

DATE: August 14, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01793

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Fahryn E. Hoffman, Esq., Department Counsel

Kathryn D. MacKinnon, Esq.

FOR APPLICANT

John F. Mardula, Esq.

SYNOPSIS

Applicant accumulated numerous delinquent debts totaling about \$7,971 due to financial indiscipline and depression about his marital breakup. After hiring a law firm and enrolling in an on-line financial counseling service, he resolved all his delinquent debts, except two that are disputed, one where the current account holder cannot be located, and one where settlement is pending. The security concern based on financial considerations is mitigated. Clearance is granted.

STATEMENT OF THE CASE

On September 8, 2005, 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 alleges security concerns under Guideline F (Financial Considerations). It alleges ten delinquent debts totaling about \$7,971.

Applicant answered the SOR in writing on October 3, 2005, admitted all the debts alleged in the SOR, and offered explanations. He initially requested a determination on the record in lieu of a hearing. On January 10, 2006, he requested a hearing. The case was assigned to another administrative judge on March 20, 2006, but reassigned to me on March 22, 2006, because of recusal of the original administrative judge. On April 12, 2006, DOHA issued a notice of hearing setting the case for May 23, 2006. On May 3, 2006, Applicant's counsel entered his appearance and requested a continuance. On May 17, 2006, DOHA issued an amended notice of hearing rescheduling the hearing for June 20, 2006. The case was heard as rescheduled. I held the record open until July 10, 2006, to permit Applicant to submit additional documentary evidence. DOHA received the transcript (Tr.) on June 29, 2006. Applicant's additional evidence was received on June 29, 2006, and, without objection from Department Counsel, was incorporated in the record as

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Applicant's Exhibits (AX) F through R.

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 33-year-old senior analyst for a federal contractor. (Tr. 28.) He has worked for his current employer since April 2003. His recent performance appraisals describe him as mature, with a good attitude and leadership skills. He is considered reliable, hard-working, and customer-oriented. (Answer to SOR at 11-12.) During his off-duty hours, he is pursuing a college degree in computer science. (Answer to SOR at 7.)

Applicant served in the U.S. Marine Corps from November 1991 to August 1994. After his discharge from the Marine Corps, he had a series of short-term and temporary jobs. He first began working for a federal contractor in January 1996 and has been employed steadily since that date. (GX 1 at 2-6.) He held a clearance in the Marine Corps, and he received a clearance as a civilian contractor employee in July 1997.

Applicant was married in March 2002. On his security application dated July 3, 2003, he indicated he and his spouse were living at separate addresses. (GX 1 at 7.) At the hearing, he testified he was in the process of being divorced. He does not anticipate that he will be obligated to pay alimony, nor will he receive alimony. No children were born of this marriage. (Tr. 48-49.)

Applicant submitted a personal financial statement on October 24, 2003, reflecting monthly net income of \$5,576, including \$2,224 contributed by his spouse, expenses of \$2,683, debt payments of \$690, and a net remainder of \$2,233. (GX 2 at 2.) He currently earns gross pay of about \$64,158 annually. (AX B.) He currently has no credit cards or revolving charge accounts. (Tr. 43.)

Applicant attributes his financial situation to periods of unemployment, depression during the breakup of his marriage, and lack of financial discipline. (Answer to SOR at 3; GX 2 at 3.) He has hired a law firm to assist him of resolving his financial situation. Several delinquent debts have been resolved or settled, and some are disputed. (AX K, L, M.) He is also utilizing an on-line financial management program to assist him in financial management and negotiation with creditors. (Answer to SOR at 3.)

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

SOR	Debt	Amount	Status	Record
1.a	Vacuum Cleaner	\$267	Paid, 1-10-06	AX Q
1.b	Catalog Store	\$420	Attempting to find current account holder	Tr. 36
1.c	Credit Card	\$1,013	Settled, 6-7-06	Tr. 38; AX O
1.d	Credit Card	\$1,121	Disputed	AX K, L, M
1.e	Credit Card	\$2,165	Settled 8-12-05	GX 7; AX A; Answer to SOR at 5
1.f	Credit Card	\$473	Disputed	Tr. 40; AX K, L, M
1.g	Credit Card	\$1,819	Settled 6-9-06	GX 7; AX I, J, N
1.h	Education Loan	\$360 past due	Account is current	AX F, G, H
1.i	Telephone	\$122	Paid 10-3-05	AX R
1.j	Jewelry Store	\$211	Settlement pending	GX 3; Tr. 42, 60

Applicant began negotiating with the creditor alleged in SOR ¶ 1.e in February 2005, before receiving the SOR. (Tr. 53.) The debt was resolved in August 2005, almost a month before the SOR was issued. (Tr. 54; GX 7; AX A; Answer to SOR at 5.)

Applicant testified he received a settlement offer on the debt alleged in SOR ¶ 1.j, but he has not presented evidence that the debt has been finally resolved. This debt was reported as a "bad debt" on the credit report from March 1997, about the time he first received his clearance. (GX 3.) The remainder of the delinquent debts first appeared on the credit report from July 2003, shortly after Applicant submitted his latest SF 86. (GX 4.)

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. 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).

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.

In evaluating an applicant's conduct, an administrative judge should consider: (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.

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. "[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

Under Guideline F (Financial Considerations), "[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 establishes DC 1 and DC 3.

Since the government produced substantial evidence to establish 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 the delinquency was an isolated incident (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 outside 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).

Although Applicant claims his problems were caused in part by periods of unemployment, the record does not support his claim. His SF 86 reflects a series of temporary and short-term jobs between his discharge from the Marine Corps in August 1994 and his full-time employment by a federal contractor in January 1996, but it does not reflect any periods of unemployment. Similarly, he claims he fell behind in his financial obligations due in part to periods of depression about his marital and family situation, but he does not identify any debts attributable to his marital breakup. 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. Applicant hired a law firm to assist him in disputing some debts and negotiating settlements of others. He also took advantage of an on-line financial management web site. He has made substantial progress, resolving all his delinquent debts except two that are disputed (SOR ¶¶ 1.d and 1.f), one where he has been unable to find the current account holder (SOR ¶ 1.b), and one where settlement is pending (SOR ¶ 1.j). I conclude MC 4 is established.

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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant disclosed his poor financial situation on his SF 86 in July 2003 and during a security interview in October 2003. He began resolving his debts before the SOR was issued. Every debt alleged in the SOR has either been resolved or disputed, except for one debt where settlement is pending and one where Applicant and his lawyers have been unable to find the current account holder. *See* ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006) ("Applicant was not required, as a matter of law, to establish that he had paid off every debt in its original full amount."). I conclude MC 6 is established.

Applicant has held his clearance for more than nine years. He is regarded as a reliable, hard-working employee. After a period of financial indiscipline, he has taken significant steps to right his financial ship. He is not financially overextended. He has significantly changed his financial habits. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the whole person, I conclude he has mitigated the security concern based on financial considerations.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial): 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

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

DECISION

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

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LeRoy F. Foreman

Administrative Judge

1. At the hearing, Applicant submitted AX A through AX E. His post-hearing submissions were labeled as Exhibits A-1 through H. To preserve the exhibit identification system commenced at the hearing, I redesignated Applicant's Exhibits A-1 through H as AX F through R.