



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-15699
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

August 29, 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 June 1, 2007 (Government Exhibit (GX) 4). On February 29, 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 answered the SOR on March 31, 2008, and requested determination on the record without a hearing. Department Counsel submitted the government's written case on May 21, 2008. On May 28, 2008, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. Applicant received the FORM on June 2, 2008, and he did not respond. The case was assigned to me on August 15, 2008.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.d through 1.r. His admissions are incorporated in my findings of fact.

Applicant is a 47-year-old senior designer for a defense contractor. He has worked for his current employer since January 2003. He served on active duty in the U.S. Air Force from October 1978 to October 1984 and was separated with a general discharge under honorable conditions (GX 4 at 24-25). He received a security clearance in December 1991 (GX 4 at 29).

Applicant filed a Chapter 7 bankruptcy petition in March 2002 and received a discharge in July 2002 (GX 5). The bankruptcy is alleged in SOR ¶ 1.a. The financial problems leading to this bankruptcy arose when Applicant's wife underwent surgery that was not covered by insurance, and Applicant was laid off from his job at about the same time. He returned to work in January 2003 at half his previous pay (Answer to SOR).

After his bankruptcy discharge, Applicant again began accumulating new delinquent debts. The SOR alleges 17 delinquent debts totaling about \$11,727. The largest debt is for \$3,998 on a delinquent car loan (SOR ¶ 1.c). Three are for less than \$100 (SOR ¶¶ 1.h, 1.m and 1.n). The debts alleged in SOR ¶¶ 1.d and 1.r are for \$137 and \$124 respectively.

Applicant denied the debt alleged in SOR ¶ 1.b. He stated he paid off the debt in March 2005, but he could not produce any documentation that the debt was satisfied.

Applicant denied the judgment alleged in SOR ¶ 1.c, the largest debt alleged. In his answer to the SOR, he claimed this debt was discharged in his Chapter 7 bankruptcy. The judgment predated the bankruptcy petition, and the creditor who obtained the judgment was listed in the schedule of creditors and received a copy of the discharge order (GX 5).

Applicant's spouse has multiple ongoing medical problems, and Applicant suffers from hypertension. The two of them take a total of 15 prescribed medications, incurring uninsured copayments of \$20 for each medication. His spouse averages three doctor visits per month, incurring a copayment of \$40 for each visit. Applicant's net monthly income is about \$2,400 per month, and his expenses are about \$1,950, leaving a net remainder of about \$450 for debt repayment (Answer at 2).

In March 2007, Applicant received a \$6,000 check from a source not reflected in the record, and he used the money to pay off a car loan. When the check was dishonored, he was required to repay the bank at a rate of \$350 per month. The dishonored check is now paid off (GX 9 at 5).

Applicant states he is unable to afford the monthly payments of \$250 to \$300 his creditors have offered. His plan is to pay off one small debt each month and save money each month until he has enough to pay off one of the larger debts in full (Answer at 1). His answer to the SOR outlining his plan was submitted in March 2008, and he received the FORM in June 2008, but he did not submit any evidence in response to the FORM to show that any of the smaller debts had been paid.

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.

Two potentially disqualifying conditions under this guideline are relevant to 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.” Applicant’s financial history establishes both of these disqualifying conditions.

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

Several mitigating conditions are relevant to this case. 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 two prongs ("so long ago" and "so infrequent") are not established because Applicant has numerous debts that are not yet resolved. The third prong (unusual circumstances not likely to recur) is established, because his financial problems were aggravated by the dishonored check that was uttered to him. The final prong is not established because Applicant has not established a track record of timely payment of debts. The bad check has been resolved, but Applicant has not demonstrated that he is now carrying out his plan of paying off one small debt each month. 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 person's control and responsible conduct, must be established. Applicant encountered several conditions beyond his control: loss of his job, reemployment at half his previous pay, the bad check, and recurring health problems for himself and his spouse. Applicant's bankruptcy petition in 2002 was a reasonable and prudent response to his loss of employment and unexpected medical expenses that were not covered by insurance. Thus, I conclude AG ¶ 20(b) is established for the Chapter 7 bankruptcy alleged in SOR ¶ 1.a. He has not demonstrated reasonable conduct concerning the delinquent debts that he accumulated after his bankruptcy, because he has not demonstrated that he is carrying out his plan to eliminate some of his smaller debts, even though he apparently has the financial means to do so.

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 because Applicant has not sought or received counseling and the problem is not under control.

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). This condition is not established because Applicant has not demonstrated that he is carrying out his plan to resolve his debts.

Security concerns under this guideline also can be mitigated 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 disputed the debts alleged in SOR ¶¶ 1.b and 1.c. He was able to document the resolution of the debt in SOR ¶ 1.c, but he provided no documentation for his dispute

regarding SOR ¶ 1.b. I conclude AG ¶ 20(e) is established only for the debt alleged in SOR ¶ 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 adult who has encountered numerous financial challenges. In his answer to the SOR, he articulated a good grasp of his financial situation and a reasonable plan to resolve his delinquent debts. He has failed, however, to demonstrate that he is carrying out his plan.

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:

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

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.r:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman