



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-00700
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on June 12, 2014. On August 6, 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 September 8, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 8, 2015, and the case was assigned to me on October 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 29, 2015, scheduling the hearing for November 18, 2015. I convened the hearing as scheduled.

Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I kept the record open until December 7, 2015, to enable him to submit additional documentary evidence. He timely submitted AX H through N, which were admitted without objection. DOHA received the transcript (Tr.) on November 30, 2015.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old ship designer employed by a defense contractor since April 2007. He has held an interim security clearance for about a year, but he has never held a final clearance. (Tr. 8.) His wife is also employed by a defense contractor. (Tr. 48.)

Applicant served on active duty in the U.S. Army from January 1997 to May 2001 and received an honorable discharge. He attended a community college from January 2003 to May 2006 but did not receive a degree. He was unemployed from January 2004 to April 2006. He worked for a non-government company from May 2006 until he began working for his current employer.

Applicant married in May 2002. He and his wife have a 12-year-old daughter. His wife has a 20-year-old son from a previous relationship. Applicant and his wife lived beyond their means, using various credit cards, from 2002 to 2005. They obtained a debt-consolidation loan in 2005. The status of this loan is described in the discussion of SOR ¶ 1.b below. Their financial problems were exacerbated when they temporarily separated for a short time in 2010, due to family hardships, and they incurred the additional expenses of maintaining two households. (Tr. 20.)

The delinquent debts alleged in the SOR are reflected in Applicant's credit bureau reports (CBRs) (GX 2-4.) The evidence concerning the status of these debts is set out below.

SOR ¶ 1.a, credit-card account, charged off for \$1,206. This debt was for purchases of electronics. The last transaction in this account was in 2009 (Tr. 33.) In his answer to the SOR, Applicant stated that he was working with the creditor to resolve this debt. He entered into a payment agreement for this debt on November 4, 2015, providing for an initial payment of \$300 and monthly payments of \$61.36. He has made the initial \$300 payment. (AX A; AX I.)

SOR ¶ 1.b, unsecured debt-consolidation loan, charged off in March 2008 for \$14,369. The original amount due on this debt was \$16,615. The debt was incurred to consolidate several credit-card accounts around 2005. Applicant was making monthly \$325 payments to the debt-consolidation company until it went out of business, and the

loan was transferred to another creditor around 2006. Applicant stopped making payments around 2007 because he could not afford them. (Tr. 38-40.) The account was referred to a collection agency, and Applicant had made payments totaling about \$1,700 as of January 2013. Another collection agency took over the debt, and by November 2015, Applicant had made payments totaling about \$3,600 and reduced the debt to \$14,369. (AX B; AX C.) The new collection agency wanted monthly payments of \$460, which Applicant could not afford. (Tr. 26-27.) As of the date of the hearing, he was negotiating with the new collection agency and trying to resolve all his smaller debts so that he would be in a better position to settle this debt. (AX H; Tr. 15-17.)

SOR ¶ 1.c, medical bill referred for collection of \$330 in August 2011. This debt was paid in full in February 2015. (AX D; Tr. 28.)

SOR ¶ 1.d, credit-card account charged off for \$2,000 in January 2008. This debt was settled in December 2015. (AX N.)

SOR ¶ 1.e, credit-card account referred for collection of \$6,431 in June 2014. Applicant's wages were garnished to collect this debt, at the rate of \$30 per week. As of the end of October 2015, he had paid \$2,130 and owed a balance of \$3,260. (AX E.)

Applicant and his wife recently purchased a home. Their home mortgage loan payments are \$1,765 per month. He has an eight-year-old truck, on which the payments are \$240 per month, and his wife has a two-year-old SUV, on which the payments are \$465. Their joint monthly net income is about \$6,910. They reported an adjusted gross income of \$144,380 on their joint federal income tax return for 2014, which was a substantial increase from the adjusted gross income of \$93,961 for 2012. (AX M; AX L.) Their monthly expenses are about \$5,215. Their budget includes saving 10% of their monthly income (\$691). They have a "surplus" of \$1,004, which they use for haircuts, parking, lunches, household and car maintenance, and taxes. (AX J.) Their budget does not include payments on the debts in SOR ¶¶ 1.a-1.c. The garnishment for the debt in SOR ¶ 1.e appears to be reflected in his net pay.

Applicant's performance appraisal for July to December 2014 rated his performance as "satisfactory." (AX G.) His performance appraisal for January to June 2015 was "satisfactory" and recommended promotion to the next classification level. (AX F.)

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 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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is partially established. The debt in SOR ¶ 1.c was for medical expenses, many of which were incurred by Applicant's wife in June through August 2013. The nature of the medical services, including pathology and anesthesiology, indicate that they were more than routine examinations. Applicant acted responsibly by resolving the medical debts in February 2014.

AG ¶ 20(b) is not established for the non-medical debts. Applicant attributed his delinquent debts in part to a family separation in 2010. However, his financial problems started around 2005 due to excessive spending.

AG ¶ 20(c) is not established. Applicant has not obtained financial counseling. Although he has made considerable progress, the evidence falls short of "clear indications" that his financial problems are under control, because he had not yet reached a payment agreement for his largest debt, alleged in SOR ¶ 1.b, when the record closed.

AG ¶ (d) is established. "Good faith" within the meaning of this mitigating condition 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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

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).

Applicant began to address his financial problems in 2005, when he obtained a debt-consolidation loan. He made regular payments until 2007, and then his payments became erratic. However, he made payments totaling \$1,700 between 2007 and January 2013, and an additional \$1,900 between January 2013 and November 2015. He has kept in contact with the series of collection agencies that have owned the debt.

Applicant did not fully appreciate the impact of his financial problems on his career until he moved to a job that required a security clearance. Since submitting his SCA in June 2014, he has resolved the debts in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. Only the debt in SOR ¶ 1.b remains unresolved, and he is negotiating a settlement of the debt with the current collection agency.

The fact that Applicant is paying the debt in SOR ¶1.e through garnishment rather than a voluntary effort diminishes its mitigating force. Satisfaction of a debt through involuntary garnishment "is not the same as, or similar to, a good-faith initiation

of repayment by the debtor.” ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), *citing* ISCR Case No. 08-06058 (App. Bd. Aug.26, 2010). However, satisfaction of a debt by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 (App. Bd. Sep 26, 2006).

Applicant has been methodically addressing his debts since about 2005. I have considered the fact that he accelerated his debt-resolution efforts when he learned that he needed a security clearance. However, the timing of his efforts does not render the mitigating conditions inapplicable. See ISCR Case No. 08-06058, *supra*. Under the circumstances of this case, his acceleration of his efforts, motivated by his need for a security clearance, does not significantly undermine the overall good faith he has demonstrated.

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 his current employer since 2007, has performed well, and has been recommended for a promotion. He held an interim clearance for more than a year. He was candid, sincere, and credible at the hearing. A lending institution found him credit-worthy for a home mortgage loan. He and his wife have methodically addressed their delinquent debts, abandoned their undisciplined use of credit cards, and adopted a reasonable family budget. They have the financial means to carry out

reasonable payment plans for their remaining debts. I am confident that Applicant will continue his good-faith efforts to resolve his remaining delinquent debts.¹

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

Subparagraphs 1.a-1.e: For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge

¹ Administrative judges do not have authority to grant conditional clearances. ISCR Case No. 99-0901, 2000 WL 288429 at *3 (App. Bd. Mar.1, 2000). See *also* ISCR Case No. 01-24328, 2003 WL 21979745 at *2 (App. Bd. May 23, 2003). However, applicants do not have a vested right to a security clearance. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance.