



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



In the matter of:)
)
) ISCR Case No. 15-01318
)
Applicant for Security Clearance)

Appearances

For Government: Andrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 11 delinquent debts totaling \$133,524. He failed to provide sufficient information about his finances and demonstrate progress resolving his SOR debts. Financial considerations security concerns are not mitigated. Access to classified information is denied.

History of the Case

On August 29, 2012, Applicant completed and signed an Electronic Questionnaire for National Security Positions (e-QIP) (SF 86). (Item 2) On September 4, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant an SOR pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006. The SOR set forth security concerns arising under the financial considerations guideline.

On November 20, 2015, Applicant provided a response to the SOR, and he requested a decision without a hearing. On December 21, 2015, Department Counsel completed the File of Relevant Material (FORM). On January 4, 2016, Applicant received the FORM. Applicant did not respond to the FORM. On May 2, 2016, the case was assigned to me. The Government’s case consisted of seven exhibits. (Items 1-7)

Findings of Fact¹

In Applicant's SOR response, he admitted the debts in SOR ¶¶ 1.a through 1.g and 1.i through 1.k. (Item 1) He denied the debt in SOR ¶ 1.h. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 53-year-old planner scheduler currently employed by the same defense contractor since October 2011.² In 1981, he received a high school diploma. In 1982, he received an associate's degree, and in 1994, he received a bachelor's degree. He has never served in the military. In 1982, he married, and in 1984, he divorced. In 1985, he married his spouse. In 1987, his son was born, and in 1990 and 1993, his daughters were born.

Financial Considerations

Applicant's history of delinquent debt is documented in his credit reports, November 7, 2012 Office of Personnel Management (OPM) personal subject interview (PSI), SF 86, and SOR response. (Items 1-7) His SOR alleges 11 delinquent debts totaling \$133,524, and their status is as follows: ¶ 1.a is a charged-off bank debt for \$34,403; ¶ 1.b is bank-collection debt for \$26,292; ¶ 1.c is a charged-off bank debt for \$18,328; ¶ 1.d is a charged-off bank debt for \$12,330; ¶ 1.e is a charged-off bank debt for \$6,286; ¶ 1.f is a charged-off bank debt for \$5,825; ¶ 1.g is a charged-off bank debt for \$2,491; ¶ 1.h is a medical-collection debt for \$523; ¶ 1.i is a judgment filed in 2011 for \$8,026; ¶ 1.j is a judgment filed in 2011 for \$3,410; and ¶ 1.k is a judgment filed in 2010 for \$15,610. (Item 1)

Applicant admitted the debts in SOR ¶¶ 1.a through 1.g and 1.i through 1.k., and explained he used the funds borrowed to sustain his business.³ He was not aware of the medical debt for \$523 in SOR ¶ 1.h, and he said he needed to investigate the debt.

In 2005, Applicant left his corporate employment, where he held a secret clearance for 19 years and had excellent credit. He and his spouse started a business. The business borrowed \$100,000 from the Small Business Administration (SBA). After the first three years, the business began to sustain losses due to the business downturn. In 2008, the SOR bank debts became delinquent, and in 2010 and 2011, his suppliers obtained the three SOR judgments in SOR ¶¶ 1.i through 1.k against Applicant and his spouse's corporation.

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

²Unless stated otherwise, the source for the information in this paragraph is Applicant's August 29, 2012 Electronic Questionnaire for National Security Positions (e-QIP) (SF 86). (Item 2)

³The source for the information in this paragraph and the next paragraph is Applicant's SOR response. (Item 1)

Applicant was unemployed from January 2011 to October 2011.⁴ In 2011, Applicant repaid his SBA loan. (Item 1) Two loans totaling \$178,000, his home loan, vehicle loans, and credit obtained since 2010 are current. (Item 1) In 2012, Applicant said he was going to contact an attorney to discuss filing for bankruptcy.

The documentation relating to the three judgments in SOR ¶¶ 1.i through 1.k indicate the judgments were against the corporation employing Applicant and not against Applicant personally. Thus, the allegations in SOR ¶¶ 1.i through 1.k are not established.

There is no evidence that Applicant received financial counseling. There is no evidence that he violated security rules, abused alcohol, or used illegal drugs. His taxes are current. He disclosed six of the delinquent SOR debts on his August 29, 2012 SF 86. (Item 2)

The file lacks supporting documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved seven of the delinquent accounts alleged in the SOR. There is no evidence of Applicant's income, and he did not provide a budget or personal financial statement. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3)

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

⁴Unless stated otherwise the information in this section is from November 7, 2012 Office of Personnel Management (OPM) personal subject interview (PSI). (Item 3)

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 in this decision should be construed to suggest that it is based, 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, OPM PSI, and SOR response. Applicant’s SOR alleges 11 delinquent debts totaling \$133,524. The medical debt in SOR ¶ 1.h for \$523 is not established because Applicant did not recognize it. The three judgments in SOR ¶¶ 1.i for \$8,026, 1.j for \$3,410, and 1.k for \$15,610 were obtained by suppliers against Applicant’s corporate employer. The judgment documentation does not show that Applicant was personally liable for these three corporate debts.⁵ The debts in SOR ¶¶ 1.h through 1.k are mitigated, leaving seven unresolved delinquent SOR debts totaling \$105,955. 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;⁶ and

⁵In ISCR Case No. 14-01231 at 4 (App. Bd. Feb. 10, 2015), the Appeal Board noted that the circumstances underlying business debts can “impugn an applicant’s good judgment.” Here, there is insufficient information about the business to show Applicant’s culpability or lack of judgment in the accrual of the judgments.

⁶The 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

(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 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).

Applicant's stated efforts to resolve his delinquent debt do not warrant full application of any mitigating conditions to seven of his SOR debts; however, he presented some important mitigating information. The business downturn damaged Applicant and his spouse's corporate business. He was unemployed from January 2011 to October 2011. The recession and unemployment are circumstances beyond his control that adversely affected his finances. He did not provide enough details about what he did to address his seven unresolved SOR debts after he became employed in 2011, and the degree of impact of these circumstances beyond his control to establish full mitigation. He did not describe receipt of financial counseling.

I have credited Applicant with mitigating the debts in SOR ¶¶ 1.h through 1.k, leaving seven unresolved delinquent SOR debts totaling \$105,955. Applicant did not provide sufficient documentation relating to these seven SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from any creditors to establish maintenance of contact with

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)).

creditors;⁷ (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution of his debts.

Applicant told an OPM investigator that several of the seven remaining SOR debts were duplications of each other; however, he did not provide any proof supporting his assertion that they were duplications of each other. He also said several large non-SOR debts were paid or maintained in current status. Without a budget and more complete financial information, it is not possible to assess whether or not he has been doing all he was capable of doing to pay his debts since becoming employed in 2011. He failed to establish mitigation under AG ¶ 20(e) for the seven unresolved SOR debts because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

There is insufficient evidence about why Applicant was unable to make greater progress resolving more of his SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

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

⁷"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 53-year-old planner scheduler currently employed by the same defense contractor since October 2011. In 1994, he received a bachelor's degree. Unemployment and the business downturn are circumstances beyond his control that adversely affected his finances. There is no evidence of abuse of alcohol, security violations, or use of illegal drugs.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Applicant's SOR alleges 11 delinquent debts totaling \$133,524. The debts in SOR ¶¶ 1.h through 1.k are mitigated, leaving seven unresolved delinquent SOR debts totaling \$105,955. He provided insufficient corroborating or substantiating documentary evidence of payments to his other SOR creditors, payment plans, or his communications to those creditors. He did not provide documentation showing his attempts to resolve any of the seven unresolved SOR debts in good faith. His failure to provide more documented evidence of progress resolving the seven unresolved SOR debts shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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. I conclude that financial consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraphs 1.h through 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

MARK HARVEY
Administrative Judge