



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-14064  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

May 12, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his security clearance application on March 12, 2007. On January 10, 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 January 17, 2008; answered it on February 5, 2008; and requested a hearing before an administrative judge. DOHA received the request on February 7, 2008. Department Counsel was prepared to proceed on February 20, 2008, and the case was assigned to me on March 7, 2008. DOHA issued a notice of hearing on March 24, 2008, and an amended notice of hearing on March 27, 2008, setting the hearing for April 23, 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. I granted Applicant's request to keep the record open until May 7, 2008, but he did not submit any additional evidence. DOHA received the transcript of the hearing (Tr.) on May 1, 2008. The record closed on May 7, 2008. Eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations. 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 56-year-old explosives truck driver employed by a defense contractor. He has two years of college but no degree (Tr. 7). He has worked for his current employer for more than 30 years (Tr. 29). He has never been married and is not legally responsible for supporting anyone but himself. He has never held a security clearance.

In the early 2000s, Applicant started accumulating delinquent credit card debt. As of the date of the SOR, he had 13 delinquent debts totaling more than \$85,000. The debts alleged in SOR ¶¶ 1.d and 1.e are the same debt, as are the debts alleged in SOR ¶¶ 1.l and 1.m. The duplicate debts are not included in the above totals.

Applicant's financial problems began when he was injured on the job and disabled for about six weeks. As a result of his injury, he could no longer work 50-55 hours per week, and the loss of overtime pay left him financially overextended (Tr. 37). He could not recall the date of his injury, but he remembered it was before he began working as an explosives truck driver in April 2002 (Tr. 35).

In a personal financial statement submitted in response to DOHA interrogatories on December 10, 2007, Applicant reported net monthly income of \$2,084, monthly expenses of \$1,160, debt payments of \$715, and a net remainder of \$208 (GX 2at 5). At the hearing, he testified his net monthly income was about \$2,100, expenses were about \$1,530, and the remainder was about \$500 minus the cost of gasoline for commuting (Tr. 45-50).

Applicant testified he thought the debt alleged in SOR ¶ 1.a had been resolved with an agreement to pay \$160 per month (Tr. 38, 48-49). He had no documentation of this resolution at the hearing and did not provide anything during the time allowed for post-hearing submissions. He has not made any payments on the other debts alleged in the SOR.

Applicant contacted a credit counseling agency at one time, but did not follow up after the first interview (Tr. 52). He does not have a budget or a specific plan to resolve his financial situation, which he characterizes as a mess (Tr. 29, 53).

## 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 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 SOR alleges 15 delinquent debts totaling more almost \$89,000. The debts alleged in SOR 1.d and 1.l duplicate other debts alleged in the SOR. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶¶ 1.d and 1.l. in Applicant’s favor. The remaining 13 delinquent debts total more than \$85,000.

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.” 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.” Applicant’s financial history raises these three disqualifying conditions.

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). The first prong (“so

long ago”) is not established because his delinquent debts remain unresolved. The second prong (“so infrequent”) is not established because his debts are so numerous. The third prong (“unlikely to recur”) is not established because Applicant is financially overextended and has no plan to right his financial ship. Finally, his financial history raises doubts about his good judgment. 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 persons’s control and responsible conduct, must be established. Applicant’s brief period of disability and his inability to work overtime were conditions beyond his control. However, he has done nothing to adjust his lifestyle to his income and virtually nothing to settle, compromise, or otherwise resolve his debts. I conclude AG ¶ 20(b) 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.” AG ¶ 20(c). Applicant has not received counseling of any type, and his financial problems are not under control. 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). Applicant testified he thought he had resolved the debt in SOR ¶ 1.a, but he provided no documentation even after being given two weeks after the hearing to provide it. He admitted he had done nothing to resolve the remaining debts. AG ¶ 20(d) is not established.

## **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. He presented himself as articulate and intelligent, but he appears to be drifting through life. He has neglected his financial obligations for years. He has no concrete plan for resolving his situation. 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 grant him 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.c, 1.e-1.k, and 1.m-1.o:	Against Applicant
Subparagraphs 1.d and 1.l:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge