



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-15153  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

July 31, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations), based on four delinquent debts totaling \$23,381, including a delinquent student loan for \$20,237. Applicant paid off all the debts except the student loan, and he has been making regular payments on the student loan for six months. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his security clearance application on December 18, 2006. On March 13, 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. 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 March 19, 2008; answered it on March 31, 2008; and requested a hearing before an administrative judge. DOHA received the request on April 4, 2008. Department Counsel was ready to proceed on April 25, 2008, and the case was assigned to me on April 29, 2008. DOHA issued a notice of hearing on May 9, 2008, scheduling the hearing for May 28, 2008. Applicant requested additional time to prepare, and I granted his request. On May 29, 2008, DOHA issued a second notice of hearing, rescheduling the hearing for June 17, 2008. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 7 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 July 2, 2008, to enable him to submit additional evidence. Applicant timely submitted AX H through L, and they were admitted without objection. Department Counsel's response to AX H through L is attached to the record as Hearing Exhibit I. DOHA received the transcript of the hearing (Tr.) on June 26, 2008. The record closed on July 2, 2008.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d. His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old digital test technician employed by a federal contractor. He has worked for his current employer since December 2006. He previously worked as a temporary contract employee, supporting the same employer from January to December 2006. He has also been self-employed since December 2004, servicing and repairing electronic scanning equipment (Tr. 48). He received an associate's degree in electronic engineering and technology in 1991, and has been taking college classes to obtain his bachelor's degree since January 2000 (Tr. 6, 39-40). He is unmarried and has three children, ages 20, 15, and 8, who live with him and his girlfriend (Tr. 41). He had an interim clearance until the SOR was issued, but he has never held a final security clearance.

Applicant's security clearance application reflects he was laid off from work and unemployed from July 2003 to September 2003. He was injured on the job in January 2004 and unemployed until April 2004. He was laid off again in May 2005 and unemployed until September 2005.

Applicant's current supervisor describes him as dedicated, extremely conscious of security procedures, hard-working, respectful, and a team player (AX L). A co-worker regards him as a dedicated employee and a "great asset" to his company (AX K).

The SOR alleges four delinquent debts: a medical debt (¶ 1.a), a utility bill (¶ 1.b), a credit card account (¶ 1.c), and a delinquent student loan (¶ 1.d). The medical debt was for treatment of Applicant's injuries in an automobile accident in 2004. He thought all medical bills had been paid by insurance, but his credit report reflected a delinquent debt for \$851. He contacted the collection agency and paid \$756, the amount the agency claimed due on the account. He has been unable to identify the creditor, if any, for the remaining \$95 listed on his credit report, but is willing to pay it if the creditor can be identified (Tr. 33-34). Applicant's credit report dated June 30, 2008 reflects a zero balance on this account (AX I at 1).

The utility bill in SOR ¶ 1.b arose after Applicant sold his house in 2005. The utility company had been estimating his bills, but they read the meter after Applicant moved and determined he owed \$2,994. This bill appears to include the cost of installing a water heater (Tr. 35). The debt has been paid in full (AX B; Tr. 34-35).

The \$55 delinquent credit card debt alleged in SOR ¶ 1.c was on an account opened in 2006. In January 2008, Applicant received an offer to settle the account for \$600, paid it, and received a letter from the collection attorneys stating the account had been settled (AX E; Tr. 35-36). Applicant's credit report dated June 30, 2008, reflects a zero balance on this account (AX I at 1).

Applicant is in a loan rehabilitation program for the delinquent student loan alleged in SOR ¶ 1.d. Applicant's mother co-signed his student loans around 1988, and applicant sent his mother \$150 per month to pay the loans starting in 2000. He was unaware that there were two separate loans and his mother was not making the payments on one of them. He discovered the account was delinquent when he was interviewed by a security investigator (GX 7 at 2-3). His credit reports reflected that the last activity on this account, with a balance of \$20,237, was in February 2004 (GX 4 at 3; GX 5 at 2; GX 6 at 9). He has been making monthly payments of \$220 by automatic debit from his checking account since January 2008. If he adheres to the monthly payment plan, his account will be rehabilitated and considered current after he makes the October 2008 payment (AX G; AX J).

Applicant testified that the security investigator "did [him] a favor" by confronting him with his delinquent debts, because he had taken his good credit for granted and did not pay enough attention to his financial situation (Tr. 45). He now pays close attention to his finances and subscribes to a credit monitoring service (Tr. 46).

Applicant works about 20 hours a week and earns about \$3,000 per month as a government contractor. He earns between \$500 and \$1,500 per month from his private business (Tr. 48). He submitted a personal financial statement in January 2008, reporting total net monthly income of about \$3,936 per month and monthly expenses between \$2,885 and \$3,235, leaving a remainder between \$1,051 and \$701. He went through a period of accumulating debts, but now his only outstanding debt is the student loan (Tr. 51). His car is paid for, and he has no credit cards (Tr. 51). He has about

\$30,000 in checking accounts, and he intends to use these funds to purchase a house (Tr. 66).

## 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.”

Applicant’s financial history raises AG ¶¶ 19(a), (c), and (e). AG ¶ 19(b) is not raised because there is no evidence of “frivolous or irresponsible spending.” 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 two prongs (“so long ago” and “so infrequent”) are not established, because Applicant had multiple delinquent debts and the student loans are still in the process of being rehabilitated. The medical bills attributable to his automobile accident arose from circumstances that are “unlikely to recur,” but the utility bills, delinquent credit card account, and delinquent student loan did not arise from unusual circumstances. The final prong (“does not cast doubt”) is established by Applicant’s aggressive responses to his delinquent debts after he learned about them and his proactive measures to prevent recurrence. I conclude AG ¶ 20(a) is established for the medical bills, but not for the others.

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. The automobile accident giving rise to the delinquent medical bills was beyond Applicant’s control, and he has resolved this debt. Applicant’s periods of unemployment also were beyond his control, but his unemployment ended before the delinquent credit card account was opened, and his unemployment appears to have been unrelated to the medical bills. He did not attribute his delinquent student loans to unemployment, but rather to being unaware that there were two loans and his mother was paying only one. I conclude AG ¶ 20(b) is established for the medical bills, but not for the others.

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 has not received counseling, but it appears his financial problems are under control. 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 was unaware of some delinquent debts until he applied for a security clearance. Upon learning of his delinquent debts, he took prompt and aggressive action. His only outstanding debt is his student loan, and it appears to be under control. I conclude AG ¶ 20(d) is 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). Applicant produced evidence that he paid the balances in full for the debts alleged in SOR ¶¶ 1.a and 1.c, and he produced a recent credit report showing zero balances on both accounts. He is willing to pay these two small amounts if the creditors can be identified. I conclude AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.a and 1.c.

### **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, intelligent, educated adult. He was sincere, candid, well prepared, and credible at the hearing. Like many applicants, he did not pay attention to his credit history until he applied for a clearance and discovered that his financial record raised security concerns. Confronted with the facts, he responded promptly and aggressively.

Applicant is not required, as a matter of law, to establish that he has paid off each and every debt alleged in the SOR. All that is required is that he demonstrate that he has “established a plan to resolve his financial problems and taken significant actions to implement that plan.” ADP Case No. 18900 at 4 (App. Bd. Jun. 6, 2008),

citing ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006) and ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2005). Applicant has resolved all the delinquent debts alleged in the SOR except for the student loan on which he has been making regular payments for six months. Based on his recent track record and his credible testimony at the hearing, I am confident that he will continue making payments on his student loans until the account is rehabilitated.

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 security 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 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:

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

Subparagraphs 1.a-1.d: For Applicant

### **Conclusion**

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

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LeRoy F. Foreman  
Administrative Judge