



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-08336  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

July 10, 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 a security clearance application on May 27, 2008. On March 17, 2009, 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 20, 2009; answered it on April 1, 2009; and requested a hearing before an administrative judge. DOHA received the request on April 9, 2009. Department Counsel was ready to proceed on April 24, 2009, and the

case was assigned to me on April 27, 2009. DOHA issued a notice of hearing on April 28, 2009, scheduling the hearing for May 13, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until May 29, 2009, to enable Applicant to submit additional documentary evidence. He timely submitted AX G, which was admitted without objection. Department Counsel's comments regarding AX G are attached to the record as Hearing Exhibit I. DOHA received the transcript on May 28, 2009. The record closed on May 29, 2009.

### **Amendment of SOR**

On my own motion and without objection by either party, I amended the SOR to reflect Applicant's correct social security number (Tr. 4). The amendment is handwritten on the SOR.

### **Evidentiary Rulings**

Applicant repeatedly objected to questions from Department Counsel about his marital status, the type of auto he drives, his student loans, and his failure to file income tax returns, arguing that information sought was irrelevant (Tr. 50, 54, 71, 73). I overruled his objections on the ground that the information was relevant to the whole person analysis.

### **Findings of Fact**

Applicant is a 39-year-old production planner for a federal contractor. He earned a bachelor of science degree in June 1996, a master's degree in business administration in September 2000, and a bachelor of science in information technology in October 2001 (Tr. 53-54). He has worked for his current employer since May 2008. He has never held a security clearance.

Applicant was married in December 2000 and divorced in May 2005. He has an eight-year-old son, for whom he pays child support (Tr. 49). He remarried in October 2005 and separated from his second wife in March 2006.

Applicant's credit bureau reports (CBR) dated February 18, 2009; August 6, 2008; March 24, 2009; and May 12, 2009, reflect two credit card accounts with balances of about \$5,900 and \$3,100, both charged off as bad debts. They also reflect a delinquent cell phone bill for \$86. The August 2008 CBR and the March 2009 CBR reflect a delinquent auto loan with a balance of \$14,457 that was charged off as a bad debt. The CBR dated May 23, 2009, however, reflects a past due balance of only \$371 on the auto loan (GX 2; GX 3; AX A through E).

In response to DOHA interrogatories, Applicant stated that he assumed the auto loan was resolved when the auto was repossessed and sold in 2003, because the

creditor has not contacted him about the debt (GX 5 at 2). He has taken no action to dispute or resolve the debt.

Applicant also stated he informed the credit card companies that he had been laid off, and he assumed the debts were written off because he has not been contacted by the creditors (GX 5 at 2). His security clearance application reflects that he was unemployed from June to November 2001, February to August 2003, September to November 2004, and in July 2006 (GX 1 at 3-4). He testified his actual period of unemployment in 2006 was from June to August (Tr. 40). He has taken no action to dispute or resolve the credit card debts.

The \$89 cell phone debt arose when Applicant moved. He was advised by the telephone company that the balance due on his account would be transferred to his new account, but the transfer never occurred (Tr. 31). After the hearing, he presented documentary evidence reflecting that the bill was paid in full (AX G). He continues to have cell phone service with the same company (Tr. 62).

Applicant testified the delinquent credit card debts were accumulated during his first marriage, when both he and his wife were laid off from their jobs. They used the credit cards for basic living expenses.

After Applicant's first wife left him, he was responsible for all the accumulated debts. The debts were solely in Applicant's name because of his wife's poor credit rating (Tr. 83-84). In May 2005, he was ordered to pay child support retroactively for the previous two years (AX F; Tr. 48). His monthly child support payments are \$871 (GX 5 at 8), and they are automatically deducted from his pay checks (Tr. 49).

All the debts alleged in the SOR are at least six years old. Applicant is not delinquent on any of his current obligations, including his child support (AX F). He submitted a personal financial statement (PFS) dated November 6, 2008. It reflected net monthly income of \$2,688, expenses of \$2,600.50, debt payments of \$553, and a net monthly remainder of \$87.50. It reflected no savings or investments (GX 5 at 6). He testified his current gross income is about \$43,000 per year (Tr. 47).

Applicant has not filed his federal and state income tax returns for the past three years. He estimates he will owe a total of about \$1,600, plus penalties and interest (Tr. 79-80, 84). He owes about \$183,000 in student loans, which are in a deferred status (Tr. 55-56).

### **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 four delinquent debts totaling about \$23,532. 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 are relevant. AG ¶ 19(a) is raised where there is an "inability or unwillingness to satisfy debts." AG ¶ 19(b) is a two-pronged condition that is raised where there is "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt." 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." 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) and (c). AG ¶ 19(b) is not raised because there is no evidence of "frivolous or irresponsible spending." AG ¶ 19(e) is raised because the evidence reflects that the credit card debts and auto loan delinquency arose during the 2001-2003 time frame, when Applicant's expenses exceeded his income.

Since AG ¶ 19(g) was not alleged in the SOR, Applicant's admitted failure to file his tax returns for three years may not be considered as an independent basis for denying his application for a clearance. His tax delinquencies may be considered, however, for the limited purposes of assessing his credibility; deciding whether a particular adjudicative guideline is applicable; evaluating evidence of extenuation, mitigation, or changed circumstances; considering whether an applicant has demonstrated successful rehabilitation; or as part of a whole person analysis." ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

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). All of Applicant’s delinquent debts were incurred at least six years ago, but three of the four debts alleged remain unresolved. Applicant’s continued employment is subject to the vagaries of the economy, making future periods of unemployment possible, and he has no savings to protect him from further financial difficulty if he is laid off. His failure to take any action to resolve the credit card debts and the auto loan delinquency 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 person’s control and responsible conduct, must be established. Applicant has suffered two marital breakups, several periods of unemployment, and consistent underemployment, all of which were largely beyond his control. However, his failure to take any action to resolve his delinquent debts after returning to the workforce precludes application of this mitigating condition.

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). Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant’s favor. See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). Applicant produced evidence that the cell phone bill alleged in SOR ¶ 1.c was resolved, but he produced no evidence of actions to resolve the remaining debts. I conclude AG ¶ 20(d) is established for SOR ¶ 1.c, but not for SOR ¶¶ 1.a, 1.b, and 1.d.

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). This mitigating condition is established for the debt alleged in SOR ¶ 1.c, but not for the remaining debts.

## 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, well-educated adult. He was sincere and articulate at the hearing. He is significantly underemployed for a person of his educational level and experience. He has been able to keep up with current debts, but he is facing delinquent tax payments as well as significant educational debt after the deferral period ends. His PFS reflects that he is living paycheck to paycheck, with no reserve funds for emergencies or temporary periods of unemployment.

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 |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | For Applicant     |
| Subparagraph 1.d: | 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