



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-07081

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro se*

January 28, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on November 20, 2006. On September 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline F (Financial Considerations). This 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 September 25, 2007. He answered the SOR in an undated document and requested a hearing before an administrative judge. DOHA received the request on October 22, 2007. Department Counsel filed notice he was ready to proceed on October 31, 2007, and I received the case assignment on November 5, 2007. DOHA issued a notice of hearing on November 8, 2007, and I convened the hearing as scheduled on December 7, 2007. Government

Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits (AX) A through D, and they were admitted without objection.

I granted Applicant's request to keep the record open to submit additional matters. On December 13, 2007, he submitted AX E through H, and they were admitted without objection. His facsimile cover sheet and index of additional exhibits is attached to the record as Hearing Exhibit I. Department Counsel's response to AX E through H is attached to the record as Hearing Exhibit II. DOHA received the transcript of the hearing (Tr.) on December 14, 2007. The record closed on December 21, 2007. Based on the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.b and 1.m. He denied the factual allegations in SOR ¶¶ 1.a and 1.c through 1.l. His admissions in the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 26-year-old electronics technician employed by a defense contractor. He previously served in the U.S. Marine Corps from July 2000 to July 2005 (GX 2). He held a security clearance in the Marine Corps (Tr. 48), and he currently holds an interim clearance (Tr. 14).

In 2002, Applicant's mother became seriously ill, and he cosigned several accounts for her, including the delinquent charge accounts alleged in SOR ¶¶ 1.g, 1.j, and 1.k (Tr. 72). When his mother passed away in August 2002 with virtually no money, Applicant became responsible for her debts (Tr. 37, 52).

Applicant was married in April 2002, the same year his mother became ill. He was a private first class (pay grade E-3) at the time. His wife worked at a job paying slightly more than the minimum wage (Tr. 53).

In January 2003, Applicant's son was born brain-damaged, and he died in August 2003. The medical debt alleged in SOR ¶ 1.i was incurred for his son's treatment, but it was not submitted to TRICARE. Applicant was unaware the claim had not been submitted, and he is in the process of submitting it (Tr. 36).

After the death of their son, Applicant's wife became severely depressed and stopped working (Tr. 37-38, 53). The combination of his mother's debts and his wife's loss of income caused him to fall behind on his own debt payments. Applicant's wife returned to work in early 2004 (Tr. 53).

The debt in SOR ¶¶ 1.a was incurred when Applicant allowed his stepfather to use his social security number to apply for a loan. His stepfather moved to another

state and stopped making payments after Applicant's mother died, leaving Applicant responsible for paying the debt. The debt alleged in SOR ¶ 1.d is the same debt as alleged in ¶ 1.a (Tr. 59-61).

Applicant found a civilian job within a month after being discharged from the Marine Corps, earning about \$35,000 per year (Tr. 47), more than he earned in the Marine Corps (Tr. 56). He has worked for his current employer since January 2006 (Tr. 40), and he currently earns about \$55,000 per year (Tr. 48). He is highly regarded by his current supervisor, who described him as "a consummate professional," and commended him for his hard work and dedication (AX H).

In August 2007, Applicant prepared a personal financial statement reflecting net monthly income of \$2,712, expenses of \$2,160, debt payments of \$122, and a net remainder of \$480 (GX 2 at 17). He did not include his wife's net monthly income about \$1,000 per month or her car payment of \$150, because at the time he was living with a roommate to save money, she was staying with her mother, and they decided to keep their income and expenses separate (Tr. 67).

In October 2007, the month following his receipt of the SOR, Applicant began working with a credit counseling service to resolve the debts alleged in SOR ¶¶ 1.a, 1.d, 1.h, and 1.j. As of the date of the hearing, he had made two monthly payments of \$199 to the service (Tr. 40). His payment plan provides for paying off the debts included in the plan in three years (Tr. 64).

Applicant has submitted the necessary paperwork to withdraw funds from his 401k retirement account to pay the delinquent rent alleged in SOR ¶ 1.b (Tr. 34). He has more than \$5,000 in his retirement account (AX B).

Applicant attempted to contact the collection attorney alleged in SOR ¶ 1.m but could not locate him, after extensive on-line searches. He located the original creditor, who would not accept payment because the account had been sold (Tr. 72). He has never been contacted by the attorney (Tr. 73).

When Applicant began falling behind on some of his debt payments, he reduced expenses by disposing of an additional car, attempting to negotiate partial payments to his creditors, and working off duty at part-time jobs (Tr. 55-56). He paid off several debts that no longer appear on his credit report and are not alleged in the SOR (Tr. 45, 49).

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

SOR	Debt	Amount	Status	Evidence
1.a	Stepfather's loan	\$2,883	Credit counseling plan	Tr. 34, 42; AX C
1.b	Rent	\$1,235	To be paid with 401k loan	Tr. 34, 61, AX B
1.c	Cable equipment	\$522	Debt resolved	Tr. 57-58
1.d	Stepfather's loan	\$2,555	Same as 1.a	AX C
1.e	Car loan	\$156	Payments are current	Tr. 35; AX F at 10
1.f	Cable service	\$55	Paid	Tr. 44; GX 3 at 3
1.g	Mother's credit card	\$100	Paid	Tr. 35, AX G
1.h	Jewelry	\$380	Credit counseling plan	Tr. 43; AX C
1.i	Medical	\$465	Submitted to TRICARE	Tr. 36
1.j	Mother's credit card	\$3,782	Credit counseling plan	Tr. 36, 43; AX C
1.k	Mother's credit card	\$281	Same as 1.g	Tr. 36, 71
1.l	Credit card	\$132	Paid	Tr. 50; AX E at 2
1.m	Collection attorney	\$584	Cannot find attorney; original creditor will not accept payment	Tr. 36-37, 73

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 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 which disqualify, or 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 under Guideline F (Financial Considerations) is set out in AG ¶ 18:

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.

The guideline sets out several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Finally, under AG ¶ 19(e), a security concern can be raised by “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ration, and/or other financial analysis.” Applicant’s history of delinquent debts is sufficient to raise these potentially disqualifying conditions.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(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.”

Applicant incurred numerous debts, some of which were resolved only recently and are not fully paid. Thus, I conclude the first prong (“so long ago”) and second prong (“so infrequent”) are not established. However, Applicant’s financial problems occurred when he cosigned several obligations for his mother, and foolishly allowed his stepfather to use his (Applicant’s) identity to obtain a loan. The medical debt occurred because of the birth and subsequent death of his son. Because these events are not likely to recur, I conclude the third prong (“unlikely to recur”) is established.

Applicant’s conduct facilitating his stepfather’s fraudulent loan application demonstrated bad judgment at the time, raising the question whether the final element of AG ¶ 20(a) (“conduct does not cast doubt”) is established. However, it occurred more than five years ago, during a period when Applicant was dealing with multiple tragic events. Since that incident, Applicant has matured, acted responsibly, and has earned a ringing endorsement from his current employer. Thus, I am satisfied that his foolish transaction with his stepfather does not cast doubt on his current good judgment, and I conclude AG ¶ 20(a) is 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 encountered several events beyond his control: his mother’s illness and death, his stepfather’s failure to keep his agreement to make loan payments, his son’s death, and his wife’s bouts of depression after their son’s death. His largest debts, alleged in SOR ¶¶ 1.a, 1.d, 1.g, and 1.k, were attributable to his mother and

stepfather. He reacted to these events responsibly, paying what he could, negotiating with creditors, disposing of a car, working a second job, and living apart from his wife with a roommate to save money. I conclude AG ¶ 20(b) is 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). Applicant sought help from a credit counseling agency and now has a negotiated payment plan that includes his largest debts. He is about three years away from completing his plan, but the situation appears to be under control. He is earning much more money than he did in the Marine Corps, and he is living frugally. I conclude AG ¶ 20(c) is 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 began resolving his financial situation before the SOR was issued. He has resolved his smaller debts and folded his large debts into a negotiated payment plan. I conclude AG ¶ 20(d) is established.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Some of these factors were addressed above under Guideline F, but some warrant additional comment.

Applicant served honorably in the Marine Corps for five years, and he held a security clearance during his military service, apparently without incident. His financial difficulties arose from a series of family tragedies and a fraudulent loan application by his stepfather. He is now gainfully employed, financially stable, and highly regarded by his supervisor. He was sincere and candid at the hearing, and I found his testimony credible.

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 mitigated the concerns based on financial considerations. Accordingly, I conclude he has 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

My formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25, are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.m:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge