

DATE: March 30, 2007

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-00309

## **ECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Stephanie C. Hess, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro se*

### **SYNOPSIS**

Applicant was granted a security clearance while on active duty in the U.S. Army in 1995. His clearance was revoked after he received a Chapter 7 discharge in bankruptcy in 1999 and became financially overextended again shortly after his bankruptcy. After he left the Army, he retained a credit counseling firm, paid off a few debts and negotiated payment plans for his unpaid debts. He disclosed the loss of his security clearance to his supervisor and on a handwritten security clearance application, but he mistakenly answered "no" to the question on the electronic version asking if his clearance had ever been suspended or revoked. He has refuted the allegation of falsifying his security clearance application and mitigated the security concerns based on financial considerations. Clearance is granted.

### **STATEMENT OF THE CASE**

On December 28, 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 by the Department of Defense on August 30, 2006 (Guidelines). The SOR alleged security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Applicant answered the SOR in writing on January 10, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 21, 2007, and heard on March 12, 2007, as scheduled. I kept the record open to enable Applicant to submit additional documentary evidence. I received his evidence on March 13, 2007, and it was admitted in evidence as Applicant's Exhibit (AX) T without objection from Department Counsel. Department Counsel's response to AX T is attached to the record as Hearing Exhibit I. DOHA received the hearing transcript (Tr.) on March 23, 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 material coordinator for a federal contractor. He has worked for his current employer since November 2002. Before his current employment, he served on active duty in the U.S. Army for more than eight years. He received a security clearance in April 1995.

In April 1999, while on active duty, Applicant filed for Chapter 7 bankruptcy, listing assets of \$20,153 and liabilities of \$32,795 (Government Exhibit (GX) 6 at 4). He received a bankruptcy discharge in July 1999 (GX 7). He attributed his financial problems to overwhelming credit card debt and an ill-advised no-money-down vehicle purchase that led to a repossession (Tr. 64).

In July 2002, the Army notified Applicant of its preliminary decision to revoke his security clearance because of his on numerous delinquent debts incurred after his Chapter 7 bankruptcy, including a balance of \$10,388 due after a second car repossession and nine smaller debts totaling about \$6,123 (GX 2). He responded on August 14, 2002, explaining the reasons for his bankruptcy and his efforts to resolve his more recent debts (GX 3). On October 18, 2002, his clearance was revoked (GX 4). Applicant decided to leave the Army because his opportunity for advancement was impaired by the loss of his clearance (Tr. 59-60).

On April 22, 2003, Applicant executed a handwritten Questionnaire for National Security Positions, seeking to regain his clearance. He answered "yes" to question 26b, asking if he had ever had a clearance denied, suspended, or revoked (AX S at 10; AX T). However, he erroneously entered a negative answer to the same question on the electronic version of the form, and he did not notice the error when he signed it on June 4, 2003 (GX 1 at 9; Tr. 60-61).

In October 2005, Applicant retained a credit counseling firm to assist him with his finances (AX A), but the firm went out of business before they could assist him (Tr. 42). He hired another firm around December 2006, and he is now making regular payments on his debts (AX G-M). He began by paying \$274 per month to the credit counseling service. In February 2007, he received a promotion and increased his payments to \$1,275 per month (AX H; Tr. 69).

Applicant's credit counseling service has been making regular monthly payments on the cell phone bill alleged in SOR ¶ 1.c, reducing the amount owed from \$1,629 to \$1,177. The creditor has agreed to apply payments to the principal rather than accrued interest. He has reached an agreement on the amount due on the car repossession alleged in SOR ¶ 1.d, and he has been making payments since December 2004, two years before the SOR was issued. In February 2007, he increased his monthly payments on this debt from \$25 to \$100.

Applicant disputed the two personal loans alleged in SOR ¶¶ 1.e and 1.f, because he had been paying them by allotment and believed they had been paid in full. He paid the debts, and the creditor agreed to remove them from his credit report, because they had been erroneously reported as bad debts.

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

SOR	Debt	Amount	Status	Record
1.c	Cell phone	\$1,629	Making payments; balance is \$1,177.	GX 12 at 1; AX I at 3; AX J at 4
1.d	Repossession	\$23,685	Compromised for \$10,950; making payments; balance is \$10,650.	GX 11 at 3; GX 12 at 1; AX E, F, G, K, Q, R; Tr. 83
1.e	Personal loan	\$478	Disputed, compromised, and deleted from credit report	AX D; Tr. 84-85
1.f	Personal loan	\$726	Disputed, compromised, and deleted from credit report	AX C; Tr. 84-85

Applicant earns about \$48,000 per year. His wife recently found employment outside the home and will earn about

\$20,000 per year (Tr. 98). He has no savings. His plan is to aggressively pay off the two delinquent debts within the next year and then start saving for the future (Tr. 99).

Applicant's supervisor for the past five years testified on his behalf. Applicant told him that he had lost his clearance because of his financial situation and needed to reapply for a clearance. The supervisor testified Applicant is a decent, hard-working person who has "tried to do the right thing." He frequently trusts Applicant to run the team in his absence. Applicant has worked hard even though his future is uncertain until the issue regarding his security clearance is resolved (Tr. 107-110).

## 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 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).

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* 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 several disqualifying conditions, 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).

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). This is a four-pronged condition. 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 these three prongs are established, the mitigating condition still is not fully established unless the conduct "does not cast doubt on the individual's currently reliability, trustworthiness, or good judgment." This mitigating condition is not established, because Applicant's debts were recent, numerous, and reflected adversely on his reliability, trustworthiness, and good judgment.

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's financial problems were the product of immaturity and bad judgment. 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 mitigating condition also has two prongs that may be either disjunctive or conjunctive. 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, the mitigating condition may still apply if there are clear indications that the problem is being resolved or under control. This mitigating condition is established, because Applicant has retained a credit counseling firm, and he has successfully resolved two debts, negotiated settlements of the other two, and has established regular payment plans designed to get him out of debt. He has been making regular payments for several months and recently increased the amounts of his payments.

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). This mitigating condition is established. He began making payments on the car repossession in December 2004, before the SOR was issued. With the assistance of a credit counseling firm, he has initiated a good faith effort to get out of debt.

### **Guideline E (Personal Conduct)**

The concern under this guideline is as follows: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." Guidelines ¶ 15. The relevant disqualifying condition in this case is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." Guidelines ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An incorrect entry on a security clearance application, standing alone, does not prove an applicant's state of mind when the entry was made. An administrative judge must consider the record evidence as a whole to determine whether there is direct or

circumstantial evidence concerning an applicant's state of mind at the time of the incorrect entry. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant denied intentionally falsifying his SF 86, and attributed his incorrect answer to an honest oversight. His testimony is supported by his truthful affirmative answer to the same question on his handwritten application. When he was first hired, Applicant told his supervisor his clearance had been revoked or suspended. His earlier disclosures that his security clearance had been suspended or revoked show that he did not intend to be deceptive when he executed the electronic SF 86.

I conclude that Applicant has refuted the allegation of falsification. No disqualifying conditions under Guidelines ¶¶ 16(a) are established. I resolve the allegations in SOR ¶ 2 in Applicant's favor.

### **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 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. Guidelines ¶¶ 2(a)(1)-(9). Many of these factors are incorporated in the above discussion of Guideline F, but some merit additional comment.

Applicant's financial difficulties arose when he was young, immature, and inexperienced. He did not learn his lesson after his bankruptcy in 1999, and he soon found himself financially overextended again. His epiphany seems to have been when he was forced to leave the Army because his financial situation had cost him his security clearance. He is now a mature adult. He has obtained professional assistance to resolve his debt. He was candid, sincere, and believable at the hearing. He has changed his financial habits, is determined to become financially secure, and appears to have established a track record of financial responsibility.

After weighing the disqualifying and mitigating conditions under Guideline E and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegation of falsification under Guideline E and mitigated the security concerns based on financial considerations under Guideline F. Accordingly, I conclude he has 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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.(1): For Applicant

Subparagraph 2.a.(2): For Applicant

**DECISION**

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

LeRoy F. Foreman

Administrative Judge