



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-02953
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/04/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on June 2, 2014. On October 26, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 November 23, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 21, 2015, and the case was assigned to me on January 13, 2016. On January 15, 2016, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for February 5, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 3 through 7 were admitted in evidence without objection. GX 2 is an unauthenticated summary of a personal subject interview that was part of the report of investigation conducted by the Office of Personnel Management. Applicant declined to waive the authentication required by Directive ¶ E3.1.20, and I did not admit it. (Tr. 26.) Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection.

I kept the record open until March 7, 2016, to enable Applicant to submit additional documentary evidence. He timely submitted AX C through H, which were admitted without objection. In the email transmitting AX C through H, he stated that he was awaiting "a few other forms as well as a few other letters from people that know [him]," but he did not submit any additional evidence or request additional time to submit it. (Hearing exhibit (HX) II.)¹ DOHA received the transcript (Tr.) on February 16, 2016.

Findings of Fact

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a and 1.b. He did not expressly admit or deny SOR ¶¶ 1.c-1.i, but he offered descriptions of the debts alleged and offered explanations for some of them. He also stated that SOR ¶¶ 1.c, 1.g, and 1.k are the same debt. I have treated his responses to SOR ¶¶ 1.c-1.i as denials.

Applicant is a 51-year-old security technician employed by a federal contractor since April 2013. He worked in the private sector from June 2004, installing and maintaining security systems for homes and businesses, until he began his current job. He was entrusted with loading cash into ATM machines, installing security systems in bank vaults, and installing home security systems. (Tr. 75, 81-82.) He testified that he held a security clearance for about eight months in 2007, but it was terminated when he voluntarily left his job. (Tr. 8.) He does not have a current security clearance. However, he holds a registration for electronic security from another government agency. (Tr. 76.)

Applicant married in October 1985, divorced in June 1996, married again in July 1996, and divorced in March 2002. He married his current spouse in April 2002. He has two adult children.

Applicant has attention deficit hyperactivity disorder (ADHD). He testified that it affects his long-term memory. His doctor states that his ADHD is "well controlled" with medication. (AX A; Tr. 13-14, 28.)

Applicant's wife testified that she is the money manager for the household. (Tr. 33.) Applicant's work often makes him unable to communicate by telephone, and she has assumed the responsibility for dealing with creditors.

¹ HX I is a letter from Department Counsel to Applicant, transmitting copies of the Government's documentary evidence to Applicant in accordance with Directive ¶ E3.1.13.

Applicant's wife was employed as a customer service representative for a telecommunications company, and she operated a private house-cleaning service until 2009, when she suffered a debilitating back injury. She was diagnosed with degenerative disc disease, and underwent multiple surgeries in her back and neck. She is unable to sit for more than 45-60 minutes, and she needed to stand up during her testimony at the hearing to relieve her discomfort. (Tr. 44, 50-51.) When she became unable to work, the family net income was reduced by about \$2,000 per month, down to about \$1,500. (Tr. 45, 92.) Their current net monthly income is about \$3,000. (Tr. 64.) They live paycheck to paycheck. Applicant's wife testified that, as of the morning of the hearing, they had two dollars in their checking account and a negative five-dollar balance in their savings account. (Tr. 40.)

Applicant has attended various colleges and universities since about 2000, in order to earn technical certifications and improve his potential for higher pay. (Tr. 80.) He continued to attend classes until 2013. (Tr. 96.) He is three or four credits short of earning a bachelor's degree, but he testified that he cannot afford to accumulate any more student-loan debt. (Tr. 96-97.)

Applicant filed a petition for Chapter 7 bankruptcy in February 1997 and his debts were discharged in May 1997 (GX 5.) He testified that this bankruptcy was the result of his second wife's dishonesty and financial irresponsibility. (Tr. 80.) She was incarcerated for embezzlement at the time of their divorce. (Tr. 85.)

Applicant filed another Chapter 7 bankruptcy petition in October 2012. He listed assets of \$4,953 and liabilities of \$240,679. His liabilities included \$167,107 in student loans and a federal income tax debt of \$1,122. His dischargeable debts were discharged in March 2013. Many of the discharged debts were medical debts. (GX 6 at 39.) Applicant's delinquent student loans and federal tax debt were not discharged. (GX 6 at 40.) Applicant and his wife both completed the financial counseling courses required by the bankruptcy court. (Tr. 71.)

The federal income tax debt listed in the 2012 bankruptcy petition was the result of mistakes in his income tax return. Applicant's wife testified that the debt was paid. It is not reflected in the CBRs and was not alleged in the SOR.

Eight of the ten delinquent debts alleged in the SOR are delinquent student loans totaling about \$21,000. Applicant's wife testified that Applicant's student loans currently total about \$79,095. (Tr. 34, 54.) Applicant is in a rehabilitation program for the student loan alleged in SOR ¶ 1.d, in which he pays \$5 per month, automatically deducted from his bank account. The last rehabilitation payment will be in February 2017. (AX B; AX F; AX G; Tr. 14, 55-56.) The payments on the other student loans are deferred until November 2016. (GX 7 at 4-5.) Applicant and his wife are trying to consolidate all the student loans so that they can make a single payment each month, but the consolidation has not yet occurred. (Tr. 59.) After November 2016, Applicant's wife anticipates that the payments on a consolidated loan will be determined by their income and probably will be about \$200 per month. (Tr. 59-60.)

In his answer to the SOR, Applicant denied the cellphone debt alleged in SOR ¶ 1.i and stated that he was disputing it. It was referred for collection in March 2014, but it is not listed in Applicant's January 2016 CBR. (GX 4 at 2; GX 7.) Applicant's wife testified that the provider terminated service in the area where they reside. After about three months of repeated telephone calls, the provider told them that they were no longer in the provider's service area. Applicant's wife testified that she returned the cellphones to the provider, but that she did not receive credit for the return. Applicant's wife testified that she "basically forgot about it." (GX 4 at 2; Tr. 61-62.) The deletion of the debt from Applicant's credit record indicates that the disputed debt was resolved in his favor.

The credit card debt alleged in SOR ¶ 1.j was charged off in September 2013. The last payment on the debt was in August 2013. (GX 7 at 6.) Applicant's wife testified that she attempted to negotiate a payment plan, but the creditor insisted in full payment in a lump sum. They cancelled the credit card but were unable to pay off the balance. Applicant had no further contact with this creditor. (Tr. 36-37, 63-64.) The debt is unresolved.

Applicant's January 2016 CBR reflects a car loan that is past due for \$1,024. The delinquent car loan is not alleged in the SOR. The agreed monthly payments on the loan are \$341. (GX 7 at 4.) Applicant made the required payments in January and February 2016 after failing to make some earlier payments. (AX D; AX E.) His wife testified that she and the lender have telephonically agreed on future monthly payments of \$500 per month, with the goal of bringing the payments up to date in six months. (Tr. 67.)

Applicant and his wife live frugally. They have no credit cards. They do not go out for dinner or movies, because they cannot afford it. (Tr. 85.) They drive a five-year-old compact car. (Tr. 67.)

Applicant's supervisor for the past two years considers him an exceptional employee. As a service technician, he is determined to find the root cause of a problem rather than merely replace parts. He frequently suggests how to eliminate waste and work more efficiently. His ethics, honesty, and integrity are beyond reproach. (AX C.)

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).

The testimony and documentary evidence submitted at the hearing 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 encountered two conditions that were largely beyond his control. First, he trusted his second wife to handle the family finances until he found out that she was financially deceptive and untrustworthy. Second, his current wife suffered disabling injuries and was unable to continue working, thereby drastically reducing the family income, and resulting in substantial uninsured medical expenses. Applicant prudently sought advice from an attorney and filed a Chapter 7 bankruptcy. He resolved the federal tax debt that was not discharged, entered into a rehabilitation program for one of his delinquent student loans, and obtained forbearance on the remaining student loans. He is trying to consolidate the loans and negotiate a repayment plan that he can afford. On the other hand, he voluntarily incurred his student-loan debts for the laudable purpose of improving his technical skills and ability to compete for higher-paying jobs, but without adequately considering how he would repay the loans. He continued to incur student-loan debt until 2013, four years after his wife became disabled and unable to contribute to family income. He does not have a good grasp of his financial situation and relies totally on his wife to manage the family finances.

AG ¶ 20(c) is not fully established. Applicant obtained financial counseling in connection with his bankruptcies, but the evidence falls short of "clear indications" that his financial problems are under control.

AG ¶ 20(d) requires "a good-faith effort to repay overdue creditors or otherwise resolve debts." 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). This mitigating condition is established for the student loan alleged in SOR ¶ 1.d. It is not established for the delinquent credit-card account alleged in SOR ¶ 1.j and delinquent student loans alleged in SOR ¶¶ 1.c-1.h, 1.k, and 1.l, because he is not making payments on them and his financial situation makes it unlikely that he will be able to afford resuming payments after November 2016.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. 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. 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant hopes to consolidate his student loans and begin an income-based repayment plan, but his good intentions do

not amount to a feasible plan, and they are not a substitute for a track record of paying debts in a timely manner. See Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

AG ¶ 20(e) is established for the cellphone debt, but not for the other debts alleged in the SOR, which are not disputed.

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 was candid and sincere at the hearing. He enjoys a reputation for honesty and integrity. He has held positions of trust without incident. While he is not likely to intentionally compromise national security for financial gain, his lack of foresight and inattention to his financial situation raise serious questions about his good judgment and reliability. He is in a deep financial hole with no feasible plan for getting out of it. "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." ISCR Case No. 09-01652 at 3 (App. Bd. Aug 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome that presumption.

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 not mitigated the security concerns raised by his financial problems. 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**

Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.l:	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