

KEYWORD: Financial

DIGEST: As a result of periods of unemployment and marital separation, Applicant incurred four delinquent debts totaling about \$16,600, including a \$4,200 state tax lien. He has paid two smaller debts and negotiated payment plans for the remaining two. He is receiving financial counseling, has a steady job, and his spouse has found work outside the home. Security concerns based on financial considerations are mitigated. Clearance is granted.

CASENO: 06-11816.h1

DATE: 09/10/2007

DATE: September 10, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-11816
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

Charles Tucker, Jr., Esq.

**SYNOPSIS**

As a result of periods of unemployment and marital separation, Applicant incurred four delinquent debts totaling about \$16,600, including a \$4,200 state tax lien. He has paid two smaller debts and negotiated payment plans for the remaining two. He is receiving financial counseling, has a steady job, and his spouse has found work outside the home. Security concerns based on financial considerations are mitigated. Clearance is granted.

## STATEMENT OF THE CASE

On September 29, 2006, 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), based on four debts, including a state tax lien, totaling about \$16,600.

Applicant answered the SOR in writing on October 27, 2006, and admitted the allegations. On June 24, 2007, he requested a hearing. The case was assigned to me on July 16, 2007, and heard on August 17, 2007, as scheduled. I kept the record open until August 31, 2007, to enable Applicant to submit additional documentary evidence. I received his evidence on August 27, 2007, and it has been admitted as Applicant's Exhibit (AX) L, without objection. DOHA received the transcript (Tr.) on August 27, 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 31-year-old employee of a defense contractor. He is married and has three children. He has held a clearance since September 1997.

Applicant served on active duty in the U.S. Air Force from March 1995 to May 2003. He received a clearance in the Air Force and has held one continuously for about 12 years (Tr. 42-45).

Applicant and his wife began living apart in March 2003. His children lived with his wife, and he lived with his father. His wife was not employed outside the home (Tr. 56). He sent his wife about \$500 every two weeks when he was employed (Tr. 51-53).

After being released from active duty, he joined the Air National Guard. He served on full-time active duty with the National Guard for one month after his release from active duty (Tr. 49). After Applicant completed his one month on full-time active duty with the National Guard, he was unemployed until September 2003, and his only income was about \$200 in military pay for inactive duty training (Tr. 49). In September 2003, he was employed by a defense contractor and began receiving net monthly pay of about \$3,200.

In November 2004, Applicant's in-laws were involved in an accident while driving Applicant's motor vehicle. The vehicle was a total loss, but the insurance paid only the market value of the vehicle, which was less than the balance on Applicant's loan. His in-laws did not reimburse him for the deficiency (Tr. 62-63). He stopped making payments on the car loan in early 2006 (Tr. 65). The deficiency of about \$11,000 is alleged in SOR ¶ 1.d. Applicant negotiated a payment plan

and has reduced the unpaid balance to \$8,393 (Tr. 74; AX A; AX C). The payments are deducted automatically from his bank account (Tr. 79).

Applicant left his job in July 2005 and moved to the state where his wife and children were residing. His in-laws purchased a home, and he intended to live in the home with his family. He promised to pay \$1,600 per month, about half the mortgage payment (Tr. 59). He was unable to find employment at his new location. He returned to his current location in September 2005, and he was hired by his present employer in November 2005 (Tr. 60).

Applicant no longer makes payments on his in-laws' home. His in-laws live in the home but have defaulted on the payments (Tr. 125-26).

Applicant and his wife resumed living together in April 2006 (Tr. 66), after he began his current job. They lived with Applicant's father for about two months (Tr. 62). They began renting their home in June 2006, paying \$1,700 per month (Tr. 67).

The tax lien alleged in SOR ¶ 1.a was the result of Applicant claiming ten exemptions on his taxes instead of the four he was entitled to. His rationale was to reduce the tax withholding to make more money available to pay other bills, not realizing that he would owe more taxes at the end of the year. He thought the plan would work because, even with ten exemptions, he was receiving a federal tax refund (Tr. 85-89). He did not consult with any tax advisors or financial advisors about the consequences of his plan (Tr. 89-90). He did not believe that he violated any tax laws by inflating his exemptions. He has negotiated an agreement to pay \$165 per month to resolve this debt (AX H).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	State tax lien	\$4,207	Paying \$165 per month since Oct. 2006	AX H
1.b	Library bill	\$68	Paid, Oct. 15, 2006	GX 6 at 1; AX E
1.c	Dental bill	\$1,288	Paid, Aug. 2, 2007	AX B, AX L
1.d	Car loan	Originally \$11,038, now \$8,393	Paying monthly since May 2006 (between \$50-\$300 per month)	GX 5 at 2; GX 6 at 2; AX C

In August 2006, Applicant prepared a personal financial statement in response to DOHA interrogatories. He reported net monthly income of \$5,144, expenses of \$2,850, debt payments of \$313 (including the debts alleged in SOR ¶¶ 1.a and 1.d), and a remainder of \$1,980. He did not report any spousal income. At the hearing, he testified his net monthly income is about \$4,400, and his spouse had been employed for about ten months, with a net monthly income of about \$2,400 (Tr. 118).

Applicant's wife drives a car titled in her name only, on which the monthly payments are \$479. Applicant does not own a car, but he drives a car owned by his father (Tr. 115-16).

For most of their married lives, Applicant's wife managed the family finances because her organizational skills were better than Applicant's. However, while they were separated, Applicant did not have the benefit of her skills (Tr. 100). Applicant recently obtained debt counseling from his credit union and is learning to budget and track expenses (Tr. 96-97).

A family friend who has known Applicant for about 20 years and who has been a government contractor with a clearance for about 23 years testified he hired Applicant to handle the information technology at his local church. He described Applicant as knowledgeable, responsible, and a person of high integrity and moral character (Tr. 136-43).

A special security agent for a federal agency who has known Applicant since elementary school described Applicant as very trustworthy and reliable. The agent testified he had also faced losing his clearance because of financial considerations. He was aware of Applicant's financial difficulties and his efforts to resolve them. He testified he had no hesitation supporting Applicant's application for continuation of his clearance (Tr. 145-57).

Applicant's direct supervisor for the past two years described Applicant as "a model employee and of good character." He regards Applicant as very dependable, morally sound, a good leader, and a devoted father and husband (AX K).

## 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).

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

The concern under Guideline F 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."

Applicant's financial problems were not the result of frivolous or irresponsible spending or consistent spending beyond his means. Instead, they were the result of periods of unemployment, some bad financial decisions, and the unexpected destruction of his car by his in-laws. Thus, I conclude AG ¶¶ 19(b) and (e) are not raised. However, his financial history raises AG ¶¶ 19(a) and (c). Further, his intentional overstatement of tax exemptions to avoid tax withholding raises AG ¶ 19(g).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (g), 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 the conduct was "so long ago," or "so infrequent," or "occurred under such circumstances that it is unlikely to recur." If any of the first three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct "does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." AG ¶ 20(a).

Applicant's debts are recent, multiple, and still not fully resolved. They were caused by an unfortunate car accident, marital strife and separation, and periods of unemployment. However, now that Applicant and his wife are reconciled and living together, they are both gainfully employed, and he is obtaining help in overcoming his financial ineptitude, the circumstances causing the problem are not likely to recur. I conclude AG ¶ 20(a) is established.

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's marital problems and his in-laws' car accident were circumstances beyond his control. However, his decision to leave his job and move to an area where he had no job, and his decision to manipulate the tax system were not responsible. I conclude AG ¶ 20(b) is not established.

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). If the person has received counseling, it must also be shown that there are clear indications the problem is being resolved or under control. However, if the person has not received counseling, this mitigating condition may still apply if there are clear indications that the problem is being resolved or under control. The evidence indicates Applicant had his financial problems under control before obtaining debt counseling. The counseling is focused on preventing future problems rather than solving past problems. I conclude AG ¶ 20(c) is established.

Security concerns under this guideline can also be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Applicant has paid the library bill and dental bill, and he negotiated payment plans for the state tax lien and the car loan. I conclude AG ¶ 20(d) is established.

Applicant's deliberate overstatement of state tax exemptions resulted in inadequate withholding from his pay and amounted to an unauthorized loan of funds from the state. It was foolish, because it caused a tax liability he could not afford to pay. I am satisfied, however, that Applicant did not realize his actions were fraudulent and possibly illegal.

### **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).

Applicant is a mature adult with many years of honorable military service. He also has held a clearance for many years, apparently without incident. For most of his married life, he relied on his spouse to manage the family finances. When he encountered marital strife and was temporarily separated from his spouse, he fell into financial difficulty because of unemployment, the unexpected loss of his car, and his financial ineptitude.

Applicant was sincere, candid, and credible at the hearing. He has recognized his ineptitude and sought counseling. His marriage and his career appear to be back on track. He is no longer vulnerable to pressure, coercion, exploitation, or duress. The likelihood of recurrence is low.

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 mitigated the security concerns based on financial considerations. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his security clearance.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.d	For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to continue Applicant's security clearance. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge