



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-05486
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Mani B. Fierro, Esq.

01/14/2016

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 (SCA) on July 16, 2010, seeking to continue his eligibility for access to classified information. On May 28, 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 June 19, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 10, 2015, and the case was assigned to me on September 17, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 30, 2015,

scheduling the hearing for October 20, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I kept the record open until November 6, 2015, to enable him to submit additional evidence, but he did not submit any additional items. DOHA received the transcript (Tr.) on November 3, 2015.

Findings of Fact

In his answer to the SOR, Applicant admitted that he owed the debts alleged in the SOR, but he contended that two of the three debts alleged were incurred when he was the victim of fraud. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 63-year-old employee of a defense contractor, working as a cyber security officer. He has worked for his current employer since November 2008. He has worked for federal contractors since April 2000. He served on active duty in the U.S. Marine Corps from July 1970 to May 1972. He received a security clearance from another government agency in October 2005.

Although Applicant has been employed almost continuously since April 2000, he has experienced frequent job changes, sometimes under unfavorable conditions. According to the employment information disclosed in his SCA, he left a job as an administrator for a federal contractor in October 2001 after he called in sick, his supervisor told him he should quit, and he took another job with another federal contractor on the same day. He left a job in November 2003 because his supervisor told him he "wasn't a fit" in the company and was no longer needed. He left a job in December 2005 because of the heavy workload. He left a job in July 2006 because he did not like the work or the working conditions. He left a job in January 2007 because he could not afford to pay for gas or parking. He left an overseas job in January 2010 because of his wife's illness and his inability to get along with his program manager. (GX 1 at 20-41.)

Applicant married in April 1984. He has no children from his marriage, but he has an adult stepson and stepdaughter. He has taken college courses and attended numerous technical and vocational schools, but he does not have a college degree.

In 2005, Applicant and his twin brother purchased a 107-acre real estate parcel. Applicant's twin brother cashed in his retirement account to purchase the property. They receive \$15,000 per year from commercial buildings on the property. In addition, they receive \$4,000 from an electric company operating windmill generators on the property. (AX D, F and G; Tr. 43-45.) Applicant also receives income from several residential rental properties at various locations. (AX E.)

In 2006, Applicant's wife and stepson opened a restaurant. When his stepson was unable to repay a \$125,000 loan he obtained to start the business, Applicant and his wife obtained a second mortgage on the family residence to repay the loan. In September 2012, Applicant and his wife sought to refinance the mortgage, but their application was rejected. Applicant is still paying off the second mortgage, and the payments are current. (Tr. 38-40; AX H.) Since 2010, he and his wife also have been paying a delinquent debt for uncollected state sales taxes resulting from the restaurant operation. As of the date of the hearing, the delinquent sales taxes had been reduced to about \$10,000. (Tr. 83.)

Applicant also used his personal credit card to pay some of the expenses associated with the restaurant. The business failed, Applicant's wife was diagnosed with cancer, and the credit-card account became delinquent. In September 2009, the account was charged off for \$17,583. (GX 5 at 1; Tr. 80.) The debt is alleged in SOR ¶ 1.c.

The financial drains of the restaurant operation caused Applicant and his wife to fall behind on their payments on their home loan and several credit-card accounts. Applicant disclosed in his SCA that several delinquent credit-card accounts were being resolved by a loan-consolidation program. The debts disclosed in his SCA were resolved and do not appear in his most recent CBR, except for the unresolved debt alleged in SOR ¶ 1.c.

During a personal subject interview (PSI) in September 2010, Applicant told the investigator that the credit-card debt in SOR ¶ 1.c had been included in a debt-consolidation plan and was being paid each month by an automatic \$586 debit from his bank account. (GX 3 at 4.) However, his CBRs from February 2013, September 2014, and May 2015 reflected that the debt was not resolved. (GX 5 at 1; GX 6 at 2; GX 7 at 3.) In his answer to the SOR, Applicant stated that he intended to resolve the debt by August 30, 2015. At the hearing, he admitted that he should have resolved the debt, but he relied on his wife, because she handled all financial matters. He had contacted the creditor but had not made any arrangements to resolve the debt. (Tr. 54-55, 109-10.)

In November 2013, Applicant entered into a contract to act as a purchasing agent for a car dealer (Dealer). Applicant testified that he agreed to purchase cars from other dealers in his own name, arrange for financing in his own name, and immediately deliver the cars to Dealer. He testified that Dealer agreed to deposit the money for a down payment into his checking account, pay him a commission upon delivery of the cars, and pay off the car loan within 30 days. (Tr. 35-36, 66-67.) He testified that Dealer told him that they needed a purchasing agent because traditional car dealers would not sell them cars if they knew the cars were intended for overseas resale. (Tr. 107.) He testified that he believed Dealer was a legitimate car dealer because he discovered it at a job fair where attendance was restricted to persons holding security clearances. (Tr. 34, 105.)

Applicant's written contract with Dealer required him to "[n]egotiate with independent automobile dealerships with respect to prices, terms and deliveries for any and all automobiles" and to "[e]nter into purchasing contracts with automobile dealers utilizing [his] own credit worthiness and in [his] own name." He was required to immediately transfer title of the automobiles to Dealer upon full payment of the automobile loan. (AX B at 1, paragraphs 3(a)-3(c).) The contract also provides that title to all vehicles purchased by a purchasing agent "shall immediately vest in [Dealer]." (AX B at 2, paragraph 6.) The written contract makes no mention of an obligation of Dealer to provide funds for the down payment or pay off the loan within 30 days.

In late November 2013, Applicant purchased a luxury car for Dealer. Dealer deposited \$35,000 in Applicant's bank account to cover the down payment, and Applicant financed the remaining \$39,000 with a car loan in his own name. Applicant immediately delivered the car to Dealer, who paid him a commission of \$1,250. Dealer did not pay off the loan. (Tr. 66-67.) The car has never been recovered. As of the date of the SOR, the loan was past due for \$1,843, with a total balance due of \$35,223. (GX 7 at 2.) In his answer to the SOR, Applicant stated that he would resolve the debt by August 2016. The unresolved car loan is alleged in SOR ¶ 1.b.

In October 2014, Applicant purchased another car for Dealer and financed the purchase with a car loan for \$32,000 in his own name. Dealer paid Applicant \$600 upon delivery of this car. Dealer did not make any payments on the car loan. The car was repossessed, but had not yet been auctioned at the time of the hearing. (Tr. 68-71.)

Applicant testified that Dealer had agreed to make a \$1,000 down payment on the second car. When he confronted Dealer about failing to make the down payment, the Dealer showed him documentation that the payment was made. Applicant became suspicious when Dealer showed him a FedEx receipt for the \$1,000 down payment, because the receipt reflected that it was sent to a post office box, and Applicant knew that FedEx will not deliver to a post office box. In November 2014, Applicant went to Dealer's office to confront him about his failure to honor the contract, and found that the office had been shut down. (Tr. 68-70.)

As of the date of the SOR, the loan for the October 2014 purchase was past due for \$2,686, with a total balance of \$32,236. (GX 6 at 2.) In his answer to the SOR, Applicant stated that he would resolve the debt by February 2016. The unresolved loan for this car is alleged in SOR ¶ 1.a.

In December 2014, Applicant contacted the police. He testified that he believed there were more than 100 individuals defrauded by Dealer. He learned from the police that two shippers were trying to ship untitled cars overseas. (Tr. 73-74.)

Applicant's twin brother is now disabled after suffering two heart attacks. He receives \$2,400 per month in disability pay and lives with Applicant and his wife. (Tr. 52.) He corroborated Applicant's testimony about the two transactions with Dealer.

Applicant and his wife enjoy foreign travel. Applicant flew from Iraq to meet his wife in the United Kingdom in 2005. They took one-week cruises to Mexico in 2006, the Caribbean in 2008, and South America in 2010. (GX 1 at 61-65; GX 3 at 3.)

In an effort to pay the family debts, Applicant has sought jobs in combat zones. While deployed to Iraq from November 2004 to December 2005, he earned \$220,000 per year. He earned \$168,000 per year while deployed again from April 2010 to December 2012. He testified that his wife spent the extra money he earned while deployed, but he did not know what she did with it. (Tr. 88-92.)

Applicant currently earns \$105,000 per year as a federal contractor. With his additional rental income from various sources, he has a net monthly remainder of about \$4,300. He keeps about \$200 of his pay for himself each month, but his wife controls all the family spending, and he is unable to account for the money he earns. (Tr. 100-01.)

Applicant's wife has suffered from cancer since about 2010. She also suffers from depression. She initially intended to testify at the hearing, but she was on medication and emotionally distraught to the extent that Applicant's counsel decided at the last minute to not call her as a witness. (Tr. 125.)

One of Applicant's colleagues, who has known him for about 15 years, testified that he was somewhat familiar with Applicant's business ventures, but he has never known Applicant to exhibit poor self-control, poor judgment, or unwillingness to abide by rules and regulations. He considers Applicant to be truthful and trustworthy. (Tr. 121-22.)

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 CBRs, PSIs, and his testimony at the hearing reflect recurring financial problems and instances of bad business judgment that are not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered the evidence of unalleged financial problems for these limited purposes.

Applicant's admissions, corroborated by the documentary evidence introduced at the hearing, 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 partially established. Applicant's debts are recent and numerous, but the debts in SOR ¶¶ 1.a and 1.b were incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established for the debts alleged in SOR ¶¶ 1.a and 1.b. The fraudulent scheme perpetrated by Dealer was a circumstance beyond Applicant's control, and he acted responsibly by notifying the police as soon as he realized that he was a victim of fraud. He has not taken any steps to resolve the two delinquent car loans, but his failure to pay the delinquent car loans under the circumstances of this case does not raise questions about his current reliability or trustworthiness. To the extent that Applicant demonstrated bad business judgment and financial naiveté, he has learned his lesson.

AG ¶ 20(b) is not established for the credit-card debt alleged in SOR ¶ 1.c. The failure of his wife's business and his wife's illness were circumstances largely beyond his control. However, Applicant has not acted responsibly regarding this debt. He knew as early as the 2010 PSI that the debt raised security concerns, and he claimed that it was resolved by his debt-consolidation plan. When he received the SOR, he was on notice that the debt was not resolved, but he took no meaningful steps to resolve it. He admitted at the hearing that he should have attended to it. He also admitted that he has a substantial net remainder each month that could be used to resolve the debt. When the record closed on November 6, 2015, he still had provided no evidence of actions to resolve it.

AG ¶¶ 20(c), 20(d), and 20(e) are not established. Applicant presented no evidence of financial counseling, and his financial situation is not under control. He has not made a good-faith effort to resolve the debt in SOR ¶ 1.c. He has not disputed any of the debts.

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 has worked for federal contractors and held a security clearance for many years. He was candid and sincere at the hearing. However, he also has a long history of financial problems. To his credit, he has resolved most of the debts that he disclosed in his SCA. He has mitigated the security concerns raised by the delinquent car loans alleged in SOR ¶¶ 1.a and 1.b.

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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Ordinarily, failure to resolve the remaining debt alleged in SOR ¶ 1.c would not necessarily be an impediment to continuing Applicant's security clearance, but his history of financial problems, total lack of involvement in his family finances, and inexplicable failure to take meaningful steps to resolve the credit-card debt, which has been delinquent since 2009, raise serious doubts about his current trustworthiness and reliability.

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**

Subparagraphs 1.a and 1.b: For Applicant

Subparagraph 1.c: 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