



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-01104
)	
Applicant for Security Clearance)	

Appearances

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

03/18/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), J (Criminal Conduct), and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on June 24, 2014. On August 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, J, and E. The DOD CAF 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 the DOD on September 1, 2006.

Applicant answered the SOR on September 9, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 12, 2015, and the case was assigned to me on November 23, 2015. On

November 30, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 16, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until January 15, 2016, to enable him to submit additional documentary evidence. I also gave Department Counsel additional time to submit additional evidence showing the basis for alleging that the child-support delinquency alleged in SOR ¶ 2.b was a criminal offense. DOHA received the transcript (Tr.) on December 24, 2015.

On January 4, 2016, Department Counsel submitted GX 6, which was admitted without objection. On January 14, 2016, at Applicant's request, I extended his deadline for submitting additional evidence to January 29, 2016. He timely submitted AX E. On February 9, 2016, he submitted AX F through I. Department Counsel did not object to the untimely submissions, and AX E through I were admitted.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.b, 1.d, 1.f-1.h, 1.j-1.l, and 2.a-2.d. He denied SOR ¶ 1.a, 1.c, 1.e, 1.i, and 2.e. He did not admit or deny SOR ¶ 3.a, which cross-alleges SOR ¶¶ 2.a-2.e. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old employee of a defense contractor. He served on active duty in the U.S. Navy from August 1996 to May 1998. He received an other-than-honorable discharge for an unauthorized absence of more than 90 days. He worked as a technician at a tire store from May 2003 to July 2006. He worked for a defense contractor as a marine electrician from July 2006 to February 2010. He was laid off and was unemployed from February 2010 until July 2011, when he began his current job. His current position is a "master trades person," responsible for ship electrical systems. He held a security clearance while in the Navy, but he does not have a current active clearance. (Tr. 7.)

Applicant married in April 2009 and divorced in April 2012. He has three children; two are 18 years old and one is 13 years old. He recently remarried on a date not reflected in the record. (Tr. 64.)

The debts alleged in the SOR are reflected in Applicant's July 2014 and December 2014 credit bureau reports (CBRs). (GX 4 and 5.) The status of the debts is summarized below.

SOR ¶ 1.a, repossession deficiency (\$7,169). Applicant denied this debt. He borrowed money to purchase a vehicle in August 2007. His vehicle was repossessed in September 2009. When his vehicle was repossessed, he owed about \$13,113. He was credited with \$2,413 for unearned finance charges, and the vehicle was sold for \$3,805, resulting in the deficiency of \$7,169. (AX G; AX H.) In July 2010, a judgment was filed

against Applicant to enforce this debt. (GX 4 at 4.) His pay was garnished to satisfy the judgment. He presented documentation that about \$7,365 had been collected by garnishment as of the date of the hearing. (AX C; AX D.) It is not clear whether the judgment is satisfied, because the record does not reflect the amount of interest and other charges that may have been added to the amount due.

SOR ¶¶ 1.b, 1.d, and 1.g, medical bills (\$1,234; \$651; and \$220). Applicant admitted these debts. He testified that he made partial payments on “a couple of the medical bills,” but he did not know which bills he paid, and he had no documentation of payments. (Tr. 43.) They are unresolved.

SOR ¶ 1.c, cell phone bill (\$1,104). Applicant denied this debt. In his answer to the SOR and at the hearing, he stated that he informed the creditor that this account was opened fraudulently and that he never had an account with this provider. (Tr. 30.) He testified that he disputed the debt with the creditor, but he had no documentation of his dispute. He also testified that he had “flagged” his credit record, but his CBRs do not reflect a fraud alert. (Tr. 45-46.) The debt is unresolved.

SOR ¶ 1.e, cell phone bill (\$532). Applicant denied this debt. He testified that he has cell phone service with this provider and his account is current. (Tr. 31.) He submitted no documentary evidence to support his testimony.

SOR ¶ 1.f, telecommunications bill (Tr. 477). Applicant admitted this debt. In January 2016, he made an agreement with the creditor to pay it in three \$160 payments, beginning on January 22, 2016. (AX E.) His post-hearing submission on February 9, 2016, did not include evidence that he made the January payment.

SOR ¶ 1.h, judgment for furniture (\$1,713). Applicant admitted this debt. He testified that he contacted this creditor and had made arrangements to resolve this debt. (Tr. 32.) He presented no documentary evidence to support his testimony.

SOR ¶ 1.i, judgment filed in September 2007 (\$6,980). Applicant denied this debt. He testified that this debt was incurred in 2007, when he was evicted for nonpayment of rent. He testified that he met with the creditor once about three years ago and made an arrangement to settle this debt. (Tr. 32, 52-54.) He had no further contact with the creditor and does not know how to contact him, because the creditor’s place of business has closed. (Tr. 55.) He presented no documentary evidence to support his testimony.

SOR ¶ 1.j, cell phone bill (\$671). Applicant admitted this debt. He testified that he tried to contact this creditor but was unsuccessful. (Tr. 33.) After the hearing, he presented documentary evidence that the debt was deleted from his credit record. (AX I.) This account was opened in September 2011 and referred for collection in October

2013. Since less than seven years have passed since the debt was referred for collection, the evidence suggests that it was resolved.¹

SOR ¶ 1.k, furniture bill (\$2,389). Applicant admitted this debt. He testified that he has only one account with this creditor, and the furniture debt alleged in SOR ¶ 1.h is included in this debt. He testified that he made an agreement to start making payments on the debt in 2016, but he presented no documentary evidence of a payment agreement. (Tr. 33, 50-53.)

SOR ¶ 1.l, electric bill (\$241). Applicant admitted this debt. He submitted documentary evidence that he had agreed to make monthly \$60 payments, beginning in February 2016, but he presented no evidence that any payments were made. (AX F.)

Applicant was arrested in June 2000 for contempt of court, arrested in June 2001 for failing to comply with his child-support obligation, and arrested in February 2004 for contempt of court. Applicant admitted these arrests, alleged in SOR ¶¶ 2.a-2.c, and testified that they were the result past-due child-support payments. He testified that his child-support payments are current, but that he still has an arrearage of about \$2,000 in child-support, on which he is making monthly payments. (Tr. 34-35, 62.) His CBRs do not reflect any child-support delinquencies.

Applicant was arrested for driving on a suspended license in October 2013, convicted, and sentenced to ten days in jail. (GX 1 at 33-34.) His license had been suspended for failure to pay traffic fines totaling about \$1,000. (Tr. 67-68.) He testified he was allowed to serve his jail sentence on weekends. However, he was working in another state, and he gave a friend the money to pay the fee for serving his jail time on weekends. However, his friend missed the deadline for paying the fee, Applicant was charged with failure to appear, and he was required to serve the jail sentence on ten consecutive days. (Tr. 35-36.)

Applicant's take-home pay is about \$2,400 per month. His current spouse is on active duty as a Navy petty officer second class, and they share expenses. Applicant testified that his spouse's take-home pay is about \$3,000 per month. (Tr. 69.) His rent is about \$1,200. Because of the garnishment to satisfy the judgment in SOR ¶ 1.a, his child-support obligation, and payments on the child-support arrearage, his net monthly remainder is only about \$300. He has about \$400 in his checking account. He has no savings, because he exhausted his savings during the past Christmas season. (Tr. 64-65.)

¹ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, which is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

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 SOR alleges 12 delinquent debts totaling about \$23,380 (SOR ¶¶ 1.a-1.l). 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).

The evidence indicates that the two debts for furniture, alleged in SOR ¶¶ 1.h and 1.k, are probably the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.h in favor of Applicant.

Applicant’s admissions and 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;

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 not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's unemployment from February 2010 to July 2011 was a circumstance beyond his control. Applicant's medical debts might have been due to circumstances beyond his control, but he provided no evidence of the circumstances under which they were incurred. Furthermore, the evidence shows that he has not acted responsibly. The judgment in SOR ¶ 1.a is being collected involuntarily by garnishment. He has made minimal effort to resolve his medical debts. He did not negotiate payment agreements for the debts alleged in SOR 1.f and 1.i until January 2016, after the hearing, when he realized that they were an impediment to obtaining a clearance.

AG ¶ 20(c) is not established. Applicant has not received financial counseling, and his financial situation is not under control.

AG ¶ 20(d) is not fully 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). Applicant receives some credit for resolving the repossession deficiency alleged in SOR ¶ 1.a, but payment by 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. Sep. 21, 2009).

The debt alleged in SOR ¶ 1.j was deleted from Applicant's credit record and appears to have been resolved. In January 2016, after the hearing, he negotiated payment agreements for the debts alleged in SOR ¶1.f and 1.i, but no payments have

been made under those agreements. He presented no documentary evidence of payments or payment agreements for the debts alleged in SOR ¶¶ 1.b-1.e, 1.g, and 1.k.

AG ¶ 20(e) is not established. Applicant claimed that he disputed the debt in SOR ¶ 1.c, but he provided no documentation of the dispute.

Guideline J, Criminal Conduct

The SOR alleges five misdemeanor arrests for contempt of court (SOR ¶¶ 2.a and 2.c), failure to comply with child-support obligations (SOR ¶ 2.b), driving on a suspended license (SOR ¶ 1.e), and failure to appear on a misdemeanor charge (SOR ¶ 2.e). The concern raised by criminal conduct is set out in AG ¶ 30: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

Applicant’s admissions and the documentary evidence presented at the hearing establish two disqualifying conditions under this guideline: AG ¶ 31(a) (“a single serious crime or multiple lesser offenses”) and AG ¶ 31(c) (“allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted”). The following mitigating conditions are potentially relevant:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and 32(d) are not established. All the misdemeanors alleged under this guideline arose because of financial mismanagement: failure to pay child support, failure to pay traffic fines, and failure to pay court fees for weekend service of a jail sentence. Applicant has not yet put his financial house in order. Thus, he has not established rehabilitation, and he has not shown that recurrence is unlikely.

Guideline E, Personal Conduct

The SOR cross-alleges the criminal conduct alleged in SOR ¶¶ 2.a-2.e under this guideline. The concern under this guideline is set out in AG ¶ 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” Applicant’s conduct establishes the following disqualifying conditions under this guideline:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially relevant:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶¶ 17(c), 17(d), and 17(e) are not established. Although Applicant's offenses were minor and charged as misdemeanors, they were frequent and the result of financial irresponsibility. He has acknowledged his behavior, but he has not obtained financial counseling or taken specific steps to gain control of his financial problems. His financial problems continue to make him vulnerable to exploitation, manipulation, or duress.

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 Guidelines F, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guideline(s), but some warrant additional comment.

Applicant was candid and sincere at the hearing, but he lacks the financial discipline necessary to attain financial stability. His financial problems began around 2007, before he was laid off. He has been employed continuously since July 2011, but he has made little headway with his delinquent debts.

After weighing the disqualifying and mitigating conditions under Guidelines F, J, and E, 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, criminal conduct, and personal conduct. Accordingly, I conclude he has not 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): **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.l:	Against Applicant

Paragraph 2, Guideline J (Criminal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a-2.e:	Against Applicant
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Paragraph 3, Guideline E (Personal Conduct):

AGAINST APPLICANT

Subparagraph 3.a:

Against Applicant

Conclusion

I conclude that 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.

LeRoy F. Foreman
Administrative Judge