



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 14-04761
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

10/05/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on October 14, 2013. On March 29, 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 May 2, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 30, 2015, and the case was assigned to me on July 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 28, 2015, scheduling the hearing for August 25, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1

through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until September 9, 2015, to enable Applicant to submit additional documentary evidence. He timely submitted AX E through G, which were admitted without objection. DOHA received the transcript (Tr.) on September 2, 2015.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.c, 1.g-1.j, and 1.s. He denied SOR ¶¶ 1.d-1.f and 1.k-1.r. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 36-year-old information technology system administrator employed by a defense contractor. He has worked for his current employer since June 2014. He served on active duty in the U.S. Navy from November 1997 to November 2011, and he received an honorable discharge. He was unemployed from November 2011 to February 2012. He held a top secret clearance and eligibility for access to sensitive compartmented information (SCI) when he was on active duty. (Tr. 46.) He worked for another defense contractor from February 2012 until June 2014, when he began his current job.

Applicant is a high school graduate and has been taking college courses since September 2013. He has not received a degree.

Applicant married in September 2001 and divorced in July 2010. They were separated for about three years before the divorce. (Tr. 32.) He and his wife had a son, now age 13. His ex-wife has three children from a previous relationship. Their 13-year-old son resides with Applicant.

Applicant's divorce decree did not specifically address responsibility for marital debts. Applicant and his ex-wife agreed that she would live in the marital home after the divorce and would be responsible for paying the mortgage loan. She lost her job and was unable to make the payments. The lender initiated foreclosure, but Applicant contacted the bank, negotiated a mortgage modification, and took over the payments. He now lives in the home with their son. (Tr. 33.)

The divorce decree required Applicant to pay her \$924 per month, of which \$400 was alimony. The child support obligation ended in 2013 or 2014, when she gave custody of their son to him. The alimony terminated in May 2015. (Tr. 33-34, 41-42.)¹

¹ Neither Applicant nor his ex-wife submitted a copy of the divorce decree, but they both testified consistently about the financial provisions in the decree and their informal agreements about the marital debts.

The unsatisfied judgments in SOR ¶¶ 1.a-1.c were for homeowners' association assessments. Applicant's ex-wife testified that the assessments were her responsibility because she was living in the home, but she was unable to pay them. She testified that Applicant was unaware of the judgments until he applied for a security clearance. When Applicant learned about the judgments, he contacted the attorney for the judgment holder and arranged to make payments on the judgments. (Tr. 38-39.) After the hearing, Applicant submitted evidence of \$200 payments in January 2013, March 2015, and May 2015; and a \$600 payment in August 2015. (AX F.)

Applicant's ex-wife also agreed to pay four debts: SOR ¶ 1.h (installment contract for furniture—\$2,122); SOR 1.i (jewelry store debt—\$3,997); SOR ¶ 1.j (credit-union loan—\$910); and SOR ¶ 1.p (home-improvement loan—\$7,453). She lost her job and was unable to make the payments. At the time of the hearing, she had rejoined the work force, and she testified that she was financially able to pay the four debts she had previously agreed to pay. (Enclosure 2, Answer to SOR; Tr. 34, 37.) However, she has not made any payments on the debts.

During a personal subject interview (PSI) in December 2013, Applicant told the investigator he remembered having credit cards from the bank alleged in SOR ¶¶ 1.e and 1.o, but that he paid the amounts due and closed the accounts in 2009. His November 2013 CBR reflected that both accounts were past due and charged off in February and March 2009. (GX 3 at 4.) He told the investigator that the medical bill alleged in SOR ¶ 1.r was for care received by his ex-wife's daughter after their divorce, and that his ex-wife was responsible for paying it. (GX 2 at 7; Tr. 72-73.)

In April 2015, Applicant hired a debt-resolution company to assist him. The company filed disputes for the debts alleged in SOR ¶¶ 1.d-1.f and 1.k-1.r. Applicant disputed the cable television debt alleged in SOR ¶ 1.d on the ground that he currently has cable service from the same provider and his service has never been disconnected. He claimed that he never had accounts with the creditors in SOR ¶¶ 1.e (contrary to his admission during the PSI), 1.f, 1.k-1.p, and 1.r. He stated that he suspected possible fraud. He disputed the cell phone debt in SOR ¶ 1.q on the ground that it had been paid in full. (Enclosure 1, Answer to SOR.)

Applicant's July 2015 CBR does not reflect the debts alleged in SOR ¶ 1.d-1.f, 1.k, 1.l, and 1.o-1.r.² It reflects that he is an authorized user but not a joint owner of the account alleged in SOR 1.g. Authorized users are not legally liable for paying the account. The CBR reflects that the debts in SOR ¶¶ 1.m and 1.n were resolved for less than the full balance.

² Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years. The exceptions to this prohibition do not apply to any of the debts alleged in the SOR. 10 U.S.C. § 1681c. None of the debts alleged in the SOR were placed for collection or charged off more than seven years before July 2015, the date of Applicant's most recent CBR. Thus, the absence of the disputed debts on the July 2015 CBR indicates that the disputes were resolved in his favor.

The debts in SOR ¶¶ 1.g-1.j, which his ex-wife agreed to pay, are unresolved. Applicant's debt-resolution company is attempting to negotiate settlements of the debts in SOR ¶¶ 1.g-1.j. (Enclosure 1, Answer to SOR.)

Applicant did not timely file his federal and state income tax returns for 2012. He had timely filed his returns for previous years. For tax year 2012, he intended to claim his son as a dependent, but was unsure how to do it. He had also received unemployment compensation and was unsure how to report it. He visited a tax preparer's office but left without seeing the tax preparer because the office was very busy. He failed to timely file his 2012 returns. A friend advised him that he could file his 2012 returns at the same time he filed his 2013 returns. He filed his federal and state tax returns for both years in April 2014. In his 2012 federal return, he claimed a \$1,263 refund. (AX E.) He was notified by the IRS that he was not entitled to a refund and that he owed taxes. His tax debt was deducted from the refunds he was due from tax years 2013 and 2014. (Tr. 65-68.)

Applicant submitted a personal financial statement (PFS) after the hearing. It reflects net monthly income of \$4,739; expenses of \$1,702; debt payments of \$1,708 (including monthly \$200 payments on the judgments in SOR ¶¶ 1.a-1.c); and a net monthly remainder of \$1,328. (AX G.)

Applicant's ex-wife testified that he is a "very honorable person," "very credible," and "a good citizen," who takes great pride in his work. (Tr. 41.) Applicant's current supervisor, who has known him for about nine months, considers him "extremely professional," diligent in protecting sensitive information, trustworthy, dependable, and reliable. Applicant is regarded as an "upstanding citizen and proactive member of the community." (AX B.) His former supervisor, who has known him for eight years, describes him as "very respectful of privacy, classified information, rules, and restrictions." (AX C.) A co-worker considers him dependable, hardworking, dedicated, devoted to his son, and active in his community. (AX D.)

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

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 three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required . . .").

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 fully established. Applicant's delinquent debts are numerous and recent. However, except for his failure to timely file his federal and state income tax returns for 2012, his other financial delinquencies occurred under circumstances making them unlikely to recur, because they were the result of his marital breakup and his ex-

wife's failure to comply with her promise to pay the debts related to the marital home and several other consumer debts.

Applicant's failure to timely file his 2012 federal and state income tax returns was a one-time occurrence. He needed professional help but did not pursue it. He was adjusting to civilian life, had recently divorced, had been unemployed, and had just begun his first job as a civilian contractor. Nevertheless, he admitted that he procrastinated. He filed the 2012 and 2013 returns in April 2014. I conclude that his failure to timely file his 2012 returns is mitigated because it was an isolated incident, followed by more than three years of responsible conduct.

AG ¶ 20(b) is established for all the allegations in the SOR except SOR ¶ 1.s, his failure to timely file his federal and state income tax returns. His financial problems were the result of conditions largely beyond his control, i.e., his marital breakup and his ex-wife's failure to carry out her agreement to pay the debts related to the marital home and several consumer debts. He acted responsibly by setting up a payment plan to resolve the three judgments for unpaid homeowners' association assessments, disputing numerous debts that he suspected were fraudulent or erroneous, and resolving the debts alleged in SOR ¶¶ 1.m, 1.n, and 1.q.

AG ¶ 20(c) is established. Applicant obtained advice and assistance from a debt-management company, and there are clear indications that his financial problems are being resolved.

AG ¶ 20(d) is established for the debts that Applicant admitted in his answer to the SOR. He is making payments on the three judgments in SOR ¶¶ 1.a-1.c. He was an authorized user, not a joint owner, on the credit card account in SOR ¶ 1.g. Nevertheless, his debt-management company is trying to settle the debt alleged in SOR ¶ 1.g, as well as the debts in SOR ¶¶ 1.h-1.j.

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 a credible and viable plan, and he has taken significant steps to implement it.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.d-1.g and 1.k-1.r. Applicant successfully disputed these debts and they are not reflected on his July 2015 CBR.

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.

Applicant served honorably in the U.S. Navy for 14 years. He held a security clearance and SCI eligibility while on active duty. He has worked for defense contractors since February 2012 and enjoys a reputation for trustworthiness, reliability, and dependability. When his ex-wife reneged on her agreement to share the marital debts, he made a good-faith effort to resolve those debts. He was candid, sincere, and credible at the hearing.

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 financial problems and failure to timely file his 2012 federal and state income tax returns. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a-1.s:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge