



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



In the matter of:)
)
) ISCR Case No. 08-08529
)
)
Applicant for Security Clearance)

Appearances

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

January 13, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems are partially the result of circumstances beyond his control. He understands the importance of maintaining financial responsibility and what is expected of him to be eligible for a security clearance. Given his circumstances, he has made reasonable efforts to resolve his financial problems, and given the opportunity, he will establish full financial responsibility. On balance, Applicant’s current financial problems do not cast doubts on his reliability, trustworthiness, or judgment. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on October 10, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On July 19, 2010, DOHA issued Applicant an SOR, which specified the basis for its decision – security concerns addressed in the Directive under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).²

On July 30, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 25, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on August 27, 2010. A second notice of hearing was issued on September 15, 2010, rescheduling the hearing for September 27, 2010. The hearing was convened as scheduled on September 27, 2010. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified, and he presented Exhibits (AE) 1 through 16, which were admitted without objection. I kept the record open, allowing Applicant additional time to submit documentary evidence. He submitted AE 15 and 16, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 4, 2010.

Procedural Issue

The Government moved to amend the SOR by adding Paragraph 1.o, alleging a \$130,888 second mortgage in collection. The motion was marked and made part of the record as Hearing Exhibit (HE) 1. Applicant did not object, and I granted the motion as requested. (Tr. 18-20).

Findings of Fact

Applicant admitted all 15 factual allegations in the SOR, with explanations. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 37-year-old information technology systems administrator working for a government contractor. He seeks to retain his security clearance eligibility to continue his job. Shortly after high school, he enlisted in the U.S. Navy where he served five years on active duty (1991-1995), and six years in the Reserve (1997-2002). During his last 10 months in the Reserve, he was recalled back to active duty. His rate was

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

² Adjudication of this case is controlled by the AGs, implemented by the DoD on September 1, 2006.

intelligence specialist, and he achieved the rank of E-5. His service was characterized as honorable.

While in the service, Applicant had access to classified information at the secret and top secret levels. After his discharge, his access to classified information was continued until the present, because of his work for government contractors. There is no evidence that he has compromised or caused others to compromise classified information, or that he has been involved in any security violations.

Applicant completed an associate's degree in Computer Information Systems from 1993 until 1994. He has never been married, but has a four-year-old daughter. He provides \$1,100 a month in court-ordered financial support to his daughter. He is current in his child support obligation.

Applicant's employment history shows that he has been consistently employed by different government contractors since his discharge from the service. From November 2005 until December 2007, Applicant worked full-time simultaneously for two different government contractors. He was employed for company "S," and earned around \$83,000 a year, working from 03:00 p.m. until 11:00 p.m. He worked for company "H," from 06:00 a.m. until 02:00 p.m., and earned around \$95,000 a year.

In early to mid-2007, Applicant entered into a contract to purchase a new home for approximately \$526,000. He put down \$60,000 when he ordered the construction of the new home. In July 2007, Applicant was laid off from his job with company H. At the time, he had not closed on the purchase of the home. He tried to get out of the real estate purchase contract, but he was not allowed to do so without forfeiting his \$60,000 down payment. Applicant made the mistake of going through with the purchase of the home with the expectation that he would quickly find another full-time job which would allow him to afford the mortgage payments. He closed on the home in October 2007. He took a first mortgage with a monthly payment of approximately \$3,900 (SOR 1.h), and a second mortgage with a monthly payment of about \$1,100 (SOR 1.o). Additionally, he took a \$29,000 consumer loan to make the mortgage payments until he could find a second full-time job.

Applicant was not able to find a second job and he could not afford to pay the mortgage, his debts, and his day-to-day living expenses. Most of the debts alleged in the SOR became delinquent during this period when he was neglecting other debts while trying to make his mortgage payments to save his home. His home was foreclosed in January 2008, and later sold.

In his October 2007 security clearance application, Applicant disclosed he had financial problems. His background investigation revealed, and Applicant admitted, the 15 delinquent or charged-off debts alleged in the SOR. Applicant explained that his financial problems were the result of him losing one of his full-time jobs and his bad business decision to purchase a home beyond his financial means.

SOR ¶ 1.a alleges a \$1,477 charged off consumer credit card that became delinquent in 2007, when he lost his second full-time job. In August 2010, he contacted the creditor, settled the debt, and established a payment plan. He made a \$200 payment in August 2010 (AE 4), and a \$447 payment in September 2010 (AE 15). He has another \$447 payment due in October 2010. With that payment, the debt will be paid in full.

SOR ¶ 1.b alleges an \$8,508 charged off credit card account that became delinquent in 2007, when he lost his second full-time job. In September 2010, he contacted the creditor and established a payment plan. He made a \$112 payment in early September 2010 (AE 5), and a \$312 payment in late September 2010. (AE 15)

SOR ¶ 1.c alleges the same debt alleged in SOR ¶ 1.b. Appellant disputed the debt through the credit bureau and it was removed from his credit report. (AE 6, 10, 11)

SOR ¶ 1.d alleges a \$2,398 charged off credit card account that became delinquent in 2007. In August 2010, he contacted the creditor, settled the debt, and established a payment plan. He made a \$198 payment in August 2010 (AE 7), a \$400 payment in September 2010 (AE 15), and a \$700 payment in October 2010 (AE 15). With two additional payments the debt will be paid in full.

SOR ¶ 1.e alleges a \$1,076 charged off consumer credit card that became delinquent in 2007. In August 2010, he contacted the creditor, settled the debt, and established a payment plan. He made a \$176 payment in August 2010 (AE 8), and a \$300 payment in September 2010 (AE 15). With two additional payments the debt will be paid in full.

SOR ¶ 1.f alleges a \$1,410 charged off debt to a telephone services provider that became delinquent in 2007. In September 2010, he contacted the creditor and paid the debt in full. (AE 15)

SOR ¶ 1.g alleges a \$406 charged off debt to a telephone services provider that became delinquent in 2007. In September 2010, he contacted the creditor and paid the debt in full. (AE 9)

SOR ¶ 1.h alleges a first real estate mortgage past due in the amount of approximately \$32,500, with a monthly payment of approximately \$3,900. SOR ¶ 1.o alleges a second mortgage on the same real estate property that was foreclosed. At his hearing, he claimed he no longer has any financial responsibility for either the first or second mortgages because the law of his state does not allow a creditor to recover for a mortgage deficiency after a foreclosure. He presented no documentary evidence to support his claim.

Concerning SOR ¶ 1.i (\$477), alleging a debt to a cable provider, Applicant initially admitted in his answer to the SOR that it was his delinquent debt. However, he

later realized he paid the debt. He presented no documentary evidence to prove it was paid. He intends to send a written dispute to the three credit bureaus.

Regarding SOR ¶ 1.j, Applicant claimed he is not familiar with the alleged creditor. He believes this is a duplicate allegation of the debts alleged in SOR ¶¶ 1.b and 1.c. The debt appears to have been deleted from the most recent credit reports. Applicant intends to send a written dispute to the three credit bureaus.

SOR ¶¶ 1.k, 1.l, and 1.m allege Applicant's unpaid traffic tickets that are in collection by a state. He testified he contacted the state and is in the process of establishing a payment plan. He presented no documentary evidence to support his claim.

SOR ¶ 1.n alleges a \$130 delinquent medical account. Applicant paid the account in August 2010. (AE 14)

Applicant was sincerely remorseful and contrite about his past financial problems. He is earning around \$98,000 a year from his current job. He is still looking for a second full-time job. With income from two jobs, he will be able to address his remaining delinquent debts expeditiously. He has been making changes in his lifestyle to save money to pay for his debts. He turned in his leased car and currently drives a 2004 truck that is paid off. He is living with his girlfriend and his daughter, and they share the apartment monthly expenses. Because his real estate property was foreclosed and sold, he believes he is no longer legally responsible for the mortgages and he will now have some additional money at the end of the month to pay his debts. He sought out financial counseling, and also considered consolidating his debts in a payment plan, but decided to pay the debts on his own and avoid the expenses associated with a commercial payment plan.

Applicant acknowledged he made a mistake by closing on the home after he lost his second full-time job. He knew that the income from one job would not be sufficient to cover his first and second mortgage payments and pay his remaining debts. He believed he would be able to find a second job in a short period of time, but he was not able to do so. He also acknowledged that he should have been more diligent in contacting his creditors and establishing payment plans. He stated that he was trying to refinance the house and include some of his delinquent debts in the refinancing, but that did not work out. Additionally, he did not have sufficient disposable income at the end of the month to pay for any additional debts and it would not have been reasonable for him to attempt to establish payment plans he could not fulfill. Considering the totality of his circumstances, Applicant is doing all he can do to resolve his debts.

Policies

The President of the United States 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. *Department of the Navy v.*

Egan, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any expressed or implied determination about Applicant’s allegiance, loyalty, or patriotism. It is merely an indication that 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996); and ISCR Case 08-06605 at 3 (App. Bd. Feb. 4, 2010).

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 or her] security

clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged 15 delinquent debts in collection or charged off, which have been delinquent for several years. Applicant admitted, and the record evidence confirms that SOR ¶¶ 1.a, 1.b, 1.d-1.h, and 1.k-1.o are his delinquent accounts. His documentary evidence shows Applicant settled and is paying the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. He paid off the accounts alleged in SOR ¶¶ 1.f, 1.g, and 1.n.

Applicant disputed the validity of the account alleged in SOR ¶ 1.c and it was removed from his credit report. He intends to dispute the account alleged in SOR ¶ 1.i, because he believes he paid it. He also is in the process of disputing SOR ¶ 1.j, because he believes it is a duplicate allegation of SOR ¶¶ 1.b and 1.c.

Concerning SOR ¶¶ 1.h and 1.o, he claimed he no longer has any financial responsibility for either debt because the law of his state does not allow a creditor to recover for a mortgage deficiency after a foreclosure and sale of real estate property. He presented no documentary evidence to support his claim.

Applicant’s delinquent debts raise the applicability of AG ¶ 19(a): “inability or unwillingness to satisfy debts;” and AG ¶ 19(c): “a history of not meeting financial obligations.”

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (a) 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;
- (b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and

(f) the affluence resulted from a legal source of income.

Applicant has been consistently employed by different government contractors since his discharge from the service in 2002. From November 2005 until around July 2007, Applicant worked two full-time jobs. In July 2007, he was laid off from one of his employers due to a company downsizing. His reduction in income and buying a home beyond his financial means caused most of his debts to become delinquent.

Applicant disclosed his financial problems in his security clearance application. Out of the 15 delinquent debts alleged in the SOR, Applicant paid three debts; he settled and made at least two payments in four debts; he successfully disputed one SOR debt; and he is in the process of disputing two other debts. In sum, Applicant resolved eight of the 15 debts alleged in the SOR, he is in the process of disputing two debts, and he contacted the creditor for three additional debts (traffic tickets) to establish a payment plan. The remaining concerns are SOR ¶¶ 1.h and 1.o, for which he claimed he no longer has any financial responsibility because the law of his state prevents a creditor to recover for a mortgage deficiency after a foreclosure and sale of the real estate property.

Outside of the delinquent debts discussed above, there is no evidence Applicant had other delinquent debts, or that he was living beyond his financial means. Applicant has a substantial income from his current employment. He is seeking another full-time job to accelerate the payment of his delinquent obligations. Because he was able to handle two full-time jobs in the past, it is likely he will be able to do so in the future. Additionally, with the payment of some of his debts, he will have more disposable income available to continue to address the remaining financial obligations.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because some of the SOR debts are unresolved (recent behavior). It partially applies because he resolved eight of the delinquent debts, he appears to have a valid reason to dispute two debts, and is making arrangements to pay the three traffic tickets. The evidence

established circumstances beyond his control contributing to his inability to pay his debts, i.e., he was laid off from one of his full-time jobs and his inability to find another full-time position. AG ¶ 20(b) is partially established by the evidence. It only applies partially, because Applicant did not exercise financial responsibility when he purchased a home beyond his financial means. Applicant presented sufficient evidence showing his efforts to contact creditors and pay his debts.

AG ¶ 20(c) applies. Applicant participated in financial counseling. He demonstrated he has the desire to resolve his debts by paying three debts, establishing payment plans for four other debts, and disputing one debt. His actions establish partial mitigation under AG ¶ 20(d). He receives only partial credit because he should have been more diligent and aggressive in the resolution of his debts. AG ¶ 20(e) partially applies because he successfully disputed one debt and is in the process of disputing two other SOR debts.

Considering the evidence as a whole, Applicant has a viable plan to resolve his financial problem. His evidence shows that through the years, he maintained financial responsibility until he lost his second full-time job. He also recently paid three debts and made payment arrangements for four other debts. He has a viable plan to resolve his other SOR debts.³

Applicant understands the possible adverse security clearance consequences of not maintaining financial responsibility. I believe that given time, Applicant will resolve the remaining SOR debts and avoid similar financial problems in the future. Although Applicant should have been more diligent addressing his debts, and he still has several unresolved SOR debts, his past behavior and current financial situation do not raise doubts about his current reliability, trustworthiness, and judgment. Financial considerations concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the 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. The 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

³ “[A]n applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009), citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(c) were addressed under that guideline, but some warrant additional comment.

Applicant served approximately 11 years in the defense of his country. He has been successful in his jobs for different government contractors since 2002. He is a mature man and a good worker. He has sought counseling to overcome his financial problems and understands the importance of maintaining financial responsibility. He has held a security clearance during most of his military service and while working for government contractors. There is no evidence he has ever compromised or caused others to compromise classified information. His financial problems seem to be the result of his making the mistake of continuing with the closing of his home knowing he just had lost one of his full-time jobs, and his inability to find a new full-time job.

Applicant is doing all he can do under his circumstances to resolve his financial problems. He has been working hard at his current job. He recently started to make a credible effort to pay his delinquent debts, and has made life-style changes to resolve his financial problems.

I find Applicant's testimony credible. He understands the importance of maintaining financial responsibility and what is expected of him to be eligible for a security clearance. He disclosed his financial problems in his security clearance application. His delinquent debts were partially the result of circumstances beyond his control. Considering his circumstances, he has made reasonable efforts to resolve his financial problems. He started to resolve his financial problems and given the opportunity, I believe he will continue to resolve his financial problems and establish full financial responsibility. Under the whole-person concept, Applicant's current financial problems do not cast doubts on his reliability, trustworthiness, or judgment.

The record evidence establishes Applicant's eligibility and suitability for a security clearance. Applicant mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a to 1.o:

For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

JUAN J. RIVERA
Administrative Judge