



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 07-03234
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

March 12, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on June 15, 2006. On September 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision deny his application, citing security concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 3, 2007; answered the SOR on October 22, 2007; and requested a hearing before an administrative judge. DOHA received the request on October 24, 2007. Department Counsel was prepared to proceed on November 30, 2007. The case was assigned to me on December 6, 2007. DOHA issued a notice of hearing on December 14, 2007, and I convened the hearing as scheduled on January 15, 2008. Government Exhibits (GX) 1 through 10 were

admitted in evidence without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I granted Applicant's request to keep the record open until February 1, 2008, to enable him to submit additional matters. On February 1, 2008, at Applicant's telephonic request, I granted an extension of time until February 19, 2008. On February 19, 2008, Applicant submitted AX H and I, which were admitted without objection. On the same day, Applicant requested another extension of time to obtain and submit additional documents, and I granted a final extension until March 3, 2008. He submitted no additional documents. Department Counsel's response to AX H and I is attached to the record as Hearing Exhibit (HX) I. Applicant's requests for extensions and my responses are attached as HX II. DOHA received the transcript of the hearing (Tr.) on January 23, 2008. The record closed on March 3, 2008. Eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.f. His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is 41-year-old flight operations analyst for a federal contractor (Tr. 42, 44). He served in the U.S. Navy from November 1985 to November 2005 and retired as a petty officer first class. He was unemployed from the date of his retirement until he began working for his current employer in November 2006 (GX 1 at 8; Tr. 44). During his Navy service he received numerous decorations and commendations (AX G). He received a clearance while in the Navy and has retained it in his current employment. He was married in April 1986 and has a 12-year-old son.

Applicant's performance evaluations since January 2007 rate him as a "high contributor" who is "willing to go the extra mile." This rating is the second highest on a scale of five ratings (AX F).

Applicant's financial problems began around 1999. He was assigned to shore duty and began working part-time jobs off duty. Relying on the additional income, he began spending more, and he overextended himself (Tr. 68, 74). He was transferred to a mobile training team involving extensive travel, which forced him to quit his second job (Tr. 69). He counted on his wife to handle the bills while he was traveling (Tr. 70). He was unemployed for a year after he retired and lived with his parents while seeking employment (Tr. 70-71). After he was hired by his current employer, he lived in an apartment away from his family and incurred the expenses of maintaining two homes (Tr. 72). His wife had medical problems that were only partially covered by TRICARE (Tr. 72). He became aware that his financial problems were a security concern when he was interviewed by a security investigator in July 2006 (GX 10). He responded to DOHA interrogatories about his financial situation in May 2007 (GX 3).

In March 2006, Applicant enrolled in a training course for government employment. He dropped out of the course because he did not find it worthwhile. The debt alleged in SOR ¶ 1.a arose when he stopped making tuition payments (Tr. 48). The debt has been settled (AX I Encl 1; Tr. 49-50).

The debt alleged in SOR ¶ 1.b arose when Applicant cosigned a car loan for his mother. His mother made payments for about 18 months, began suffering medical problems, stopped making payments in May 2002, and voluntarily surrendered the car in January 2003. The car was repossessed and sold. The amount of the debt alleged in the SOR is the amount due on the loan, not counting the proceeds of the sale. Applicant contacted the creditor and was informed that they were negotiating with his mother to resolve the deficiency on the debt (Tr. 53). He contacted the creditor again shortly before retiring from the Navy but was unable to obtain any documentation showing how much the creditor received from the sale of the car (Tr. 53-54). At the hearing, he admitted the debt but questioned the amount (Tr. 52). After the hearing, he learned the entry had been deleted from his credit report at the request of the creditor (AX I at 2 and Encl 2). The record does not reflect the reason for the deletion.

Applicant testified at the hearing that the creditor for the credit card debt alleged in SOR ¶ 1.c could not find any record of this account, which was about eight years old. After the hearing, he provided a written statement that he had negotiated settlement of the debt for one-half of the balance and payments of \$266.87 for four months beginning on February 14, 2008 (AX I at 1). Applicant did not produce documentation of the settlement agreement or any payments made.

Applicant paid off the credit card debt alleged in SOR ¶ 1.d in May of 2007, using back pay for a disability rating (Tr. 57; GX 7 at 6; AX I Encl 3). He testified he did not pay off the debt sooner because it was “out of sight, out of mind” (Tr. 59).

The debt alleged in SOR ¶ 1.e was an unsecured personal loan. It also was paid off from Applicant’s back pay for disability (Tr. 61; AX B).

The debt alleged in SOR ¶ 1.f arose from a purchase of a computer in 1999. Applicant testified the computer was for his son (Tr. 62), but that testimony seems implausible because his son would have been only four years old in 1999. The account was placed for collection in 2004. Applicant disputed the credit report entry, but the credit bureau informed him in June 2007 that it was correctly reported (AX B). He has sent letters requesting a payment plan, but the debt remains unresolved (Tr. 63).

The credit card debt alleged in SOR ¶ 1.g became delinquent in 2000. At the hearing, Applicant testified his wife had a credit card from this creditor but he did not. He did not know if he was listed as a joint account holder (Tr. 64). After the hearing, he presented evidence the account is paid (AX I Encl 4).

Applicant testified the creditor for the credit card debt alleged in SOR ¶ 1.h could not find any record of the debt (Tr. 66). After the hearing, Applicant resolved the debt by

transferring a reduced balance to a new “pre-approved” credit card account, which is now listed as current (AX I at Encl 5 and Encl 6).

Applicant disputed the debt for telephone services alleged in SOR ¶ 1.i. Applicant testified he contacted the collection agency, who had no information in their records (Tr. 67). After the hearing, he contacted the original creditor and asked why the debt was no longer on his credit reports. Applicant stated he was informed by the creditor’s representative that the account probably was satisfied (AX I at 2).

Applicant received financial counseling from the Navy as part of his preparation for retirement. He has not enrolled in any credit counseling since his retirement (Tr. 83).

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

SOR	Debt	Amount	Status	Evidence
1.a	Tuition	\$545	Paid	AX C; AX I Encl 1
1.b	Car repossession	\$35,263	Amount disputed; deleted from credit report; status is unclear	AX I Encl 2
1.c	Credit card	\$2,025	Payment plan beginning Feb 08; no documentation	AX I at 1; AX B
1.d	Credit card	\$371	Paid	GX 7 at 6; AX I Encl 3
1.e	Loan	\$2,630	Paid	AX B
1.f	Computer	\$4,565	Unresolved	AX I at 1-2
1.g	Credit card	\$1,673	Paid	AX I Encl 4
1.h	Credit card	\$1,147	Resolved	AX I at 2; AX I Encl 5
1.i	Telephone	\$140	Disputed	AX I at 2

Applicant submitted a budget analysis as of January 14, 2008, reflecting monthly net income of \$4,721, including his military retirement and disability pay. His monthly expenses are \$2,431 and his monthly debt payments are \$1,377, leaving a net monthly remainder of \$913. The computation of the net monthly remainder assumes minimum monthly payments on all credit card balances. The listed debts do not include the installment payments on the debt alleged in SOR ¶ 1.c. The total outstanding balance on all debts is about \$21,966, including \$9,329 in car loans and credit card balances totaling more than \$10,000. (AX E).

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 have 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 revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. 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 that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. 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. 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).

Analysis

The security concern relating to Guideline F is set out in AG ¶ 18 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.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an "inability or unwillingness to satisfy debts." Applicant has not resolved the debts in SOR ¶¶ 1.b, 1.c, and 1.f. He admitted the debt in SOR ¶ 1.b in his answer to the SOR and at the hearing. The deletion of the debt in SOR ¶ 1.b from his credit report is inconclusive, because the reason for the deletion is not reflected in the record. He has failed to document the payment plan for the debt in SOR ¶ 1.c or provide proof of any payments, even though the first payment was due before the record closed. He has been unable to negotiate a settlement of the debt in SOR ¶ 1.f. I conclude AG ¶ 19(a) is raised.

AG ¶ 19(b) is a two-pronged condition that is raised 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." Applicant's spending habits while he was on shore duty and working two jobs suggest frivolous or irresponsible spending, satisfying the first prong. However, he has stated his intent to pay his debts and has demonstrated his intent by resolving some of his debts. I conclude AG ¶ 19(b) is not raised.

AG ¶ 19(c) is raised when there is "a history of not meeting financial obligations." Applicant's financial history raises this disqualifying condition.

AG ¶ 19(e) is raised 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." Applicant's unwise overspending while he was working two jobs raises this disqualifying condition.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (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 never shifts 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.”

The first prong (“so long ago”) is not established, because the debts in SOR ¶¶ 1.b, 1.c, and 1.f, are not yet resolved. The second prong (“so infrequent”) is not established because of Applicant’s multiple delinquent debts. The evidence regarding the third prong (“unlikely to recur”) is inconclusive, because it is too soon to determine whether Applicant will revert to the irresponsible spending habits he exhibited while in the Navy. His current income and expenses have him living on the financial edge, with little flexibility to meet unexpected expenses. Because none of the first three prongs are established, I conclude AG ¶ 20(a) 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.” AG ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. Applicant’s mother’s illness that caused her to default on her car payments, his year of unemployment, the expense of maintaining two households, and his wife’s recent medical problems were conditions beyond his control. However, many of his delinquent debts preceded these events. Although Applicant contacted the creditor regarding the car repossession, his overall attitude toward his delinquent debts was, in his words, “out of sight, out of mind.” It was only after he realized his security clearance was in jeopardy that he began aggressively resolving his debts.

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 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, this mitigating condition may still apply if there are clear indications that the problem is being resolved or under control. Applicant received a type of financial counseling before he retired from the Navy, but it was more a review of his financial status than a program designed to change spending habits. The debts in SOR ¶¶ 1.b and 1.f are unresolved, and there is no evidence that Applicant has

complied with the payment plan for the debt in SOR ¶ 1.c. I conclude AG ¶ 20(c) is not established.

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’s recent efforts to resolve his delinquent debts followed several years of inaction and indifference, and they were triggered by his realization that his clearance was in jeopardy. I conclude AG ¶ 20(d) is not established.

Security concerns under this guideline also can be mitigating by showing “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” AG ¶ 20(e). While Applicant has not provided “documented proof” to support his disputing of the debts in SOR ¶ 1.b, 1.f, and 1.i, his testimony and post-hearing submission are “evidence of actions to resolve the issue.” The dispute regarding SOR ¶ 1.f was decided against him. I conclude AG ¶ 20(e) is established, but only for the debt in SOR ¶ 1.i.

Under the whole person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 individual’s age and maturity at the time of the conduct;
- (5) 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant served his country for more than 20 years and held a security clearance for about eight years, apparently without incident. However, he overextended himself while on active duty, and he still is on the financial edge. Whether he will

exercise financial discipline and resolve his remaining debts cannot be determined. He has not yet established a sound financial track record.

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 eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge