

KEYWORD: Financial

DIGEST: Applicant fell behind on his debt payments after his income was dramatically reduced in early 2003. Although he began working for his current employer in December 2003 and making good money, he did nothing to resolve his delinquent debts until December 2006. He started making monthly installment payments on three of the eight delinquent debts alleged in the SOR, but he has taken no action regarding five debts. Security concerns based on financial considerations are not mitigated. Clearance is denied.

CASENO: 06-23037.h1

DATE: 08/31/2007

DATE: August 31, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-23037
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

Applicant fell behind on his debt payments after his income was dramatically reduced in early 2003. Although he began working for his current employer in December 2003 and making good money, he did nothing to resolve his delinquent debts until December 2006. He started making monthly installment payments on three of the eight delinquent debts alleged in the SOR, but he has taken no action regarding five debts. Security concerns based on financial considerations are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On March 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 alleged security concerns raised under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on April 15, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 24, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on June 8, 2007, but he did not respond. The case was assigned to me on August 15, 2007.

FINDINGS OF FACT

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

Applicant is a 47-year-old measurement calibration technician employed by a defense contractor since December 2003 (Item 4 at 3). He previously served on active duty in the U.S. Air Force for 20 years, retiring in July 2001 as a technical sergeant (E-6). He held a security clearance for all of his Air Force career, and he received a top secret SCI clearance in September 1997.

Applicant was married in March 2001. He has a 14-year-old stepdaughter, a 7-year-old daughter, and a 5-year-old son. He and his wife separated during the summer of 2006, and he pays his wife child support of \$800 per month (Answer to SOR at 2).

When Applicant retired from the Air Force, he was scheduled for an interview with a defense contractor in the U.S. He also had a backup plan to seek employment with an airline. Both plans were derailed by the terrorist attacks of September 11, 2001. The defense contractor put plans for deploying a new radar system on hold, and the airlines stopped hiring.

Applicant was unemployed from July 2001 until September 2001, when he found employment as a field engineer for a crane repair company. He left this job in May 2002 because his employer began requiring almost continuous travel (Answer to SOR at 1). He then worked as an automotive technician for a luxury car dealer from May 2002 until August 2003, initially at a pay rate comparable to his crane repair job. Because of downturns in the economy and reduced demand for luxury cars, however, his pay as an automotive technician was reduced by about one-third, and he began falling behind on his debt payments.

In early 2003, Applicant's wife and family moved to the United Kingdom, her native home. Applicant joined them in July 2003, and began working in a low-paying job in an Air Force club. At this point he had stopped making payments on his debts (Answer to SOR at 2). In December 2003, he began working for his current employer. He started work at \$11.30 per hour but is now earning \$18.55 per hour (Item 7 at 8). At some time after starting this job, Applicant, his spouse, and their three children moved from a two-bedroom home into a three-bedroom home. The record does not reflect how much this move increased his housing costs.

In December 2006, Applicant began working with a debt counseling agency. He made monthly payments in December through April 2007 on three of the debts alleged in the SOR. Because he did not respond to the FORM, the record does not reflect whether he has continued to make payments after April. In January 2007, he executed a personal financial statement in response to DOHA interrogatories, which reflected monthly net income of \$4,311, expenses of \$2,356, and debt payments of \$775 (Item 7 at 4).

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b, and denied the allegations in SOR ¶¶ 1.c-1.h. The evidence concerning his delinquent debts is summarized in the table below.

SOR	Debt	Amount	Status	Record
1.a	Telephone	\$667	Paying \$30 per month	Item 3 (Answer to SOR) at 7-8; Item 8 at 1 (Credit report dated 3-7-07)
1.b	Utilities	\$482	Unpaid	Item 8 at 1
1.c	Credit card	\$8,126	Unpaid	Item 8 at 1
1.d	Collection account	\$2,309	Unpaid	Item 3 at 7-8; Item 8 at 2
1.e	Collection account	\$4,095	Paying \$105 per month	Item 3 at 7-8; Item 8 at 2
1.f	Collection account	\$14,317	Paying \$300 per month	Item 3 at 7-8; Item 8 at 2
1.g	Credit card	\$2,448	Unpaid	Item 5 (Credit report dated 6-25-04) at 3
1.h	Charge account	\$2,343	Unpaid	Item 5 at 5

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 adjudicative 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.

The disqualifying condition in AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” Applicant’s financial history raises both of these conditions.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) 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 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.” AG ¶ 20(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established 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 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.”

Applicant’s financial problems began when his pay as an automotive technician was reduced, and they were exacerbated when his family moved back to the U.K. and he followed them, working for several months at low pay. There is no evidence he experienced previous financial problems. His financial problems are unlikely to recur if he continues working for his current employer. The circumstances causing his financial distress do not raise doubts about his reliability, trustworthiness, or good judgment. However, his failure to begin resolving his problems until December 2006, three years after he started his current job, raises doubts about his prudence, sense of duty, and good financial judgment. I conclude this mitigating condition is not fully 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 unexpected reduction in his pay as an automotive technician were circumstances beyond his control. He appears to have acted responsibly when the circumstances occurred, but he did not act responsibly once his financial situation stabilized, because he waited three more years to begin resolving his financial problems. I conclude this mitigating condition is not fully 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). This mitigating condition also has two prongs. If, as in this case, the person has received counseling, it must also be shown that there are clear indications the problem is being resolved or under control. The second prong is not established, because there is no evidence that the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.g, and 1.h are being resolved.

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). 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. Applicant waited three years to begin repaying his delinquent debts, after he realized his security clearance was in jeopardy. His debt repayment plan appears to cover only three of the eight debts alleged in the SOR. I conclude this mitigating condition is not established.

The Whole Person

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). Several of these factors are incorporated in the above discussion of Guideline F, but some merit additional comment.

Applicant is a mature adult. He served honorably for 20 years in the Air Force, and he held clearances during all of his Air Force service, apparently without incident. His financial downturn was unfortunate and not entirely in his control. However, his failure to address his financial problems for three years after returning to gainful employment raises doubts about his sense of duty, judgment, and reliability. He has not yet established a track record of systematic payments on his delinquent debts.

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. Accordingly, I conclude 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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