



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



In the matter of:)
)
) ISCR Case No. 14-06574
)
Applicant for Security Clearance)

Appearances

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

06/25/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On April 1, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance. On April 22, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on May 22, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on June 3, 2015, and the hearing was convened as scheduled on June 10,

2015. Applicant waived the 15-day hearing notice requirement in ¶ E3.1.8 of the Directive.¹

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 3. Applicant testified and submitted Applicant's Exhibits (AE) A through L. The record of the proceeding was left open until June 24, 2015, to provide Applicant the opportunity to submit additional matters. Applicant timely submitted AE M through N. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 18, 2015.

Preliminary Matter

Department Counsel made a motion to withdraw the allegation in SOR ¶ 1.d because it was a duplicate of the allegation in SOR ¶ 1.e. Applicant had no objection to the motion. The motion was granted.²

Findings of Fact

Background Information. Applicant is a 40-year-old warehouse specialist who has been working in that position for different defense contractors since August 2009. He graduated from high school in 1993 and from a law enforcement academy in 1995. He served in the National Guard from April 1998 to April 2002 and in the Army Reserve from April 2002 to September 2007. He received honorable discharges for his military service. He has been divorced twice and has no children. He has been living with a cohabitant since October 2013. He did not know whether he held a security clearance in the military.³

SOR Allegations and Applicant's Response. Excluding the withdrawn allegation, the SOR alleged that Applicant had five delinquent debts, totaling \$20,368. In his Answer to the SOR, Applicant admitted each allegation, in whole or in part, with comments. His admissions are incorporated into the findings of fact.⁴

Applicant's Reasons for the Financial Problems. Applicant attributed his financial problems to his last divorce. He married his second wife in August 2001. In 2010, she suffered a stroke. She is 100% disabled and does not work. They separated in December 2012. He stated that his wife was physically abusive and that she had an extramarital affair. They later tried to reconcile, but decided to file for divorce in late 2013. Their divorce was granted in April 2014. In the divorce decree, he is obligated to

¹ Tr. 11-12.

² Tr. 12-13.

³ Tr. 6-8, 35-36; GE 1, 2.

⁴ Applicant's Answer to the SOR.

pay \$650 in alimony until she dies, remarries, or cohabitates. The alimony payments are deducted directly from his pay. The alleged debts, some of which are marital debts, were not addressed in their property settlement agreement. However, he had taken responsibility for them. He indicated that it has taken him longer than expected to resolve these debts following the divorce, but he is continuing to take action to do so. Additionally, Applicant testified that he was been suspended from his job for the past two months while awaiting the outcome of this security clearance adjudication. The suspension has delayed him in taking action to resolve some of the debts.⁵

SOR ¶ 1.a – mortgage loan past due for \$3,522 in a foreclosure status with a total balance of \$11,532. Applicant's ex-wife purchased a mobile home. He was not a party to that transaction. After they separated, his ex-wife remained in the mobile home and was making the monthly mortgage payments. Later, he agreed to cosign documents to refinance the mobile home to lower her monthly payments. Sometime after the refinancing, she moved from the mobile home and stopped making the monthly payments. The bank initiated foreclosure proceedings. He received a Notice of Judgment on the foreclosure and, in discussions with the bank, stated that he would pay half of the final debt. At the time of the hearing, he did not know whether the mobile home had been resold, but testified that individuals were now living in the mobile home that he did not know. He called the billing department of the bank to obtain information about the status of the mortgage loan and indicated the bank was not forthcoming with information. He indicated that he planned to make an appointment with one of the bank's managers to determine the status of the debt. In his post-hearing submission, he indicated that he has contacted a debt resolution company and was working toward a settlement agreement. Under this proposal, he will pay half of the debt, \$6,500, over a 24-month period. He will propose paying \$200 per month for the first six months and \$300 per month for the remaining 18 months.⁶

SOR ¶ 1.b – collection account for \$2,074. This was a cell phone account that had a date of last activity of July 2014. The cell phones were used by his ex-wife and her son. After he and his ex-wife separated, he wanted to cancel this account, but was advised by his attorney not to do so. During his marital separation, he forgot about the account and stopped making payments. Recently, Applicant entered into a repayment agreement with the creditor. Under the agreement, he makes \$91 monthly payments. He testified that he made two payments under the agreement prior to the hearing and that the payments are automatically withdrawn from his checking account. He also indicated that he may be able to settle this debt for a lump-sum payment at a later time.⁷

SOR ¶ 1.c – collection account for \$6,048. This was a medical debt that was assigned for collection in November 2013. In an interview with an Office of Personnel

⁵ Tr. 33-34, 40-41, 46-47; GE 2.

⁶ Tr. 37-38, 49-54; GE 2, 3; AE M, N.

⁷ Tr. 38-41, 54-55; GE 2, 3; AE L.

Management (OPM) investigator, Applicant indicated he thought this medical debt was his ex-wife's responsibly. He later determined that this was his debt and was not processed properly under his medical insurance policy. After providing the hospital with the correct medical insurance information, the claim was reprocessed. His insurance company paid a majority of the bill. At the time of the hearing, this debt had been reduced to \$175. Applicant indicated that he would pay the remainder of the debt when he started working again.⁸

SOR ¶ 1.e – collection account for \$601. This was a telecommunications account that was assigned for collection in October 2013. Applicant disputes this account. He had a plan with a telecommunications company that provided for expanded coverage. He lived in an area that resulted in him incurring significant roaming charges, much higher than the national average. The company informed him that it was canceling his service at the end of the month. Upon receiving that notice, he contacted another company to sign up for their service. Because he signed up for services with another company before the end of the month, the first company claimed he canceled the contract and charged him a cancellation fee. He contends that he should not have been charged the cancellation fee because the company already informed him it was canceling his service. He refuses, as a matter of principle, to pay this cancellation fee. At the hearing, he also indicated that he did not know how to dispute this debt with the creditor or through the credit reporting agencies. In his post-hearing submission, he indicated that he was contemplating paying this debt because it would be easier, faster, and cheaper than disputing it.⁹

SOR ¶ 1.f – collection account for \$113. This was a cell phone account that was assigned for collection in August 2013. When interviewed by the OPM investigator, he did not realize this debt existed. He acknowledged this delinquency was his fault. At the hearing, he provided documentation showing this debt has been paid.¹⁰

Financial Status. Applicant indicated that, besides the alleged debts, he had no other delinquent debts. He indicated that he budgets his money and has sufficient income to meet his financial obligations. As noted above, he has been suspended for the past two months due to this pending security clearance adjudication. He indicated that he plans to continue paying the remaining debts when he returns to work.¹¹

Character Evidence. Applicant presented a character reference letter from his manager that indicated he is a trustworthy and outstanding employee. The manager described him as a model employee. The manager noted that Applicant received a

⁸ Tr. 20-22, 41-43, 47-49; GE 3; AE K.

⁹ Tr. 43-45, 55-57; GE 3 AE M, N.

¹⁰ Tr. 45-46; GE 3; AE J.

¹¹ Tr. 43, 46-47; GE 2.

promotion last year and is the lead supervisor for the night shift. A coworker indicated that Applicant has the desire and drive to do the “right thing” even when it was not the easiest or simplest course of action. As an example, the coworker stated,

One specific instance was when I asked him why he was staying married to his now ex-wife. His reply was that he just couldn’t leave her when she so obviously needed help. When I told him that, in his circumstances, that I would have left her, he just replied, “I can’t do that. It just wouldn’t be right.”¹²

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, in reaching a decision.

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 of potential, rather than actual, risk of compromise of classified information. 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), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the

¹² AE F, G.

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 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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that he was unable to pay for an extended period. The evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations 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; 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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant recently divorced. His divorce was a condition beyond his control that contributed to his financial problems. Since his divorce, he has taken responsible steps to resolve his financial problems. While more time is needed for him to fully resolve these problems, he has taken sufficient action to show that he is committed to resolving them. AG ¶ 20(b) applies.

The debt in SOR ¶ 1.a was incurred under unusual circumstances that are unlikely to recur. He cosigned documents to refinance the mortgage loan for his then-estranged wife's mobile home. She later defaulted on the mortgage payments and the mobile home was foreclosed. Upon learning of the foreclosure, he contacted that bank and advised that he would pay half of the final debt. The bank has not been forthcoming in providing him with information on the status of the foreclosure. He does not know how much, if anything, is owed on the mortgage loan. It is possible this debt was resolved through resale of the mobile home in the foreclosure process, but that has not been established. Given the unusual circumstances in which this debt was incurred, it does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies to SOR ¶ 1.a.

Applicant paid the debt in SOR ¶ 1.f. He entered into a repayment plan for the debt in SOR ¶ 1.b and has made two payments under that plan. A billing error occurred in the processing of the medical debt in SOR ¶ 1.c. The billing error was corrected and the debt

was reduced to a minor amount. Applicant credibly testified that he will pay the remainder of the debt in SOR ¶1.c when he returns to work. AG ¶¶ 20(c) and 20(d) apply to SOR ¶¶ 1.b, 1.c, and 1.f.

Applicant disputes the debt in SOR ¶ 1.e. His telecommunications company advised him that it was going to cancel his account at the end of the month. Upon receiving that advice, he signed a contract with another company. By doing so, the first company claimed he canceled the contract and charged him cancellation fees. Applicant was unaware of how to dispute this debt. Although no documentation was provided to support the dispute, Applicant's testimony about this debt was credible. AG ¶ 20(e) partially applies to SOR ¶ 1.e.

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 relevant 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.

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.

My comments under Guideline F are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served in the National Guard and Army Reserve for a number of years and received honorable discharges. He is a valued employee of a defense contractor. He recently divorced and has been working through the financial problem arising from that condition beyond his control. In doing so, he has shown that he takes his financial obligations seriously and will continue to take reasonable steps to resolve his financial problems.

Overall, the record evidence leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. Applicant mitigated the security concerns under the financial considerations guideline.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraphs 1.e-1.f:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Clearance is granted.

James F. Duffy
Administrative Judge