

DATE: October 9, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-11721
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

As a result of periods of unemployment, inattention to his financial situation, and the financial repercussions of a divorce, Applicant became financially overextended. Although he resolved a child support arrearage and a delinquent federal tax liability, he has not resolved five delinquent debts totaling about \$10,256. Security concerns based on financial considerations are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On May 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on July 14, 2007. He admitted three allegations, denied two, offered explanations, and requested a hearing. The case was assigned to me on August 21, 2007, and heard as scheduled on September 18, 2007. I kept the record open until September 28, 2007, to enable Applicant to submit additional evidence. I received two timely submissions from Applicant, and they have been admitted as Applicant's Exhibits (AX) E and F. DOHA received the transcript (Tr.) on September 24, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 55-year-old software manager for a defense contractor. He has worked for his current employer since July 2005. He has about two years of college but no degree (Tr. 8). He has an interim clearance but has never held a final security clearance (Tr. 9).

Applicant is a contract employee earning \$17.00 per hour. He does not draw a salary and is paid only for hours worked (GX 4 at 5). In response to DOHA interrogatories, he submitted three pay vouchers from October and November 2006 reflecting biweekly net pay of \$24.75, \$949.67, and \$715.77 (GX 4 at 6-8). At the hearing, he testified he has worked "off and on" for the past five years. His longest break between jobs was 10-12 weeks, and there were several breaks of 2-3 weeks (Tr. 52-53).

Applicant rents his home and has a car that is fully paid for (Tr. 63,66). However, has no medical insurance and only about \$4,000 in his retirement account (Tr. 66). He is a diabetic, and he pays for his medications himself at a cost of about \$200 per month (Tr. 67, 69).

Applicant was married in June 1973 and divorced in September 1988. One child was born during the marriage, and Applicant was required to pay child support of \$200 per month (AX A). As of July 1994, he owed an arrearage of \$2,500 for child support (AX B at 2). His pay was garnished in September 2000 to collect the arrearage (Tr. 64). In August 2007, he was notified he owed an arrearage of \$1,625 (AX C). This notification was erroneous, because his child support obligation ended in December 2001 and the arrearage was satisfied by the garnishment (Tr. 55; AX E at 5).

Applicant fell behind on his federal income tax payments starting in 1993. He negotiated an installment agreement with the Internal Revenue Service and satisfied his federal tax obligations in 2006 (AX E at 2, 7-13).

In February 2001, a state tax lien for \$3,548 was filed against Applicant (GX 2 at 2). The tax lien is alleged in SOR ¶ 1.a. He admitted this debt in his answer to the SOR. He testified no payments have been made on this debt because he does not have the funds and has not taken the time to negotiate an installment plan (Tr. 57).

Applicant’s credit report dated August 15, 2006, reflected a credit card debt of \$2,369 that was charged off as a bad debt (GX 3 at 1). This debt is alleged in SOR ¶ 1.b. It arose when Applicant acted “out of love” and arranged a trip to a homecoming event for himself and a companion. He testified he was short of funds but had good credit. When this relationship began to dissolve, he became careless about his finances (Tr. 57-58). He testified he was in the process a trying to make payment arrangements on the debt (Tr. 58), but no evidence of a payment arrangement has been submitted.

The same credit report reflected a delinquent credit card debt of \$3,225, alleged in SOR ¶ 1.c. Applicant denied any knowledge of this debt, but he has taken no action to dispute or resolve it (Tr. 58-59).

Applicant’s credit report dated May 6, 2004, reflected a delinquent telephone bill for \$80 placed for collection, alleged in SOR ¶ 1.d (GX 2 at 2). He denied this debt (Tr. 60). There is no evidence, however, that he has taken any action to dispute it.

The same credit report reflected a credit card debt of \$1,033 that was more than 120 days past due, alleged in SOR ¶ 1.e (GX 2 at 2-3). Although he admitted the debt in his answer to the SOR, he testified he had no recollection of it and had not made any payments on it (Tr. 61). He believes he owes the debt but cannot recall how it was incurred (Tr. 69).

Applicant testified he has been unable to pay the debts alleged in the SOR because his limited income has been devoted to paying the child support arrearage and his delinquent federal income taxes (Tr. 31-34). The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status	Evidence
1.a	State tax lien	\$3,548	Unpaid	GX 2 at 2
1.b	Credit card	\$2,369	Unpaid	GX 2 at 3
1.c	Credit card	\$3,226	Unpaid	GX 2 at 3
1.d	Telephone bill	\$80	Unpaid	Tr. 60; AX E at 14
1.e	Credit card	\$1,033	Unpaid	Tr. 61, 69; GX 2 at 2-3

Applicant testified he attempted to enroll in consumer credit counseling about two months before the hearing but was not accepted because his total indebtedness was less than \$10,000 (Tr.

62). However, the SOR alleges debts totaling \$10,256. After the hearing, he submitted evidence that he has again applied for credit counseling (AX E at 3-4).

Applicant is active in community affairs. He is deeply patriotic and altruistic. In 2006, he received a President's Volunteer Service Award for his voluntary community work (AX E at 15-17). He performed volunteer work in Morocco (Tr. 51), and he received a letter of commendation for his work with an international economic development organization (AX E at 18).

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 occupy a position . . . that will give that person 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 and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *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. *See* 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 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).

CONCLUSIONS

Guideline F (Financial Considerations)

The concern under this guideline is as follows: “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 ¶18.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(b) is a two-pronged condition that is raised where there is “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” AG ¶ 19(g) is raised by “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

AG ¶ 19(a) and (c) are raised by Applicant’s financial history. AG ¶¶ 19(b) is raised by evidence that Applicant used a credit card to finance a discretionary homecoming trip when he was short of funds. He carelessly neglected the debt, and still has no realistic plan to pay it. AG ¶ 19(e) is not raised because there is no evidence of “consistent” spending beyond Applicant’s means. AG ¶¶ 19(g) is not raised because there is no evidence of failure to file returns or fraudulent filing, but only evidence of failure or inability to pay the taxes due.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (b), and (c), the burden shifted to Applicant to produce evidence 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).

Security concerns based on financial problems can be mitigated by showing that “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(a). This mitigating condition is not established, because Applicant’s multiple debts continue to persist and are likely to recur unless he can either raise his income or negotiate favorable resolution of his delinquent debts.

Security concerns under this guideline also can be mitigated by showing that “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(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. Applicant encountered a divorce, intermittent periods of unemployment, and medical problems, all of which were beyond his control. However, all the debts alleged in the SOR were incurred after

his divorce. There is no evidence his medical problems interfered with his ability to work. His intermittent unemployment pattern, however, is relevant to the debts alleged in the SOR and is sufficient to establish the first prong of AG ¶ 20(b). The second prong is not established, however, because he irresponsibly incurred the debt in SOR ¶ 1.b and has neglected to take any meaningful action to resolve it or the remaining debts alleged in the SOR.

Security concerns under this guideline also can be mitigated by showing that “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(c). This condition is not established, because Applicant has not yet begun a counseling program and his financial situation is not under control.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). This condition is not established because Applicant has not yet initiated any effort to resolve the debts alleged in the SOR.

Security concerns under this guideline also can be mitigated by showing “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(e). This condition is not established, because Applicant has taken no action to dispute the credit card reports or the debts alleged in SOR ¶¶ 1.e and 1.d.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant’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. AG ¶¶ 2(a)(1)-(9). Some of these factors are discussed above, but some merit additional comment.

The record reflects two significant debts for child support and federal income taxes that were not alleged in the SOR. A clearance decision may not be based on conduct not alleged in the SOR. ISCR Case No. 01-26479 at *4, 2003 WL 227061192 (App. Bd. Sep. 16, 2003). However, conduct not alleged in the SOR may be considered: “(a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.” ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have limited my consideration of these two debts to an evaluation of the reasons for Applicant’s financial distress, to determine whether the mitigating conditions in AG ¶ 20(b) and (20(d) are established, and in my whole person analysis.

Applicant is a mature adult with 20 years of experience in his field. At the hearing, he presented himself as articulate, very intelligent, and sincere. However, he appeared overwhelmed

by his financial situation. At times, he seemed to be unfamiliar with the scope and nature of his debts, and he did not have a plan for resolving them. To his credit, he resolved the child support arrears and federal tax lien, but he remains financially overextended, making further delinquent debts likely. Although he is very sincere and undoubtedly patriotic, he is vulnerable to pressure, coercion, exploitation, or duress.

Applicant needs a clearance to continue working in his chosen field. However, his need for a clearance does not make him more suitable for a favorable determination. ISCR Case No. 00-0593 at 4 (App. Bd. May 14, 2001). The impact of a clearance decision on Applicant's career is not a relevant consideration in adjudicating his security eligibility. *See* ISCR Case No. 02-09220 at 5 (App. Bd. Sep. 28, 2004).

After weighing the disqualifying and mitigating conditions under Guidelines F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial Considerations: AGAINST APPLICANT)

Subparagraphs 1.a-1.e:

Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman
Administrative Judge