



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
-----)	ISCR Case No. 08-09328
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

May 20, 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 28, 2008. On February 2, 2009, 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 February 17, 2009; answered it on February 23, 2009; and requested a hearing before an administrative judge. DOHA received the

request on February 24, 2009. Department Counsel was ready to proceed on March 3, 2009, and the case was assigned to me on March 9, 2009. DOHA issued a notice of hearing on March 11, 2009, scheduling the hearing for April 1, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but presented no documents. I held the record open until April 15, 2009, to enable Applicant to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. Applicant's email transmitting his evidence and Department Counsel's comments regarding AX A through D are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on April 9, 2009. The record closed on April 15, 2009.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.d through 1.i. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old program manager for a federal contractor. He served on active duty in the U.S. Army from January 1982 to January 2003, retiring as a sergeant first class (E-7). He retired with a fifty percent service-connected disability (GX 3 at 1). He worked for a private company from February to November 2003, and for a federal contractor from November 2003 until May 2008, when he began working for his current employer. While working full-time, he received a bachelor's degree in management and human resources in May 2005 and a master's degree in human resource development in August 2006. He received a security clearance in April 1986 while in the Army, but it was administratively terminated when he was assigned to recruiting duty, which did not require a clearance. He does not currently hold a clearance (Tr. 11).

Applicant was married in May 1981 and divorced in June 1991. He remarried in January 1995. He has four children, ages 26, 22, 15, and 12, and a stepdaughter, age 17. The two oldest children are attending college, and he provides financial assistance to one of them (Tr. 26).

Applicant testified that he retired from the Army ill-prepared for the financial demands of the civilian world. He found himself unable to sustain himself and his family in their previous lifestyle. He began falling behind on his bills, because his income was insufficient to cover his monthly expenses, which included medical expenses for treatment of fused vertebrae in his neck. Although he was entitled to medical care coverage, he did not realize the financial consequences of using out-of-network providers. He decided to take care of essential living expenses but to let revolving credit fall behind. He considered but rejected the possibility of filing a bankruptcy petition. He kept current with creditors who were willing to negotiate, but he stopped payments to those who would not negotiate (Tr. 28-29; GX 3 at 1).

Applicant currently lives geographically separated from his family because he has children in high school, and he is incurring the additional expense of maintaining a second household (Tr. 29, 58). He lives in a one-bedroom apartment and uses public transportation whenever possible to save money (Tr. 52).

Applicant consulted with a debt counselor and decided he could make more progress by handling his delinquent debts himself. He testified he has adopted the “Dave Ramsey” method of debt resolution, under which he pays more than the minimum on smaller debts, pays the minimum on larger debts, and progresses to paying more on the larger debts as the smaller debts are paid off (Tr. 31, 41, 64). He concentrates on paying off current debt before addressing delinquent debt. He uses a spiral notebook to track his progress (AX A; Tr. 59).

In response to DOHA interrogatories, Applicant submitted a personal financial statement (PFS) dated November 3, 2008. It reflected net monthly income of \$8,319, expenses of \$5,857, debt payments of \$1,489 (not including any debts alleged in the SOR), and a net monthly remainder of \$973. He has no money in savings, about \$360 in investments, and no emergency funds (GX 4 at 7; Tr. 63).

Since responding to DOHA interrogatories in November 2008, Applicant has paid off two charge accounts listed on his PFS but not alleged in the SOR (Tr. 51). The total amount owed on these two accounts was about \$984.

Applicant is currently making payments on a late-model truck for which he owes about \$27,816, and in which he has negative equity. His plan is to pay down the balance on the truck sufficiently so that he can trade it for another vehicle with a lower interest rate and lower monthly payments. He hopes to be able to trade in his truck by the summer of 2010. He plans to use funds generated by lower monthly payments on his truck to pay off his second vehicle, currently used by his family, on which he owes about \$14,367. After his truck and car payments are resolved, he intends to start paying off his remaining debts, including the delinquent debts alleged in the SOR (Tr. 61-63).

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

SOR	Debt	Amount	Status	Evidence
1.a	Medical	\$128	Unpaid	GX 2; Tr. 35
1.b	Medical	\$30	Unpaid	GX 2; Tr. 36
1.c	Apartment damage	\$102	Disputed	AX A; AX D; Tr. 36
1.d	Charge account	\$3,174	Unpaid	GX 2; Tr. 39-40
1.e	Credit card	\$17,640	Unpaid	GX 2; Tr. 45
1.f	Credit card	\$4,889	Unpaid	GX 2; Tr. 45
1.g	Credit card	\$11,885	Same as 1.e	Tr. 17; GX 2 at 3, 12
1.h	Credit card	\$3,443	Same as 1.f	Tr. 17; GX 2 at 4, 13
1.i	Medical	\$387	Unpaid	GX 2; Tr. 49-50

Applicant disputed the debt for damage to an apartment, denying that he caused the damage. He testified he believed the disputed debt was resolved favorably by telephone in 2004 (Tr. 68-69). When he realized it was on his current credit report (AX B), he filed a dispute with the credit reporting agency (AX D).

Applicant believes the delinquent medical bills are either co-payments or items for which insurance coverage was denied. He has not disputed any of these debts (Tr. 65). Even though the amounts are relatively small, he has not paid them because it would require him to deviate from the "Dave Ramsey" method (Tr. 65-66).

Applicant's plan for resolving his debts assumes he will continue in his current job. If his application for a clearance is denied, his pay would be substantially reduced; and he probably would return to the location where his family now lives and seek new employment (Tr. 66-67).

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 nine delinquent debts totaling about \$41,678. Two of the debts appear to be duplicates, leaving seven remaining delinquent debts totaling about \$26,350. 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 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.” 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.” Applicant’s financial history raises AG ¶¶ 19(a), (c), and (e), 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 credit card debts alleged in SOR ¶¶ 1.g and 1.h duplicate the debts alleged in SOR ¶¶ 1.e and 1.f. 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.g and 1.h in Applicant's 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). This mitigating condition is not established, because Applicant's delinquent debts remain unresolved, are numerous, are not the product of unusual circumstances, and cast doubt on his good judgment.

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. The first prong of this mitigating condition is not established because Applicant's debts were normal living expenses. Even his medical problem was not "unexpected," because it was diagnosed while he was still on active duty and his medical expenses after retirement were either copayments or the result of using out-of-network providers.

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 received counseling but decided he could better handle the situation himself. This condition is not established because his financial problems are not yet under control. Applicant has devised a plan to gain control of his finances, but it is long term and subject to many contingencies. He does not expect to accomplish the first step, trading his truck for another vehicle at a lower interest rate and lower monthly payments, until the summer of 2010. It is contingent on his ability to continue paying down the principle on the loan, a reliably foreseeable trade-in-value for the truck, his ability to qualify for financing at a lower rate, and his ability to find a suitable vehicle at a price he can afford. He has no savings and no emergency funds to cover unexpected expenses. His plan assumes he will continue working at his current pay level, which he cannot do without a clearance.

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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

The evidence is sparse regarding the time frame in which Applicant began negotiating with creditors, but it appears that his initial efforts predated his current job and security clearance application. I am satisfied his efforts to resolve his debts have been motivated by a sense of obligation and not the pressure of qualifying for a security clearance.

An applicant is not required, as a matter of law, to establish resolution of each and every debt alleged in the SOR. See ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008). An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There also is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *Id.*

Applicant has adopted a plan to reduce his indebtedness. His plan, however, will not begin to address the delinquent credit card accounts and medical bills alleged in the SOR until some time after the summer of 2010, and it is subject to numerous uncertainties and contingencies. I conclude AG ¶ 20(d) is not established.

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 denied the debt alleged in SOR ¶ 1.c. He attempted to resolve it by telephone, and he thought it was resolved until he saw it on his credit report. He has filed a formal dispute and requested the debt be deleted from his credit file. I conclude this mitigating condition is established for the debt alleged in SOR ¶ 1.c.

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, articulate, well-educated adult. His loyalty and dedication are not in question. He was candid and sincere at the hearing. He exercised bad financial judgment and fell into financial distress shortly after retiring from the Army. In some respects, he has learned from his mistakes, but he is far away from his goal of financial stability. He is confident of his ability to gain control of his finances, but his confidence rests in part on very optimistic assumptions. He remains vulnerable to pressure or coercion. He has not fully dispelled the concerns about his 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 findings 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraphs 1.g-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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge