

DATE: March 19, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06865

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant accumulated delinquent debts totaling more than \$25,000. He is relying on a statute of limitations to preclude enforcement of a large credit card debt. A credit union debt was charged off and reported to the Internal Revenue Service as income. He is making small payments on two charge accounts, but the payments barely exceed penalties and interest. He has not mitigated the security concern arising from financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On June 13, 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, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleged security concerns raised under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on July 10, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 15, 2006. The case was heard on February 8, 2007, as scheduled. I left the record open until February 23, 2007, to enable Applicant to submit additional documentary evidence. I received his submission on February 21, 2006, consisting of four documents. I admitted the first three, without objection from Department Counsel, and they are included in the record as Applicant's Exhibits (AX) A, B, C. I sustained an objection to AX D for identification, Applicant's answer to the SOR, on the ground that it is already part of the record. DOHA received the hearing transcript (Tr.) on February 21, 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 41-year-old software engineer employed by a defense contractor. He has worked for his current employer since April 2003. He held a clearance from about 1989 to 1996, but it was administratively terminated when he no longer needed it (Tr. 16). He was married in December 1998, and his spouse is employed outside the home.

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

SOR	Debt	Amount	Status	Record
1.a	Credit card	\$13,253	Settlement discussed Jan 02; unresolved	GX 4 at 2; AX B; AX C
1.b	Credit card	\$18,319	Same as ¶ 1.a	GX 4 at 2
1.c	Credit union	\$1,122	Charged off; reported to IRS as income	GX 4 at 3; AX A
1.d	Charge account-(electronics)	\$4,170	Making payments but still delinquent	GX 2 at 9-11; GX 4 at 2; GX 6 at 2
1.e	Charge account (automotive)	\$1,665	Making payments but still delinquent	GX 2 at 13; GX 5 at 1; GX 6 at 2

The debts alleged in SOR ¶¶ 1.a and 1.b are collection accounts originating with the same creditor. Applicant testified these debts originated when he was unemployed or underemployed for a short time and he exceeded his credit card limit. His SF 86 reflects continuous employment from March 1989 to December 2002, and unemployment from December 2002 until he began working for his current employer in April 2003 (GX 1 at 2-3). He asked the creditor to reduce or eliminate the penalty fees, but he was unsuccessful (Tr. 31). He testified he believed that his credit limit was \$5,000 or \$6,000, and the balance due on the account was about \$8,900 (Tr. 51).

On January 2, 2002, the creditor contacted Applicant offering to settle the account or make special payment arrangements (AX B). Applicant responded on January 27, 2002, stating he was interested in hearing what they had to offer (AX C). He received no response. He did not receive any additional bills from the original creditor or the collection agencies who took over the account, and he has done nothing further to settle the debt. In response to DOHA interrogatories in March 2006, he stated "nothing will be done" about the debt until the original creditor corrects the duplicate entries on his credit report (GX 2 at 2). He believes collection of the debt is now barred by the state statute of limitations (Tr. 34). No evidence other than Applicant's testimony was presented by either party regarding the statute of limitations.

The credit union debt of \$1,122 alleged in SOR ¶ 1.c is unpaid. Applicant decided to delay any payments on this debt until his more recent debts were under control. On December 31, 2006, the credit union charged off the debt and reported it to the Internal Revenue Service as income received by Applicant (AX A).

Applicant is making payments on the debts alleged in SOR ¶¶ 1.d and 1.e. However, the amounts of the payments barely exceed the interest and penalties.

In a personal financial statement submitted in response to DOHA interrogatories in March 2006, Applicant reported net monthly income of \$6,500, expenses of \$3,790, debt payments of \$1,630, and a remainder of \$1,080 (GX 2 at 6). His spouse is employed (Tr. 43), but he did not report her income on his personal financial statement. Since 2000, Applicant and his spouse have often maintained two households because they were employed at different locations.

Applicant's debt payments include two car payments totaling \$1,294. He needs a dependable car because his work requires frequent travel. His car is a 2001 Land Rover purchased in 2001 for about \$23,000, and his wife's car is a 2005 Toyota Prius, recently purchased for about \$30,000 (Tr. 42-43). He owes about \$45,000 for the two vehicles, and his payments are current (GX 2 at 6). He and his wife have two credit card accounts that are current (Tr. 39-40; GX 4 at 2).

Applicant testified he and his spouse "throw everything into the pot" and pay their monthly bills (Tr. 43). He estimates their net monthly remainder is about \$1,000 to \$1,200. They use some of the remainder to repay money they borrowed from their parents (Tr. 45). Applicant does not have a formal budget, but keeps it "on the back of an envelope" or in his head (Tr. 46). He explored the possibility of financial counseling around 1994 but has not done anything recently (Tr. 47). He has no savings or retirement accounts (Tr. 44-45).

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 security guidelines contained in the Directive.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

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). "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *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* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F (Financial Considerations)

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history raises DC 1 and DC 3.

The evidence indicates that the debts alleged in SOR ¶¶ 1.a and 1.b probably are duplicates. When the same conduct is

alleged twice in the SOR under the same guideline, one of the duplicate allegations should be resolved in Applicant's favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶ 1.a. in Applicant's favor.

The credit union debt alleged in SOR ¶ 1.c was cancelled and reported to the IRS as income attributable to Applicant. While Applicant's neglect of this debt is relevant to evaluating his financial habits, the specific debt no longer exists and no longer raises a security concern. Thus, I resolve SOR ¶ 1.c in Applicant's favor.

Since the government produced substantial evidence to raise DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. 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).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or were isolated incidents (MC 2). Directive ¶¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet fully resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions "largely beyond the person's control" (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances beyond his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

Applicant's period of unemployment and his additional living expenses incurred during business travel were circumstances beyond his control. However, there is no evidence Applicant reduced or monitored his spending during periods of unemployment or underemployment or that he did anything to minimize his travel expenses. He did nothing to resolve his indebtedness on the credit card account in SOR ¶¶ 1.b until he had grossly exceeded his credit limit, leaving himself in a bad bargaining position. He purchased a new and expensive car while he was living on the financial edge. His response to having exceeded his credit limit was to stop making payments on the account. His response to double entries on his credit report was to refuse to make further payments. On the other hand, he responded promptly to the creditor's offense of settlement in January 2001, to no avail. However, considering his overall pattern of financial management, I conclude MC 3 is not established.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. MC 4 is not established because Applicant has not sought financial counseling.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. 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). Having been unsuccessful in negotiating a settlement of the debt covered by SOR ¶¶ 1.b, Applicant has relied on the statute of limitations to resolve the debt. Reliance on a statute of limitations does not constitute a good-faith effort to resolve a debt, but the statute is relevant because it makes Appellant less vulnerable to coercion or temptation to engage in illegal conduct to generate funds.

Applicant took no action to resolve the debt in SOR ¶¶ 1.b until he had grossly exceeded his credit limit. His prompt response to the offer of compromise is some evidence of good faith. He took no action to resolve the credit union debt in SOR ¶ 1.e. That debt has been charged off, cancelled, and reported to the IRS as income. While cancellation of the credit union debt reduced Applicant's vulnerability to coercion or exploitation, it did not establish a good faith effort to resolve the underlying debt. Applicant's small payments on the debts in SOR ¶¶ 1.f and 1.g barely exceeded the interest and penalties. He offered no reasonable explanation for making voluntary repayments to his family instead of increasing his payments on delinquent debts. While his need for reliable transportation is clear, his purchase of an expensive SUV at a time when he had numerous delinquent debts appears to go beyond satisfying his need for basic transportation. While Applicant has taken some actions indicating good faith, these actions in the context of his entire financial situation are insufficient to establish MC 6.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under Guideline F, 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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9. Some of these factors were discussed under Guideline F, but some merit additional comment.

Applicant is a mature, well-educated, intelligent adult, but his approach to his financial situation has been haphazard. He has been reactive rather than proactive. His casual, "back-of-the-envelope" approach to financial management shows less than the level of good judgment expected of a person with access to classified information. The amount of the legally enforceable delinquent debt does not raise serious concerns about vulnerability to pressure, coercion, exploitation, or duress. Applicant's financial situation appears manageable, but he is either unable or unwilling to manage it. He shows no motivation to change his financial habits, making continuation or recurrence of his financial problems likely.

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 grant him a 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: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: 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