



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-05342
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John B. Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

May 29, 2009

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations), based on 50 delinquent debts reflected in Applicant's credit bureau reports. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on October 12, 2007. On December 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on March 2, 2009; answered it on the same day; and requested a hearing before an administrative judge. DOHA received the request on March 3, 2009. Department Counsel was ready to proceed on March 17, 2009, and the case was assigned to me on March 19, 2009. DOHA issued a notice of hearing on March 30, 2009, scheduling the hearing for April 20, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but submitted no documentary evidence. I kept the record open until May 6, 2009, to enable him to submit evidence. DOHA received the transcript on April 28, 2009. Applicant timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. Department Counsel's response to AX A is attached to the record as Hearing Exhibit I. The record closed on May 6, 2009.

### **Procedural Issue**

At the hearing, Applicant stated he was unaware of his right to be represented by a lawyer or personal representative (Tr. 4-5). The previously-assigned Department Counsel sent the "discovery packet" containing GX 1 through 4 to Applicant on March 16, 2009. The cover letter explained to Applicant that he was entitled to retain an attorney or obtain the help of a personal representative, but it was sent to his former address (HX II). Applicant stated he never received the packet (Tr. 22).

The currently-assigned Department Counsel determined on March 26, 2009, that Applicant had moved to another address (HX III). A discovery packet was never sent to Applicant's new address and apparently was not forwarded from his previous address (Tr. 23).

The notice of hearing sent to Applicant and his employer included a memorandum entitled, "Prehearing Guidance for DOHA Industrial Security Clearance (ISCR) Hearings and Trustworthiness (ADP) Hearings." This memorandum also advised the recipient of the right to be represented by an attorney or personal representative (HX IV). Applicant received the hearing notice, but he stated he did not remember seeing the memorandum attached to the notice (Tr. 20). I conclude that he received the memorandum attached to the hearing notice but paid no attention to it.

I asked Applicant if he would have hired a lawyer if he knew he was entitled to one, and he responded in the negative, stating he could not afford a lawyer. I asked him if he was willing to continue the hearing while representing himself, and he responded in the affirmative (Tr. 24). Based on Applicant's statement that he would not have hired a lawyer even if he had been aware of his right to do so, and his affirmative statement that he desired to continue the hearing and represent himself, I conducted the hearing as scheduled.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.j, 1.k, 1.l, 1.m, 1.o, 1.q, 1.r, 1.x, 1.cc, 1.dd, 1.ee, 1.gg, 1.rr, and 1.ss. He did

not address the allegations in SOR ¶¶ 1.a, 1.e, 1.n and 1.bb in his answer. At the hearing, he admitted the delinquent debts alleged in SOR ¶¶ 1.a, 1.p, and 1.t. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 36-year-old shipping and receiving clerk employed by a defense contractor. He began working as a temporary employee in October 2007, and he became a permanent employee on November 1, 2007. He has an interim clearance, but he has never held a final clearance (Tr. 5, 32-33).

Applicant is unmarried and has no children (Tr. 31). He has a high school education and has taken some college courses (Tr. 5).

Applicant testified the delinquent rent alleged in SOR ¶ 1.a occurred when he stopped paying rent because his landlord refused to make repairs to the apartment (Tr. 35-36). His landlord obtained a judgment against him, which is unsatisfied.

The debts alleged in SOR ¶¶ 1.b-1.d were delinquent rent payments. They were satisfied by garnishment (Tr. 36-37; AX A).

The bad checks alleged in SOR ¶¶ 1.e, 1.f, 1.k-1.o, 1.q, 1.r, and 1.gg, and the overdraft charges alleged in SOR ¶ 1.p and 1.t arose when Applicant's checking account was overdrawn. He testified he believed the bad check alleged in ¶ 1.gg was paid, but he could not produce any documentation of payment. He knew the checks had been dishonored, but he did nothing because no one contacted him about them.

Applicant testified his delinquent medical bills (SOR ¶¶ 1.g-1.i, 1.s, 1.u, 1.v, 1.y-1.aa, 1.ii, 1.mm-1.pp, 1.tt-1.vv, and 1.xx) arose when he had a pacemaker implanted in December 2003 (Tr. 64). His medical insurance carrier changed from the time he had the implant until he was released from the hospital, and each carrier insisted that the other carrier was responsible for the medical bills (Tr. 29-30). He testified his father has made inquiries with the insurance companies, but Applicant has not filed disputes with the credit bureaus or had any contact with the insurance companies or medical providers (Tr. 59).

Applicant denied the delinquent cable bill alleged in SOR ¶ 1.w, testifying it was his father's account. He and his father have the same name. He called the cable company, and was informed there was no account with his social security number, but he has not filed a dispute with the credit bureau (Tr. 48-49). He produced no written documentation regarding this account.

Applicant testified he believed the delinquent debt for satellite television service alleged in SOR ¶ 1.x was paid, but he was unable to produce any documentation (Tr. 49-50). He testified his video store account referred to in SOR ¶ 1.hh was current, but he was unable to produce documentation (Tr. 54-55). He denied the debt for an unreturned video alleged in SOR ¶ 1.ww, but he produced no evidence concerning the status of his account with the video store (Tr. 56).

Applicant neither admitted nor denied the debt alleged in SOR ¶ 1.bb. He testified he believed it was for furniture, but he was unable to produce any evidence it was resolved (Tr. 51).

Applicant admitted that the three delinquent cell phone debts alleged in SOR ¶¶ 1.cc-1.ee were unpaid. He testified he believed the cell phone debt alleged in ¶ 1.jj duplicates the debt alleged in ¶ 1.ee (Tr. 55).

Applicant denied the collection accounts alleged in SOR ¶¶ 1.ff and 1.qq, and the two restaurant debts alleged in 1.kk and 1.ll, and they remain unresolved. He admitted the collection account debt in SOR ¶ 1.rr, and it is unpaid. The tuition bill alleged in SOR ¶ 1.ss has been paid (GX 3 at 5).

In response to DOHA interrogatories, Applicant submitted a personal financial statement (PFS) on July 30, 2008 (GX 2 at 8). His PFS reflects net monthly income of \$1,884, expenses of \$1,312, and a debt payment of \$185, and monthly remainder of \$4,126. The remainder is miscalculated; it should be \$387.

The table below summarizes the evidence concerning the debts alleged in the SOR.

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Answer</b>	<b>Status</b>	<b>Evidence</b>
1.a	Rent	\$2,795	None	Unpaid	Tr. 35-36
1.b	Rent	\$623	Admit	Paid by garnishment	Tr. 36; AX A
1.c	Rent	\$1009	Admit	Paid by garnishment	Tr. 37; AX A
1.d	Rent	\$2,012	Admit	Paid by garnishment	Tr. 37; AX A
1.e	Bad check	\$466	None	Unpaid	Tr. 40
1.f	Bad check	\$100	Admit	Unpaid	Tr. 41-42
1.g	Medical	\$35	Deny	Unpaid	Tr. 42-43
1.h	Medical	\$35	Deny	Unpaid	Tr. 42-43
1.i	Medical	\$250	Deny	Unpaid	Tr. 42-43
1.j	Bad check	\$100	Admit	Unpaid	Tr. 42
1.k	Bad check	\$76	Admit	Unpaid	Tr. 42
1.l	Bad check	\$105	Admit	Unpaid	Tr. 42
1.m	Bad check	\$80	Admit	Unpaid	Tr. 42
1.n	Bad check	\$78	None	Unpaid	Tr. 42
1.o	Bad check	\$69	Admit	Unpaid	Tr. 42
1.p	Overdraft charge	\$1,085	Deny	Admitted at hearing; unpaid	Tr. 47
1.q	Bad check	\$65	Admit	Unpaid	Tr. 42
1.r	Bad check	\$65	Admit	Unpaid	Tr. 42
1.s	Medical	\$964	Deny	Unpaid	Tr. 42-43

(Table continued on next page.)

1.t	Overdraft charge	\$341	Deny	Admitted at hearing; unpaid	Tr. 47
1.u	Medical	\$179	Deny	Unpaid	Tr. 42-43
1.v	Medical	\$55	Deny	Unpaid	Tr. 42-43
1.w	Cable	\$1,077	Deny	Disputed; father has same name; no documentation	Tr. 48
1.x	Satellite TV	\$361	Admit	Maybe paid, but no documentation	Tr. 49-50
1.y	Medical	\$40	Deny	Unpaid	Tr. 42-43
1.z	Medical	\$373	Deny	Unpaid	Tr. 42-43
1.aa	Medical	\$795	Deny	Unpaid	Tr. 42-43
1.bb	Furniture	\$1,973	None	Unpaid	Tr. 51
1.cc	Cell phone	\$176	Admit	Unpaid	Tr. 52
1.dd	Cell phone	\$578	Admit	Unpaid	Tr. 52
1.ee	Cell phone	\$727	Admit	Unpaid	Tr. 53
1.ff	Collection	\$334	Deny	Unpaid	Tr. 54
1.gg	Bad check	\$31	Admit	Maybe paid; no documentation	Tr. 54
1.hh	Video store	\$18	Deny	No documentation	Tr. 54-55
1.ii	Medical	\$519	Deny	Unpaid	Tr. 42-43
1.jj	Cell phone	\$404	Deny	Duplicates 1.ee	Tr. 55
1.kk	Restaurant	\$159	Deny	Unknown	Tr. 55-56
1.ll	Restaurant	\$160	Deny	Unknown	Tr. 56
1.mm	Medical	\$190	Deny	Unpaid	Tr. 42-43
1.nn	Medical	\$326	Deny	Unpaid	Tr. 42-43
1.oo	Medical	\$373	Deny	Unpaid	Tr. 42-43
1.pp	Medical	\$519	Deny	Unpaid	Tr. 42-43
1.qq	Collection	\$646	Deny	Unpaid	Tr. 56
1.rr	Collection	\$52	Admit	Unpaid	Answer to SOR
1.ss	Tuition	\$1,240	Admit	Paid	GX 3 at 5
1.tt	Medical	\$6,137	Deny	Unpaid	Tr. 42-43
1.uu	Medical	\$244	Deny	Unpaid	Tr. 42-43
1.vv	Medical	\$88	Deny	Unpaid	Tr. 42-43
1.ww	Video store	\$90	Deny	Unpaid	Tr. 56
1.xx	Medical	\$100	Deny	Unpaid	Tr. 57

### 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 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 SOR alleges 50 delinquent debts. Applicant established that four debts were paid (SOR ¶¶ 1.b-1.d and 1.ss). He admitted 18 debts in his answer to the SOR and two additional debts at the hearing.

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.

The potentially disqualifying condition in AG ¶ 19(a) is raised by an "inability or unwillingness to satisfy debts." AG ¶ 19(c) is raised by "a history of not meeting financial obligations." Applicant's financial history raises these two disqualifying conditions, shifting the burden to him 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).

The evidence indicates that the delinquent cell phone debt alleged in SOR ¶ 1.jj duplicates the debt alleged in SOR ¶ 1.ee. 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 the debt alleged in SOR ¶ 1.jj in his favor.

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). Applicant's debts are recent and frequent. With the exception of the medical bills, they did not occur under unusual circumstances unlikely to recur. His inaction regarding his numerous delinquent debts 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). Applicant’s medical problems requiring a pacemaker implant were beyond his control, but he has not acted responsibly to resolve the debts that were incurred. While some of the debts should have been covered by his medical insurance, many of the medical bills are for small amounts consistent with copayments or deductibles. He has relied on his father to make inquiries and has taken virtually no personal action to resolve the debts he believes should be covered by insurance. 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 counseling, and his financial problems are 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). 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). This mitigating condition is established for the debts alleged in SOR ¶¶ 1.b-1.d and 1.ss, but not for the remaining debts.

Finally, 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 testified the delinquent cable bill alleged in SOR ¶ 1.w was his father’s debt, but he provided no documentation that his father was the account holder, and he has taken no action to have the debt deleted from his credit history. I conclude AG ¶ 20(e) 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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature adult. He was articulate and candid at the hearing. He was aware of his bad checks and medical bills before he applied for a clearance. His neglect of his financial situation raises doubts about his reliability, trustworthiness, and good judgment.

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**

Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraphs 1.e-1.ii:	Against Applicant
Subparagraph 1.jj:	For Applicant
Subparagraphs 1.kk-1.rr:	Against Applicant
Subparagraph 1.ss:	For Applicant
Subparagraphs 1.tt-1.xx:	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