



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-07005
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: Tanya Bullock, Esq.

November 25, 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 a security clearance application on January 3, 2008. On August 7, 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 acknowledged receipt of the SOR on August 12, 2008; answered it on September 3, 2008; and requested a hearing before an administrative judge. DOHA

received the request on September 4, 2008. Department Counsel was ready to proceed on September 17, 2008, and the case was assigned to me on September 22, 2008. DOHA issued a notice of hearing on September 29, 2008, scheduling the hearing for October 21, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified on his own behalf and presented the testimony of two witnesses. The record closed on October 21, 2008. DOHA received the transcript (Tr.) on October 30, 2008.

### **Findings of Fact**

In his answer to the SOR and at the hearing, Applicant denied the allegations in SOR ¶¶ 1.d and 1.d and admitted the remaining allegations. He also suggested that the debts alleged in SOR ¶¶ 1.j and 1.l duplicated ¶ 1.c and 1.i. His admissions are incorporated in my findings of fact.

Applicant is a 58-year-old software systems engineer for a federal contractor. He is married and has two children, ages 10 and 8. He graduated from college in June 1973 with a bachelor of science degree in software engineering. He started a master's degree program in management science and completed all his course requirements, but he abandoned his graduate studies when he found full-time employment (Tr. 65-65). He received a security clearance in January 1974 while working for a defense contractor and held it for 11 years (Tr. 100), but he does not hold a current clearance. He worked in the private sector until September 2001, when he was laid off. At the time, his effective income, with stock options and other forms of compensation, was about \$200,000. He testified most of the debts alleged in the SOR were incurred before he was laid off (Tr. 69).

Applicant was unemployed until August 2002. He moved back to his home state; and he, his wife, and his children lived with his mother (Tr. 73). He was employed in various jobs, including low paying "day labor" jobs and as a telemarketer, from September 2002 until January 2003. He began working with a mortgage company in 2003 and eventually became a senior loan officer, earning about \$24,000 per year (Tr. 80). He began working for his current employer in December 2007, and he now earns about \$92,000 a year. His former supervisor at the mortgage company has offered him an opportunity to work part-time as a loan officer to generate additional income, and he has accepted the offer, earning an additional \$900 per month (Tr. 57; GX 3 at 5).

Applicant's supervisor at his primary job testified his performance has been "superior." He testified he "couldn't ask for better." He described Applicant as reliable, dependable, intelligent, and a person who responds to challenges aggressively (Tr. 27).

The SOR alleges 21 delinquent debts totaling about \$38,772, including 9 default judgments and two other unpaid judgments totaling \$24,511. Applicant admitted all the delinquent debts except the default judgment alleged in SOR ¶ 1.d and the four default judgments alleged in SOR ¶ 1.e. Department Counsel presented no evidence to support SOR ¶ 1.e.

Over the years, Applicant contacted his creditors to determine who owned the debt, but he did not negotiate any payment plans. His supervisor at the mortgage company also is his credit counselor. His credit counselor negotiated with Applicant's creditors and received settlement offers on several delinquent debts. Although Applicant first estimated he had about \$500 per month available for delinquent debts, the credit counselor determined that Applicant could cut back on expenses and generate about \$1,000 per month for delinquent debt payments. He advised Applicant to first pay off the smaller creditors and then negotiate payment plans on the larger debts (Tr. 49). As of the date of the hearing, no payments had been made on any of the delinquent debts (Tr. 52).

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

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	Judgment (Time Share)	\$6,383	Unpaid	Tr. 41-42
1.b	Judgment (Credit card)	\$1,867	Settlement offer for \$1949	Tr. 42
1.c	Judgment (Credit card)	\$6,208	Unpaid	Tr. 42
1.d	Judgment (Rent)	\$780	Satisfied	Tr. 43; Answer
1.e	Judgments (Rent)	\$3,530	No evidence	Tr. 13
1.f	Judgment (Personal Loan)	\$1,000	Claim abandoned	Tr. 43, 91, 104; Answer
1.g	Judgment (Medical)	\$979	Unpaid	Tr. 44
1.h	Judgment (Credit card)	\$3,764	Settlement offer for \$2,258	Tr. 44
1.i	Cell phone	\$311	Unpaid	Tr. 44
1.j	Cell phone	\$418	Unpaid	Tr. 44
1.k	Telephone	\$250	Settlement offer for \$125	Tr. 45
1.l	Credit card	\$6,851	Settlement offer for \$4,200	Tr. 45
1.m	Credit card	\$817	Unpaid	Tr. 45-46
1.n	Telephone	\$219	Unpaid	Tr. 46
1.o	Medical bill	\$651	Unpaid	Tr. 46
1.p	Medical bill	\$480	Unpaid	Tr. 46
1.q	Storage	\$374	Unpaid	Tr. 47
1.r	Cell phone	\$482	Settlement offer for \$381	Tr. 47
1.s	Cable	\$170	Unpaid	Tr. 47
1.t	Credit card	\$3,073	Settlement offer for \$615	Tr. 44-45
1.u	Telephone	\$165	Settlement offer for \$82	Tr. 45

Applicant is living modestly. He does not own a home, and he has only one credit card, with a credit limit of \$150. He has one car, a seven-year-old minivan (Tr. 124). He

admitted at the hearing that his delinquent debts have been “off the radar screen” because his creditors have not been contacting him. He testified he learned in the mortgage business that being proactive toward “essentially dormant” debts can have a negative effect on a credit score. He has been working on improving his credit score with a view toward buying a home (Tr. 127).

## **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 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." There is no evidence of frivolous or irresponsible spending. Applicant was living within his means until he lost his job in September 2001. However, his record of longstanding delinquent debts raises AG ¶¶ 19(a) and (c), 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).

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. 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."

Neither of the first two prongs (“so long ago” or “so infrequent”) is established because Applicant has numerous delinquent debts that are not resolved. The third prong (“unlikely to recur”) is established because Applicant is employed, highly regarded by his supervisor, lives modestly, and has kept up with his current debts. Nevertheless, his lack of effort to resolve his delinquent debts after being employed for 10 months, and his failure to execute the plan devised by his credit counselor 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 loss of employment and subsequent periods of underemployment were circumstances beyond his control. He initially acted responsibly, seeking other employment, accepting positions far below his qualifications, and moving in with his mother to save money. His lack of effort after he obtained his current position in December 2007, however, was not responsible. I conclude he has not fully established the second prong of AG ¶ 20(b).

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’s credit counselor presented him with a detailed plan to resolve his debts and negotiated settlement offers for many of the debts, but Applicant had taken no action to execute the plan as of the date of the hearing. Thus, I conclude AG ¶ 20(c) 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 resolved the judgment for unpaid rent (SOR ¶ 1.d) and the judgment based on the personal loan (SOR ¶ 1.f), but he took no action to resolve his remaining delinquent debts. He admitted at the hearing that he allowed the debts to remain dormant in order to focus on improving his credit score and qualifying for a home loan. AG ¶ 20(d) is not 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 suggested that two debts alleged in SOR ¶¶ 1.j and 1.l might be duplicates of SOR ¶¶

1.c and 1.i, but he offered no evidence that he had disputed the duplicate debts. 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 talented, well-educated, mature adult. He was articulate, sincere, candid, and credible at the hearing. He held a clearance for 11 years without incident. He has worked hard to avoid additional delinquent debts, and he has a modest lifestyle. He has taken a step in the right direction by obtaining the services of his former supervisor as a credit counselor, but he has failed to carry out the financial plan he was given, even though he now has the means to begin paying off his debts. Until he establishes a track record of systematically resolving his delinquent debts, he will remain vulnerable to pressure, coercion, exploitation, or duress. See Directive ¶¶ E3.1.37 through E3.1.41 (reconsideration authorized after one year).

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.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant
Subparagraphs 1.g-1.u:	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.

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LeRoy F. Foreman  
Administrative Judge