



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



In the matter of:)
)
) ISCR Case No. 14-06895
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges a Chapter 7 discharge of his nonpriority unsecured debts in January 2008, and one judgment and six charged-off or collection accounts totaling \$35,670. He failed to provide sufficient documentation of his progress in resolving his financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 5, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Item 3) On May 30, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 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). (Item 1) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant Applicant access to classified

information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On June 9, 2015, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 2) A complete copy of the file of relevant material (FORM), dated August 5, 2015, was mailed to him on August 6, 2015.¹ Applicant did not respond to the FORM. The case was assigned to me on October 15, 2015.

Findings of Fact²

In Applicant's SOR response, he admitted his nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code.³ He admitted the SOR debts in ¶¶ 1.b through 1.d and 1.f through 1.h. He provided extenuating and mitigating information as part of his SOR response. Applicant's admissions are accepted as findings of fact.

Applicant is a 61-year-old security employee, who has worked for a defense contractor since November 2013.⁴ He did not disclose any college attendance. In 1981, he married his spouse. His three children are adults. He honorably served in the U.S. Marine Corps from 1980 to 2000. There is no evidence of security violations or use of illegal drugs. He disclosed his delinquent debts on his SF 86. He was unemployed from September 2012 to November 2013.

Financial Considerations

Applicant's credit reports and SOR allege a Chapter 7 discharge of his nonpriority unsecured debts in January 2008 (SOR ¶ 1.a), and one judgment and six charged-off or collection accounts totaling \$35,670. The status of his SOR debts is as follows:

SOR ¶ 1.b alleges a charged-off bank debt for \$9,711. The creditor wrote that the balance is \$18,427 and the next \$50 payment is due on April 12, 2015. (Item 2 at 10) Applicant's checking account showed a \$50 payment to the creditor on April 6, 2015.

SOR ¶ 1.c alleges a charged-off bank debt for \$9,473. On April 21, 2015, a law firm wrote Applicant that the debt was \$9,373. (Item 2 at 6) Applicant provided a money order showing a \$50 payment to the creditor and a \$50 payment to a law firm on March

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated August 6, 2015, and Applicant's receipt is dated August 19, 2015. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³The source for the information in this paragraph is Applicant's SOR response. (Item 2)

⁴Unless stated otherwise, Applicant's May 5, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) is the source for the facts in this paragraph. (Item 3)

5, 2015. (Item 2 at 2, 11) On May 27, 2015, a collection company wrote Applicant that the debt was \$7,476. (Item 2 at 13) Applicant's May 14, 2015 credit report shows two charged-off accounts owed to the same creditor for \$7,475 and \$9,374; each account has a different account number; and both entries indicate the debts resulted from vehicle loans. (Item 5)

SOR ¶ 1.d alleges a charged-off debt owed to a store for \$7,060. SOR ¶ 1.g alleges a judgment for \$7,060. Applicant admitted responsibility for this debt; he said the debts in SOR ¶¶ 1.d and 1.g are duplications of the same debt; and the debt is being collected by a law firm. (Item 2) Applicant's checking account statement showed \$100 payments on March 5, 2015, and April 6, 2015. (Item 2 at 2, 3, 9)

SOR ¶ 1.e alleges a bank-credit card account placed for collection for \$1,035. Applicant denied this debt and indicated it was paid. (Item 2) He did not provide any corroborating documentation showing resolution of this debt.

SOR ¶ 1.f alleges a charged-off store debt for \$1,155. Applicant is making payments to a collection company. (Item 2) Applicant paid \$61 on March 3, 2015; April 3, 2015; and May 5, 2015, (Item 2)

SOR ¶ 1.h alleges a telecommunications account placed for collection for \$176. On May 12, 2015, Applicant paid the creditor \$10, and the current balance is \$166. (Item 2 at 7) He provided a bill from the same creditor for another account seeking \$226, and money orders showing payments of \$20, \$50, and \$10. (Item 2 at 12)

Applicant's SF 86 notes that he sought assistance from a law firm to contest entries on his credit report. (Item 3) In total, he provided proof of payment of \$623 to his SOR creditors, and it appears the payments were made in March through May 2015, although the dates for some money orders are not legible.

Applicant's FORM noted the absence of other mitigating information. The FORM explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 4) Applicant did not file a response to the FORM.

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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. 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. Thus, nothing in this Decision should be construed to suggest that it is based, 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.

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 and SOR response. Applicant's SOR alleges a Chapter 7 discharge of his nonpriority unsecured debts in January 2008, and one judgment and six charged-off or collection accounts totaling \$35,670. Applicant admitted responsibility for one judgment and five charged-off, or collection accounts totaling more than \$30,000.

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).

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;⁵ 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.

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 delinquent debt does not establish full application of any mitigating conditions to all of his SOR debts. He did not provide sufficient information about his finances to establish his inability to make greater progress paying his creditors. Unemployment is a circumstance largely beyond his

⁵The 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)).

control, which caused his financial problems; however, and he did not provide sufficient proof that he acted responsibly under the circumstances after he obtained employment.

Applicant did not provide documentation showing his income and expenses, and he did not provide a budget. He presented insufficient evidence about what he has done since becoming employed with his current employer to pay his SOR debts or his other debts. Aside from the evidence from March through May 2015 showing a total of \$623 in payments and some recent correspondence from creditors, he did not provide sufficient documentation relating to resolution of his SOR debts. He is credited with mitigating the debt in SOR ¶ 1.d for \$7,060 because this debt is a duplication of the debt in SOR ¶ 1.g for \$7,060. I have also credited him with mitigating the debt in SOR ¶ 1.h for \$176. I note that the debt in SOR ¶ 1.b alleges a charged-off bank debt for \$9,711; however, the debt's balance is \$18,427. I did not credit him with paying the debt in SOR ¶ 1.e for \$1,035 because he did not provide proof that the debt is resolved, such as checking account statements or a letter from the creditor showing payment or resolution. He did not provide evidence of financial counseling or other evidence of progress or resolution of his SOR debts after his SOR response on June 8, 2015.

Applicant's failure to prove that he has made more substantial steps to resolve his debts shows a lack of judgment and responsibility that weighs against approval of his security clearance. There is insufficient evidence that he was unable to make greater progress resolving his delinquent debts, or that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial consideration concerns are mitigated.

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.

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. 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.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 61-year-old security employee, who has worked for a defense contractor since November 2013. He honorably served in the U.S. Marine Corps from 1980 to 2000. He disclosed his delinquent debts on his SF 86. There is no evidence of security violations or use of illegal drugs.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. His SOR and credit reports allege a Chapter 7 discharge of his nonpriority unsecured debts in January 2008, and one judgment and six charged-off or collection accounts totaling \$35,670. He admitted all of the SOR allegations, except for SOR ¶ 1.e for \$1,035. He is credited with mitigating the debt in SOR ¶ 1.d for \$7,060 because this debt is a duplication of the debt in SOR ¶ 1.g for \$7,060. I have also credited him with mitigating the debt in SOR ¶ 1.h for \$176. I note that the debt in SOR ¶ 1.b alleges a charged-off bank debt for \$9,711; however, the debt's balance is \$18,427. He provided proof of payments from March through May 2015 totaling \$623. After he received the FORM, he had an opportunity to show more progress resolving his SOR debts; however, he did not respond to the FORM.

Applicant's failure to provide more corroborating documentation shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, documented financial progress, or a longer track record of debt payment is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not established at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. Based on the facts before me and the adjudicative guidelines that I am required to apply, I conclude that it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

I have carefully applied the law, as set forth in *Egan, supra*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not mitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge