



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04668
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

July 31, 2009

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 August 30, 2007 (Government Exhibit (GX) 1). On September 17, 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 received the SOR on September 28, 2008, answered it in an undated document, and requested determination on the record without a hearing (GX 3). DOHA received his response on October 14, 2008. Department Counsel submitted the government's written case on December 3, 2008. On December 4, 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 apparently did not receive the FORM, and it was resent on May 18, 2009. Applicant received the FORM on May 21, 2009. On June 18, 2009, he telephonically requested an extension of time to respond, and the deadline was extended to July 6, 2009. He submitted additional evidence on June 26, 2009. The case was assigned to me on July 7, 2009.

Amendment of SOR

The last four debts alleged in the SOR were mislabeled as 1.i, 1.j, 1.k, and 1.l. They should have been labeled as 1.l, 1.m, 1.n, and 1.o. Applicant noted the error in his answer to the SOR, and Department Counsel moved to amend the SOR to conform to Applicant's answer. I granted the motion to amend, and the corrections have been handwritten on the SOR.

Findings of Fact

Applicant is a 42-year-old access control officer employed by a federal contractor. He has worked for his current employer since April 2006. He previously worked for another federal contractor from July 2001 to October 2003 and for a state government from August 2000 to June 2001. He was unemployed from February to August 2000. He worked for a state government from February 1998 to February 2000 and for a private company from January 1995 to February 1998. He previously received a clearance in September 1997. The record does not reflect whether he currently holds a clearance.

Applicant was married in June 1998 and divorced in March 2007. He has a child for whom he is obligated to pay child support of \$600 per month.

The SOR alleges 15 delinquent debts totaling about \$51,476. Five debts (SOR ¶¶ 1.g-1.j and 1.l) totaling about \$33,702 are for student loans. SOR ¶ 1.a alleges unpaid state taxes. SOR ¶¶ 1.b, 1.c, 1.f, and 1.n allege delinquent credit card accounts. SOR ¶ 1.d alleges an unpaid telephone bill. SOR ¶ 1.e alleges a child support arrearage. SOR ¶ 1.k alleges a deficiency after car repossession. SOR ¶ 1.m alleges an unpaid judgment obtained by a vacation resort. SOR ¶ 1.o alleges an unspecified collection account. All the delinquent debts were incurred after Applicant's period of unemployment ended in August 2000.

In his answer to the SOR, Applicant provided evidence that the debts alleged in SOR ¶¶ 1.a and 1.b were paid, and that he was making payments on the debts alleged in SOR ¶¶ 1.f-1.j, 1.l, and 1.n. In his response to the FORM, he provided evidence that

the child support arrearage in SOR ¶ 1.e had been resolved; the balance on the debt in SOR ¶ 1.f had been reduced from \$3,526 to \$1,492; and the balance on the debt alleged in SOR ¶ 1.n had been reduced from \$3,379 to \$988. The debts in SOR ¶¶ 1.c, 1.d, 1.k, 1.m, and 1.o are not resolved. Applicant has not disputed any of the debts.

In response to DOHA interrogatories on June 10, 2008, Applicant stated he had been making payments to the creditors listed in SOR ¶¶ 1.c, 1.f, and 1.n, but had been unable to continue the payments because he had been laid off from his employment (GX 7 at 15, 25, and 26). This lay-off apparently was from a second job, because in his response to the FORM dated July 26, 2009, he stated he expected to continue making his monthly payments but that payments on the student loans were reduced due to loss of his second job.

In a personal financial statement (PFS) attached to the DOHA interrogatories of June 2008, Applicant reported net monthly income of about \$2,326, expenses of \$2,790, and debt payments totaling \$395 on the debts alleged in SOR ¶¶ 1.c, 1.f, and 1.n (GX 7 at 30). It does not reflect any payments on his student loans. If his information is accurate, he has a negative cash flow of \$559 per month.

Applicant's PFS lists real estate worth \$400,000. He does not list any mortgage payments, but he does list rent of \$1,051. His credit report dated April 18, 2008, reflects a real estate mortgage with payments of \$1,056 and a remaining balance of \$125,000 (GX 7 at 3). The record does not reflect whether this property is Applicant's residence or a residence occupied by someone else such as his ex-wife. The record also does not reflect whether Applicant could use the equity in this property to repay his delinquent debts.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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 made “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.

Four potentially disqualifying conditions are relevant. AG ¶ 19(a) is raised by “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised by “a history of not meeting financial obligations.” AG ¶ 19(e) is raised by “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.” AG ¶ 19(g) is raised by “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

Applicant’s financial history raises AG ¶¶ 19(a), (c), and (e). AG ¶ 19(g) is not raised by the state tax debt, because there is no evidence that the debt was caused by a failure to file a return or by filing a fraudulent return.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (e), the burden shifted to Applicant 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 mitigating condition is not established, because Applicant’s debts are recent and numerous, and there is no evidence that they were the result of circumstances that are unlikely to recur. His divorce arguably qualified as a circumstance that is unlikely to recur, but he has provided no evidence of the impact of his divorce on his financial situation, other than his obligation to pay child support.

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). Applicant’s divorce might qualify as a circumstance beyond his control, but he presented no evidence of the financial impact of the divorce. He was unemployed from February to August 2000, but he presented no evidence showing that this period of unemployment caused his current financial problems. All the delinquent debts alleged in the SOR appear to have been incurred after he returned to the workforce. His loss of a second job appears to have occurred at some time in 2008, long after the debts were already 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). This mitigating condition is not established because there is no evidence Applicant has sought or received debt 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). Good faith means acting 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). The evidence shows that Applicant paid the debts alleged in SOR ¶¶ 1.a and 1.b, paid the child support arrearage alleged in SOR ¶ 1.e, and has been making payments on the debts alleged in SOR ¶¶ 1.f-1j, 1.l, and 1.n. AG ¶ 20(d) is established for these debts, but not for the others alleged in the SOR.

An applicant is not required, as a matter of law, to establish resolution of each and every debt alleged in the SOR. See ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008). An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There also is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *Id.*

To his credit, Applicant negotiated payment plans with three creditors and made periodic payments until he lost his second job. He apparently has been making some payments on his student loans, also dependent on his second job. He has no specific plan to address the remaining delinquent debts, and he does not appear to have the financial means to do so.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guideline F in my whole person analysis.

My evaluation of Applicant’s sincerity, candor, and credibility is limited because this case is being decided without a hearing. Applicant has responded in detail to DOHA

inquiries, the SOR, and the FORM. Nevertheless, he has provided little information about the impact of his employment lay-offs and his divorce on his financial situation. In spite of his efforts to resolve some of his debts, the evidence does not show that he is likely to achieve financial stability in the foreseeable future.

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 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.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraphs 1.e-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	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