



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08553
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

September 29, 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 January 11, 2008. On April 27, 2009, the Defense Office of Hearings and Appeals (DOHA) sent Applicant 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 May 14, 2009; answered it on June 20, 2009; and requested a hearing before an administrative judge. DOHA received the request on

June 22, 2009. Department Counsel was ready to proceed on July 17, 2009, and the case was assigned to me on July 22, 2009. DOHA issued a notice of hearing on July 24, 2009, scheduling the hearing for August 25, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Department Counsel also presented a demonstrative exhibit summarizing the evidence, which is attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection.

I kept the record open until September 11, 2009, to enable Applicant to submit additional documentary evidence. He telephonically requested an extension until September 18, 2009, which I granted. He timely submitted AX C, which was admitted without objection. Department Counsel's response to AX C is attached to the record as HX II. DOHA received the transcript (Tr.) on September 1, 2009. The record closed on September 18, 2009.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.d, 1.e, 1.g, and 1.h. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 54-year-old system administrator for a defense contractor. He has worked for his current employer since April 2003. He served on active duty in the U.S. Army from January 1974 to January 1978 (AX A). Except for a period of unemployment from January 1997 to April 1998, he has worked for federal contractors since 1979 (Tr. 34). He received a clearance from another federal agency in September 1982. He currently holds a secret clearance (Tr. 7).

Applicant was married in November 1992 and divorced in December 1998. He and his ex-wife had a son, who is now 17 years old. Applicant was paying child support, but he was given full custody of his son after his ex-wife passed away in July 2007. His son is a senior in high school with a good academic record, and he is preparing to attend college (AX B; Tr. 30-31). His son inherited a substantial sum of money from his mother and does not depend on Applicant for financial support (Tr. 61-62, 67-68).

The SOR alleges nine delinquent debts totalling more than \$49,000. The debts alleged in SOR ¶¶ 1.a and 1.i are duplicates. All the debts became delinquent around 2002-2003, except the debts in SOR ¶¶ 1.f and 1.h, which became delinquent in 2007.

Applicant testified the debts alleged in SOR ¶¶ 1.b and 1.c were paid, but he submitted no documentation of payment (Tr. 68-69). He promised to submit documentation after the hearing (Tr. 69), but he submitted nothing regarding these debts in his post-hearing submission.

Applicant testified he received a settlement offer from the creditor alleged in SOR ¶ 1.e, but he had not accepted the offer (Tr. 70). He presented no additional evidence regarding this debt in his post-hearing submission.

The debt alleged in SOR ¶ 1.g is an unsatisfied judgment for unpaid condominium fees. In his answer to the SOR, Applicant submitted a promissory note that he executed, promising to pay the debt in installments. He testified he is paying \$575 on the note and will pay it off when he is able (Tr. 57). He provided no documentation of any payments.

The credit card debt alleged in SOR ¶ 1.h arose when Applicant gave his ex-wife a credit card to be used for their son. He refused to pay the balance because his ex-wife used the card for other purchases. After his ex-wife passed away, a collection agency obtained a judgment against Applicant for the full amount of the balance due (GX 5 at 3-4). Applicant has satisfied the judgment (Answer at 3-4).

The debt alleged in SOR ¶ 1.i is the deficiency after an automobile was repossessed. Although Applicant denied this debt in his answer to the SOR, he admitted at the hearing that the car was repossessed. He disagreed with the amount claimed due. He has not contacted the creditor or otherwise attempted to resolve the dispute (Tr. 52-54).

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

SOR	Debt	Amount	Answer	Status	Evidence
1.a	Car loan, same debt as ¶ 1.i	\$13,396	Deny	Unpaid	GX 3 at 2
1.b	Credit card	\$912	Deny	Unpaid	GX 4 at 10; GX 5 at 10; GX 6 at 4
1.c	Line of credit	\$3,958	Deny	Unpaid	GX 4 at 10; GX 6 at 4; GX 5 at 10
1.d	Overdraft	\$310	Admit	Unpaid	GX 2 at 2; GX 5 at 8
1.e	Credit card	\$567	Admit	Unpaid	GX 2 at 2; GX 3 at 2; GX 5 at 7, 9
1.f	Credit card	\$156	Deny	Unpaid	GX 4 at 10
1.g	Condo fees	\$5,857	Admit	Unpaid	GX 2 at 2; Answer at 2; Tr. 57
1.h	Collection	\$6,558	Admit	Paid	GX 5 at 3-4; Answer at 3
1.i	Car repossession	\$17,596	Deny	Unpaid	GX 4 at 8; GX 5 at 8, 10

Applicant's monthly take-home pay is about \$5,300. He is buying his condominium, and his monthly mortgage payments are about \$1,300 (Tr. 55). He owns a six-year-old car and has no car-related debt (Tr. 58). He has about \$300,000 in a government retirement account and about \$5,000 in a 401(k) retirement account (Tr. 63-64). He suffers from diabetes and has out-of-pocket expenses of about \$100 per

month for medication (Tr. 60). He has not sought or received financial counseling (Tr. 65). He denied five of the debts alleged in the SOR, but he has not disputed them or provided any documentation supporting a basis for disputing them (Tr. 71).

Applicant promised to submit documentation showing resolution of the debts alleged in SOR ¶¶ 1.c, 1.e, 1.g, and 1.h after the hearing (Tr. 74-76). His post-hearing submission consisted only of a one-page handwritten statement that he intended to pay the unsatisfied judgments against him within one year (AX C).

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.

Two disqualifying conditions under this guideline are relevant. 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 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, with three disjunctive prongs and one conjunctive prong. 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.” This mitigating condition is not established because Applicant's delinquent debts are numerous, many are not yet resolved, and they did not occur under circumstances making them unlikely to recur.

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 was divorced well before his current financial problems arose, and there is no evidence his marital breakup caused his financial problems. His periods of unemployment were beyond his control, but he has not responded reasonably after returning to the workforce. He has been employed by his current employer since April 2003, and he paid the debt alleged in SOR ¶ 1.h, but he has not made reasonable efforts to resolve his other delinquent debts or document his remedial actions. 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 Applicant has not sought or received financial 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). 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 is not required to establish that he has paid off each and every debt listed in the SOR. He must show, however, that he has a reasonable and feasible plan to resolve his financial problems and that he has taken significant actions to implement that plan. ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008).

Applicant testified he was making payments on the debt alleged in SOR ¶ 1.g, but he produced no documentary evidence of any payments. He produced evidence that the debt in SOR ¶ 1.h was paid. With respect to the remaining delinquent debts, he has no plan and has taken virtually no action to resolve them. I conclude 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). Although Applicant denied five debts and testified he disagreed with the amount of the debt alleged in SOR ¶ 1.i, this mitigating condition is not established because he produced no documentation for the basis of his disputes and he has taken no action to resolve them.

The same underlying debt is alleged in SOR ¶¶ 1.a and 1.i. 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 SOR ¶ 1.a for Applicant.

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 relevant 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature adult with many years of service to the government. He has held a clearance for many years, apparently without incident. He was sincere and candid at the hearing, but he did not appear to have a good grasp of his financial situation. He promised extensive documentation of his financial situation, but he produced virtually nothing, even though he was given additional time to do so.

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 on the allegations in the SOR:

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

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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
Administrative Judge