



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



In the matter of:)
)
 -----) ISCR Case No. 15-00809
)
 Applicant for Security Clearance)

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

04/14/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 28 delinquent debts, including 22 medical debts. His largest delinquent SOR debt was his first mortgage, and he brought it to current status using funds from his 401(k) account. He also paid one judgment, and he brought his medical debts to current status. Two debts do not have payment plans and remain unresolved. He is investigating one account and communicating with his creditors on the other account. He assures he intends to pay his debts. While additional sustained financial effort is necessary, he has established a track record of debt payment and resolution. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

On May 29, 2014, Applicant completed and signed a Questionnaire for National Security Positions (SF 86). (Government Exhibit (GE) 1) On September 22, 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*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance

for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On September 30, 2015, Applicant responded to the SOR, and he requested a hearing. On December 3, 2015, Department Counsel was ready to proceed. On January 28, 2016, the case was assigned to me. On February 8, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 24, 2016. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 14-15) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits, and Applicant offered two exhibits. (Transcript (Tr.) 19-23; Government Exhibit (GE) 1-4; Applicant Exhibit (AE) A-B) Applicant objected to the content of the Government Exhibits because they did not contain recent information about Applicant's finances. (Tr. 19-20) I overruled Applicant's objection, and the four government exhibits were admitted into evidence. (Tr. 20-21) I advised Applicant that he had a right to present additional information on his finances. (Tr. 21) Department Counsel did not object to Applicant's exhibits, and they were admitted into evidence. (Tr. 23; AE A-B) On March 3, 2016, DOHA received a copy of the transcript of the hearing.

Findings of Fact¹

In Applicant's SOR response, he discussed the SOR allegations; however, he did not specifically admit or deny the SOR allegations. He also provided extenuating and mitigating information. Applicant's general admissions are accepted as findings of fact.

Applicant is a 42-year-old employee of a defense contractor. (Tr. 6) He has been employed by the defense contractor for the previous 14 years in a position relating to aircraft. (Tr. 8) In 1992, Applicant graduated from high school. (Tr. 6) From 1992 to 1995, Applicant served in the Army, and his military occupational specialty (MOS) was motor transport operator (88M). (Tr. 8) He left active duty as a private first class, and he received an honorable discharge. (Tr. 8) In 2002, he received a college certificate in information technology. (Tr. 7) In 2002, he married, and his children are ages 6, 20, and 21. (Tr. 30-31, 57)

Financial Considerations

In 2004, Applicant's spouse obtained a bachelor's degree in business administration. (Tr. 37) In 2009, Applicant's spouse became unemployed, and his family's annual income was reduced from over \$100,000 to about \$58,000. (Tr. 32-34, 46) His spouse unsuccessfully applied for hundreds of jobs. (Tr. 37) She had a difficult pregnancy, and she was unable to travel. (Tr. 38) She is working on her master's

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

degree in instructional technology. (Tr. 34-38) She has an \$11,000 student loan debt that is currently in deferment. (Tr. 49)

In 2007, Applicant had a minor stroke, which resulted in medical bills. (Tr. 39) Applicant maintained contact with his creditors and kept them informed of his financial status. (Tr. 40) Applicant's annual income is now \$64,000, and his spouse earns about \$9,600 annually as a substitute teacher. (Tr. 44-45) Their two vehicles are paid off, and they do not have any credit card debts. (Tr. 45, 47) They have a remainder of about \$200 monthly to address unforeseen contingencies. (Tr. 45)

Applicant's 28 delinquent SOR debts are documented in his SF 86, credit reports, SOR response, and hearing record. His SOR alleges 22 delinquent medical debts, delinquent first and second mortgages, one judgment, and one charged-off debt related to a vehicle.

SOR ¶¶ 1.c-1.e, 1.g-1.s, and 1.w-1.bb allege 22 delinquent medical debts totaling \$5,182. (Tr. 27-28) The 22 debts were for various amounts, and originated from the same medical creditor. (Tr. 27-28) Applicant made payments of \$148, \$521, and \$285 to address his medical debts for a total payment of \$954. (Tr. 27; AE A) The creditor merged all of the medical debts into one debt, and he currently owes \$3,258. (Tr. 55-56) He made a separate \$53 payment to resolve the debt in SOR ¶ 1.bb. (Tr. 30) He was unsure whether all of the medical debts were processed through his medical insurance company, and he was working with his creditor and insurance company to insure proper processing of his medical debts. (Tr. 27-28)

The debts in SOR ¶¶ 1.a, 1.b, and 1.f are owed to the same bank. SOR ¶ 1.a for \$214,974 is for a first mortgage, which was alleged on the SOR to be delinquent in the amount of \$5,587. (SOR response; AE B at 2) Applicant unsuccessfully sought to have the creditor merge the first and second mortgages into one debt. On November 9, 2015, Applicant paid the bank-creditor \$8,938, which brought his first mortgage to current status. (Tr. 28-29; AE A at 4; AE B at 2)

SOR ¶ 1.b for \$68,164 is for Applicant's second mortgage, which has been delinquent for about two years. (Tr. 59; GE 2) In 2006, Applicant and his spouse took out a second mortgage to finish their basement and make repairs. (Tr. 33) On January 21, 2016, Applicant asked the creditor of the second mortgage to provide a settlement agreement, and Applicant intends to start a payment plan to bring the debt to current status. (Tr. 43-44, 58)

SOR ¶ 1.f is a revolving credit account in the amount of \$360. (GE 3) Applicant's 2015 credit report shows the debt in SOR ¶ 1.f is settled, and this debt does not appear in the two subsequent credit reports of record. (GE 2, 3; AE B)

The judgment in SOR ¶ 1.t for \$2,308 is related to a purchase at a store. The creditor settled the debt for \$1,850. (Tr. 29) On February 12, 2016, the creditor filed an Order of Satisfaction with the court. (AE A at 8)

The debt in SOR ¶ 1.u for \$1,513 resulted from Applicant's vehicle being in an accident. (Tr. 51-52) Applicant believed he had gap insurance to cover the difference between the amount of the lien and the vehicle's fair market value, and the creditor contended the insurance payment was insufficient. (Tr. 51-52) His February 23, 2016 credit report indicates the account was transferred and the balance is zero; however, his new credit report does not indicate the current holder of the debt. (Tr. 52; AE B) Applicant has not been able to ascertain the current holder of the debt. (Tr. 52) Applicant disputed his responsibility for the debt. (Tr. 52) Applicant promised to pay this debt if it resurfaces on his credit report, or he is able to locate the creditor holding the debt. (Tr. 53)

Applicant borrowed about \$10,000 from his 401(k) account to pay, resolve, or bring his debts to current status. (Tr. 29) He had taxes withheld from his 401(k) early withdrawal. (Tr. 58) The balance of his 401(k) account is down to \$13,782. (Tr. 58) He used his federal income tax refund to pay the judgment in SOR ¶ 1.t. (Tr. 48)

In sum, in the previous 12 months Applicant paid \$11,795 to his SOR creditors. His credit reports show several non-SOR accounts were paid as agreed. His first mortgage was brought to current status, and a judgment was settled and paid. His 22 medical SOR debts were merged into one debt; he paid \$1,007 to his medical creditors; and his medical debts are in a current payment plan.

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, *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 revised 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 should be construed to suggest that I have based this decision, 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, SOR response, and hearing record. Applicant’s SOR alleges 28 delinquent debts, including 22 medical debts, delinquent

first and second mortgages, a judgment, and a delinquent vehicle loan. 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;² 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

²The 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)).

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).

AG ¶¶ 20(a) through 20(d) apply. Applicant’s financial problems resulted from Applicant’s minor stroke and his spouse’s unemployment and underemployment.

In the previous 12 months, Applicant paid \$11,795 to his SOR creditors. His credit reports show several non-SOR accounts were paid as agreed. His first mortgage was brought to current status, and a judgment was settled and paid. His 22 medical SOR debts were merged into one debt; he paid \$1,007 to his medical creditors; and his medical debts are in a current payment plan. He is communicating with his creditors, and has assured he intends to pay his debts. I am confident that Applicant will conscientiously endeavor to resolve his remaining delinquent debts.

Based on Applicant’s credible and sincere promise to timely pay his debts, future new delinquent debt “is unlikely to recur and does not cast doubt on [Applicant’s] current reliability, trustworthiness, or good judgment,” and “there are clear indications that the problem is being resolved or is under control.” His payments of some of his debts showed good faith. He has sufficient income to keep his debts in current status and to continue making progress paying his remaining delinquent debts. His efforts are sufficient to mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, he mitigated security concerns under the whole-person concept, *infra*.

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.

Applicant is a 42-year-old employee of a defense contractor. He has been employed by the defense contractor for the previous 14 years. From 1992 to 1995, Applicant served in the Army; he left active duty as a private first class; and he received an honorable discharge. In 2002, he received a college certificate in information technology. There is no evidence of security violations, abuse of alcohol or drugs, or criminal activity.

Applicant's financial problems resulted from circumstances beyond his control including his minor stroke, his spouse's unemployment, and her underemployment. In the previous 12 months, Applicant paid \$11,795 to his SOR creditors. His credit reports show several non-SOR accounts were paid as agreed. His first mortgage was brought to current status, and a judgment was settled and paid. His 22 medical SOR debts were merged into one debt; he paid \$1,007 to his medical creditors; and his medical debts are in a current payment plan.

Applicant is communicating with his creditors, and has assured he intends to pay his debts. He understands that he needs to pay his debts, and the conduct required to retain his security clearance. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a "meaningful track record" of debt re-payment. Applicant needs to continue to pay his creditors, to establish a payment plan for his second mortgage, and to locate and set up a payment plan for his vehicle

loan. Applicant should continue his efforts to establish and maintain his financial responsibility.³

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations security concerns are 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:	FOR APPLICANT
Subparagraphs 1.a through 1.bb:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge

³The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "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. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [the applicant] the opportunity to have a security clearance while [the applicant] works on [his or] her financial problems."). This footnote does not imply that this decision to grant Applicant's security clearance is conditional.