

KEYWORD: Financial

DIGEST: Applicant received a Chapter 7 bankruptcy discharge in September 1996. Starting around 1999, he began to accumulate new delinquent debts, which remained unresolved until after he was notified that his security clearance was in jeopardy. Security concerns arising from financial considerations have not been mitigated. Clearance is denied.

CASENO: 06-15893.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-15893
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant received a Chapter 7 bankruptcy discharge in September 1996. Starting around 1999, he began to accumulate new delinquent debts, which remained unresolved until after he was

notified that his security clearance was in jeopardy. Security concerns arising from financial considerations have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On October 17, 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 approved by the President on December 29, 2005, and implemented effective September 1, 2006 (Guidelines). The SOR alleged security concerns raised under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on October 30, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 26, 2007, and heard on April 18, 2007, as scheduled. I kept the record open until May 9, 2007, to enable Applicant to submit additional documentary evidence. I received his additional evidence on May 8, 2007, and it has been admitted as Applicant's Exhibits (AX) Q through double I (II), without objection. DOHA received the hearing transcript (Tr.) on April 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 40-year-old employee of a federal contractor. He has worked for his current employer since January 2003. He is a temporary employee but aspires to earn a permanent position (Government Exhibit (GX) 1 at 3; Tr. 55). He is a high school graduate and has about 20 college credits. He currently holds a security clearance (Tr. 9).

Applicant received a Chapter 7 bankruptcy discharge in September 1996 (SOR ¶ 1.n). About \$30,000 in debts were discharged, most of which were credit card debts (Tr. 50). He was unemployed from September to December 1999 and for an unspecified number of days in July 2002 (GX 1 at 3). He worked a series of temporary low-paying jobs insufficient to sustain his lifestyle, and he began using credit cards for living expenses (Tr. 56-57). The SOR alleges 12 delinquent debts totaling about \$15,701, some of them dating back to 1999. In his answer to the SOR and at the hearing, he admitted the Chapter 7 bankruptcy and all the delinquent debts alleged in the SOR.

The SOR also alleges that Applicant told a security investigator in January 2006 that he did not intend to pay his delinquent debts because of the time elapsed since they were incurred (SOR ¶ 1.m). Applicant admitted this allegation in his answer to the SOR, and he commented, "It is not out of the realm of possibilities here to make proper restitution/payment if need be."

In response to DOHA interrogatories, Applicant submitted a personal financial statement on September 13, 2006. It reflects net monthly income of \$2,948, expenses of \$1,620, no debt payments, and a remainder of \$1,338 (GX 2 at 5). His most recent pay vouchers reflect that his net pay ranges from about \$823 to \$939 per week, depending on overtime (AX N, O, P).

At the hearing, Applicant testified he was “appalled” when he reviewed his credit report. He admitted having an “out of sight, out of mind” approach to his financial situation. He was frightened when he learned that his clearance was in jeopardy as a result of his financial neglect (Tr. 38). On January 12, 2007, after receiving the SOR, he enrolled in a consumer credit counseling service, including a debt management program commencing on February 15, 2007 (AX A, B, J, K, L). He no longer has any credit cards. The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status and Date of Action	Record
1.a	Credit card	\$656	Included in debt management plan (Jan. 12, 2007)	AX C
1.b	Medical	\$363	Included in debt management plan (Jan 12, 2007)	AX C
1.c	Medical	\$107	Paid (Feb. 8, 2007)	AX I
1.d	Credit card	\$3,217	Added to debt management plan (Apr 27, 2007)	AX R, S
1.e	Credit card	\$523	Included in debt management plan (Jan. 12, 2007)	AX C
1.f	Credit card	\$1,288	Compromised and paid in full (Apr. 27, 2007)	AX C, R, V, W
1.g	Car repossession	\$8, 520	Payment plan negotiated; two payments made (Apr. - May, 2007)	AX D-H; Tr. 44-45
1.h	Medical	\$365	Paid in full (Apr. 25, 2007)	AX R, U, EE
1.i	Telephone bill	\$35	Paid in full (May 3, 2007)	AX R, X, Y, HH
1.j	Bad check	\$275	Paid in full (Apr. 24, 2007)	AX R, Z, II
1.k	Bad check	\$220	Paid in full (Apr. 24, 2007)	AX R, Z, II
1.l	Cell phone	\$132	Paid in full (Feb. 2007)	AX R, AA, BB, DD

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 the Guidelines ¶¶ 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* Guidelines ¶ 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.” Guidelines ¶18.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. Guidelines ¶ 19(a) applies where there is an “inability or unwillingness to satisfy debts.” Guidelines ¶ 19(b) is a two-pronged condition that applies 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.” Guidelines ¶ 19(c) applies when there is “a history of not meeting financial obligations.” Guidelines ¶ 19(e) applies

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.” All these disqualifying conditions are raised by the evidence in this case.

Since the government produced substantial evidence to raise the disqualifying conditions in Guidelines ¶¶ 19(a), 19(b), 19(c), and 19(e), 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 is never shifted 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.” Guidelines ¶ 20(a). Applicant’s delinquencies were recent, frequent, and indicative of unreliability and bad judgment. I conclude this mitigating condition is not 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.” Guidelines ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. Applicant experienced short periods of unemployment, but the fundamental causes of his situation were neglect and unwillingness to adjust his lifestyle to his income. He ignored his debts even though he worked for his current employer for more than four years and had funds available. I conclude this mitigating condition 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.” Guidelines ¶ 20(c). This condition is established.

Finally, security concerns under this guideline can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Guidelines ¶ 20(d). 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.” ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

At the hearing, Applicant admitted he was frightened into action by the prospect of losing his clearance. His personal financial statement and the relative ease with which he was able to gain control of his finances during the four months before the hearing demonstrates that he had the ability to resolve his problems long ago. His inaction until well after he received the SOR dissuades me from finding good faith. I conclude this mitigating condition is not established.

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. Guidelines ¶¶ 2(a)(1)-(9). Many of these factors are addressed above, but a few merit additional comment.

Applicant is a mature, well-educated, intelligent, and articulate man with a long history of financial irresponsibility that did not end until he was confronted with the prospect of losing his clearance. His recent remedial actions have significantly reduced the potential for pressure, coercion, exploitation, or duress. However, his financial recovery is too short-lived to warrant a conclusion of rehabilitation or behavioral changes. It is too soon to determine the likelihood of recurrence. "Only with the passage of time will there be a track record that shows whether a person, through actions and conduct, is willing and able to adhere to a stated intention to refrain from acting in a way that the person has acted in the past." ISCR Case No. 97-0727, 1998 DOHA LEXIS 302 at *7 (App. Bd. Aug. 3, 1998).

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 based on financial considerations, and he has not 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.n:	Against Applicant

DECISION

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

LeRoy F. Foreman
Administrative Judge