



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-07154  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Joel R. Rosenberg, Esq.

July 3, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his security clearance application on December 5, 2006. On January 28, 2008, 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). 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 February 1, 2008; answered it on February 14, 2008; and requested a hearing before an administrative judge. DOHA received the request on February 19, 2008. Department Counsel was prepared to proceed on March 17, 2008, and the case was assigned to me on March 20, 2008. DOHA issued a notice of hearing on March 27, 2008, scheduling the hearing for April 3, 2008. Applicant declined to waive the 15-day notice requirement of the Directive ¶

E3.1.8, and he requested additional time to retain counsel and prepare for the hearing. On March 31, 2008, I granted Applicant's request. The email correspondence concerning a hearing date is attached to the record as Hearing Exhibit (HX) I.

DOHA issued a second notice of hearing on May 12, 2008, scheduling the hearing for May 29, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified on his own behalf, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through N, which were admitted without objection. I granted Applicant's request to keep the record open until June 30, 2008, to enable him to submit additional documentary evidence. Applicant timely submitted AX O through V, and they were admitted without objection. Department Counsel's response to AX O through V is attached to the record as Hearing Exhibit II. DOHA received the transcript of the hearing (Tr.) on June 5, 2008. The record closed on June 30, 2008. Eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations except SOR ¶ 1.b. 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 a 66-year-old security guard for a federal contractor. He has a high school education. He has worked for his current employer since August 1980, and he has held a clearance since January 1982.

Applicant has been separated from his spouse since June 1990. He has four adult children and five grandchildren (Tr. 60-61). His spouse is self-supporting, but he keeps her on his medical and dental insurance plan because she has no medical and dental benefits from her job (Tr. 61).

A city police detective who has known Applicant for many years considers him dependable, responsible, courteous, and trustworthy. He described Applicant as "the most honest and dependable person" he knows (AX N).

Applicant's daughter testified that her father has a good reputation in the community for truthfulness and honesty. He is a very private person, and he is "very giving" at Christmas (Tr. 93-94).

An ordained minister and friend of Applicant who has known him for 29 years described Applicant as quiet and reserved. He testified there has never been any reason to question Applicant's honesty or integrity (Tr. 98-100).

Applicant's son-in-law has known Applicant for about 13 years. He testified Applicant is a wonderful neighbor and a good citizen. "Everybody loves him." He could

not imagine Applicant doing anything at work that would affect his employment or any governmental interest (Tr. 102-04).

In 2001, Applicant inherited between \$225,000 and \$250,000 from his father. He promptly began spending money on his children and himself. In accordance with his father's wishes, he gave each of his four children \$5,000 apiece (Tr. 62). He bought two cars, extensively remodeled his home, bought gifts for his children and grandchildren, paid for the weddings of his two daughters, and paid for the honeymoon of one daughter. He took his children to the Bahamas, Puerto Rico, and twice to Disneyland (Tr. 75). He opened numerous credit card accounts, often because there was a discount on the initial purchases if a new account was opened (Tr. 64). He admitted at the hearing that at Christmas he "went a little crazy" for his children and grandchildren (Tr. 64). Without realizing it, he spent more money than he inherited, and he accumulated more credit card debt than he could pay. He used a home equity loan to pay about half the debt. He began falling behind on his payments in 2005 and 2006 (Tr. 80).

The SOR alleged 14 delinquent debts totaling about \$22,552. Applicant's credit report dated December 22, 2006 reflected that the debt alleged in SOR ¶ 1.d was in good standing (GX 3 at 6), and his credit report dated January 11, 2008 reflected a zero balance on that account (GX 2 at 5). Department Counsel conceded that the debt for \$394, alleged in SOR ¶ 1.e, had been paid (Tr. 18).

Applicant presented documentary evidence of partial payment of the debt alleged in SOR ¶ 1.b (Answer to SOR; GX 4 at 7-8). He presented documentary and testimonial evidence that the debts alleged in SOR ¶¶ 1.c, 1.f, 1.l, and 1.m had been paid in full (Tr. 71; AX D, G, S, and T). He also presented evidence that monthly payments were being made on the debts alleged in SOR ¶¶ 1.a, 1.b, 1.j and 1.k (AX C, F, H, J, P, and Q). He presented evidence that other debts not alleged in the SOR were resolved, but he did not link the evidence to the debts alleged in the SOR (AX B and C). He asserted that the debts alleged in SOR ¶¶ 1.g, 1.h, 1.i, and 1.n had been paid in full (Tr. 58; AX A), but he presented no documentary evidence to support his assertion.

Applicant recently started collecting Social Security, increasing his monthly income by about \$1,724 per month. His monthly net income is about \$3,484, his living expenses are about \$845, his monthly mortgage payment is about \$747, and his credit card payments are about \$630, leaving a net monthly remainder of about \$1,261. In December 2007, he received a settlement for injuries in a car accident. His net recovery was about \$41,000 (Tr. 77).

Applicant has about \$12,000 in money market accounts, \$3,000 in a savings account, and about \$2,000 in his checking account (Tr. 59). He owns two cars that are paid off, and they are worth a total of about \$35,000 (Tr. 60). He owns his home, which is worth about \$94,000 (Tr. 74). Applicant was on short-term disability from about July 4 to July 30, 2007 (GX 4 at 29), but the record does not reflect the financial impact, if any, of his disability.

## 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**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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.” 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.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” 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.”

All these disqualifying conditions are raised by the evidence. With respect to AG ¶ 19(a), it appears that Applicant initially was unable to pay his debts; but he now has sufficient savings and income to pay them all, but he has not done so.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (b), (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 two prongs (“so long ago” and “so infrequent”) are not established because Applicant incurred numerous delinquent debts, and some of them are not yet satisfied. The third prong (“under such circumstances that it is unlikely to recur”) is established. Applicant led a modest life until he inherited a large sum of money. He spent with abandon until he was deeply in debt. He is not likely to inherit or otherwise acquire such a large sum of money again.

The fourth prong (“does not cast doubt”) is not established. Applicant exhibited extremely poor judgment by squandering his inheritance and not paying attention to his financial situation. Because his exercise of bad judgment was recent, continuing through 2005 and 2006, when his debts started becoming delinquent, it raises doubt about his current 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.” AG ¶ 20(b). This mitigating condition is not established because Applicant’s financial problems were totally the result of his voluntary acts.

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 is not established. Although he retained legal counsel for his hearing, there is no evidence he has sought or received financial counseling.

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).

Although Applicant asserted that all debts alleged in the SOR were paid or otherwise resolved, he failed to produce evidence to support his assertion that the debts alleged in SOR ¶¶ 1.g, 1.h, 1.i, and 1.n were paid in full. He has the financial resources to pay all his debts in full, but has not done so. He offered no reasonable explanation for not paying off the debts alleged in SOR ¶¶ 1.a, 1.b, 1.j, and 1.k. He bears the burden of establishing a mitigating condition, and he did not sustain his burden of establishing AG ¶ 20(d).

## Whole Person Concept

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) the 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 is a mature adult with a long record of faithful service to his employer. He has held a security clearance for many years without incident. However, he did not exhibit the level of maturity and responsibility expected of a mature adult, a father, and a grandfather when he squandered his inheritance and ruined his credit rating. His testimony at the hearing was disjointed, and he did not appear to have a good grasp of the facts. 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**

Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Subparagraphs 1.g-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraph 1.n:	Against 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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LeRoy F. Foreman  
Administrative Judge