments on his medical debts. This mitigating condition is not established for the credit cards, which were delinquent well before Applicant was disabled. The utility bill was charged off at about the time of his brain surgery, but he has not claimed that it was delinquent because of his disability. The bills for cell phone service and satellite television service became delinquent after he returned to work. He claims that these debts have been paid or are being paid through payment plans, but he has not supported his claim with documentary evidence.

AG ¶ 20(c) is not established. There is no evidence of financial counseling, and no evidence that Applicant's non-medical debts are being resolved.

AG ¶ 20(d) is established for the medical debts. A "good-faith effort" within the meaning of this mitigating condition 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 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). Applicant has been making payments to the collection agency for the medical debts and has made significant progress.

AG ¶ 20(d) is not established for the non-medical debts. Applicant has asserted that they are paid or are being paid through payment plans, but he has not supported his assertion with documentary evidence. If the two judgments for delinquent credit card accounts are being satisfied by garnishment, the requirement for a "good-faith effort" is not satisfied. Payments by involuntary garnishment are "not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009).

AG ¶ 20(e) is not established. Applicant has not disputed any of the 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. 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 some warrant additional comment.

Because Applicant requested a determination on the record without a hearing, I have no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Likewise, I am unable to evaluate whether he has any residual impairment due to his dystonia.

This is a sad case. Applicant has worked for the same defense contractor for more than 19 years and held a security clearance for the entire time. He has suffered through a debilitating illness. However, he has presented no evidence of the quality of his performance, and no evidence of his current financial situation. He has not submitted documentation of his claims that some debts were paid or were being paid, even after Department Counsel pointed out in the FORM that there were serious evidentiary deficiencies in his answer to the SOR.

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. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

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

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

Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.z:	For Applicant
Subparagraphs 1.aa-1.bb:	Against Applicant
Subparagraph 1.cc:	For Applicant
Subparagraphs 1.dd-1.ee:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge