



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-15506
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

July 28, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application on November 16, 2006. On February 22, 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 February 28, 2008; answered it on March 15, 2008; and requested a hearing before an administrative judge. DOHA received the request on April 4, 2008. Department Counsel was prepared to proceed on April 25, 2008, and the case was assigned to me on April 29, 2008. DOHA issued a hearing notice on May 9, 2008, scheduling the hearing for May 28, 2008. On May 16, 2008 Applicant requested a continuance to enable him to gather documentary evidence, and I granted his request on the same day. Applicant's request and my ruling are attached to the record as Hearing Exhibit (HX I).

DOHA issued a second notice of hearing on May 29, 2008, rescheduling the hearing for June 17, 2008. I convened the hearing as rescheduled. 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 E, 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 documentary evidence. Applicant timely submitted AX F, and it was admitted without objection. Department Counsel's response to AX F is attached to the record as Hearing Exhibit II. DOHA received the transcript (Tr.) on June 26, 2008. The record closed on July 2, 2008.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR and offered explanations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old multimedia producer for a defense contractor. He has worked for his current employer since November 2006. He also works part-time as a self-employed multimedia producer. He has never held a security clearance.

Applicant has been married since June 2005. In May 2007, his spouse was seriously injured in a boating accident and has been unable to work (GX 5 at 2; AX C). Even with health insurance, Applicant has incurred significant medical expenses for the care and treatment of his spouse.

Applicant testified he began having financial problems in 1997 or 1998, when he worked as a salesman for a computer retailer. After the retailer went out of business, Applicant worked for his father for eight years and was able to resolve his debts (Tr. 36-37). When the market declined and Applicant started making less money, he again started having financial problems (Tr. 37).

Applicant accumulated the 14 debts alleged in the SOR, totaling about \$89,273, by purchasing media equipment for his part-time business (GX 4 at 2). Most of the debts became delinquent in late 2005, before his spouse's boating accident, except for the debts alleged in SOR ¶ 1.a and 1.h, which became delinquent in early 2007. None of the debts alleged in the SOR were resolved as of the date of the hearing, and no payments had been made on any of the debts.

Applicant testified he had several settlement offers pending that he would resolve in 10 to 15 days. He presented documentary evidence that one debt had been settled, but he could not connect the evidence to any debts alleged in the SOR (AX B; Tr. 51-53). He did not present any evidence of settlements in his post-hearing submission. He presented one post-hearing document (AX F) from his landlord, showing that he and his spouse have been tenants since July 2006 and have never been late in paying their rent.

Applicant's biweekly net pay is about \$1,840 (Tr. 45). He presented a budget worksheet at the hearing (AX A), listing his monthly net income as between \$3,650 and \$3,700, and itemizing monthly expenses totaling \$3,650, leaving no net remainder. His monthly budget includes some apparently discretionary items such as cable/internet (\$120), books and magazines (\$50), movies and concerts (\$20), and hobbies (\$100). No expenses attributable to his part-time business are included. He testified he has canceled his credit cards and now pays cash for all his purchases (Tr. 40-41).

Applicant consulted with a debt counselor in 2006 and a bankruptcy attorney in 2007, but he took no action after these consultations. He testified he suspected his inability to manage his finances might be due to attention deficit disorder, and that he intend to undergo evaluation (AX D and E; Tr. 39, 43). He presented no evidence at the hearing or in his post-hearing submission reflecting a diagnosis of attention deficit disorder.

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 SOR alleges 14 delinquent debts totaling about \$89,273. 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(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).

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 has numerous delinquent debts that are not resolved. None of the debts appear to have been caused by unusual circumstances. Applicant’s long history of overspending casts doubt on his current reliability, trustworthiness, and 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 financial problems are partially the result of business downturns, but he neglected to adjust his spending habits when they occurred. His medical expenses and loss of a second income after his spouse’s injury were beyond his control, but they occurred after the debts alleged in the SOR already were delinquent. 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 consulted with a debt counselor and a bankruptcy attorney; but he has taken no action, and his financial problems are not under control. I conclude this mitigating condition 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 presented no evidence of payment, compromise, or settlement of any debts alleged in the SOR. I conclude this mitigating condition 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 intelligent, well-educated, and articulate, but he seems unable to adjust his spending to his income. He was personable, sincere, and candid at the hearing, but he seems to be drifting through life, with no plan for resolving his financial problems. He is understandably distracted and concerned by his spouse’s serious injuries, but they occurred after the debts alleged in the SOR were already delinquent. 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:

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

Subparagraphs 1.a-1.n: Against Applicant

Conclusion

In light of all of the circumstances, 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