

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

In the matter of:)
)
[REDACTED]) ISCR Case No. 15-00027
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2016

Decision

HESS, Stephanie C., 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 (e-QIP) on July 28, 2014. On August 4, 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 received the SOR and answered it on August 31, 2015, requesting a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 24, 2015, and a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, was sent to Applicant the same day. He was given an opportunity to file objections and

submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 7, 2015, and did not respond.¹ The case was assigned to me on February 23, 2016.

Findings of Fact

The SOR alleges four delinquent debts totaling approximately \$42,984, which include a \$31,315 federal tax lien (SOR ¶ 1.a) and a \$10,278 delinquent line of credit (SOR ¶ 1.b). In his Answer, Applicant admitted these two debts, but qualified both admissions with the repayment status of each debt. He denied owing the debt of \$1,181 alleged in SOR ¶ 1.c, stating that he was the victim of identity theft. He denied the \$210 debt alleged in SOR ¶ 1.d, stating he paid it. Applicant's admissions are incorporated in my findings of fact.

Applicant is a 41-year-old database administrator employed by a defense contractor since September 2005. He graduated from high school in June 1992 and served honorably on active duty in the U.S. Army from August 1992 until August 2005. He was granted a security clearance by the U.S. Army in 1993 and has held a DOD security clearance since 2005. (GX 5.)

Applicant married in March 2000 and divorced in 2002. Although he owns a home in the U.S., he has been living and working overseas since 2005, primarily supporting U.S. military missions. He was unemployed for three months in 2010 while between jobs, and lived off his savings during this period. (GX 2; GX 3.)

The tax lien and delinquent debts are reflected in Applicant's credit bureau reports (CBRs) dated August 2014 and June 2015. (GX 4; GX 5.) Applicant disclosed and explained the repayment status of the tax lien, including a prior garnishment, in his Personal Subject Interview (GX 3.)

Shortly after Applicant began working overseas in 2005, he was advised by a fellow contractor that he was not required to file tax returns until he returned to the U.S. (GX 3.) Applicant relied on this misinformation, and failed to timely file and pay his federal taxes from 2006 until 2011. He remained unaware of the erroneous nature of this advice until approximately June 2012, when the Internal Revenue Service (IRS) began garnishing his wages. (GX 3.) The IRS also placed a lien against Applicant's house in 2012, in the approximate amount of \$31,314. He contacted an attorney to assist him in setting up a payment plan, but in the interim, the IRS continued to garnish his wages. (GX 3; GX 5.) In November 2014, he entered a direct debit payment plan with the IRS of \$800 per month. He has filed and paid his taxes since 2011 and is current with this repayment plan. (GX 1.)

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated September 24, 2015, and Applicant's receipt is dated October 7, 2015. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1.

The \$10,278 debt alleged in SOR ¶ 1.b is for a line of credit that was placed for collection in 2011. Applicant had been making payments as agreed until the creditor entered bankruptcy. He discontinued his payments because he did not know where to send them. Later, while reviewing his credit report, he was able to identify a collection creditor. In August 2014, he entered a repayment plan, with scheduled monthly payments of \$416. (GX 3; GX 1.) He pays this account as agreed and the August 2015 balance was approximately \$8,584, making the current balance approximately \$6,088. (GX 1.)

Applicant denies that he owes the \$1,181 credit card debt as alleged in SOR ¶ 1.c. He states that he realized he was a victim of identity theft in 2011, when he returned to his home in the U.S. and discovered that the prior tenants had damaged his residence, failed to pay the utility bills, opened a credit-card account in his name, and illegally sold his personal property. He filed a local police report, and has provided the investigative case number assigned by the police. He has also disputed this account with the credit reporting agencies. (GX 3; GX 1.) This debt does not appear on the June 2015 CBR. (GX 5.) The unpaid utility bills had been placed for collection, and Applicant paid them. (GX 4.)

The \$210 debt alleged in SOR ¶ 1.d was placed for collection in 2009. Applicant did not recognize this account during his September 2014 PSI, but stated that he would contact the creditor. (GX 3.) Applicant now states that he paid the debt “some months” prior to receiving the SOR. (GX 1.) This debt does not appear on the June 2015 CBR. (GX 5.) He has not incurred any delinquent debt since 2011.² (GX 4; GX 3.)

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’s 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.

² The tax lien was entered in 2012 for tax years 2006-2011.

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, e-QIP, and PSI, 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 established. The circumstances surrounding Applicant's financial issues are unlikely to recur and Applicant's behavior does not cast doubt on his "current reliability, trustworthiness, or good judgment." He relied on the erroneous tax advice of a coworker, and, upon learning of his mistake, took action to rectify it. The creditor for his line of credit entered bankruptcy. He tracked down the new creditor and entered into a payment plan. He was a victim of identity theft. He reported the crime and disputed the fraudulent account.

AG ¶ 20(b) is partially established. Clearly, Applicant had no control over his creditor entering bankruptcy or being a victim of identity theft. He acted responsibly under both these circumstances. While his reliance on the erroneous tax advice of a coworker was arguably within his control, upon learning of his mistake, he acted responsibly by arranging a repayment plan with the IRS.

AG ¶ 20(c) is established. Applicant has not received financial counseling; however, he has resolved or is resolving his debts and there is a “clear indication” that his financial problems are under control. He has not incurred any delinquent debt since 2011.

AG ¶ 20(d) is established. Of the four debts alleged in the SOR, Applicant has paid one and successfully disputed another. He has been in repayment of his tax debt since 2012, first through garnishment and, since November 2014, through a direct debit monthly payment of \$800. The fact that Applicant was paying this debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug.26, 2010). However, payment by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006). He has been paying \$416 monthly on his \$10,278 line of credit and the current balance is about \$6,000. “Good faith” 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 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. 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).

AG ¶ 20(e) is established. Applicant disputed the debt from the stolen credit-card account with the police and the credit-reporting agencies. He provided the police’s investigative case number and the debt does not appear on the August 2014 CBR. (GX 3; GX 5.)

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 I have also considered the following:

Applicant served honorably in the U.S. Army for 13 years, where he was first granted a security clearance in 1993. He has worked overseas supporting U.S. military missions and held a DOD security clearance since 2005. During his brief period of unemployment in 2010, he lived off his savings and did not incur any delinquent debt. He lives within his means and is current on all his ongoing financial obligations. I am confident that Applicant will continue his good-faith efforts to resolve his remaining delinquent debts.

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 delinquent debts. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him 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

Subparagraph 1.a – 1.d:

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.

Stephanie C. Hess
Administrative Judge