



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-09340
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro se*

March 31, 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 an Electronic Questionnaire for Investigations Processing (e-QIP) on March 28, 2008 (Government Exhibit (GX) 5). On December 22, 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 (GX 1). 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR on January 5, 2009; answered it on January 15, 2009; and requested determination on the record without a hearing. Department Counsel submitted the government's written case on February 4, 2009. On February 5, 2009, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. Applicant received the FORM on February 12, 2009, and he timely submitted three documents on March 12, 2009. The case was assigned to me on March 26, 2009.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c. His admissions are incorporated in my findings of fact.

Applicant is a 36-year-old data entry technician employed by a defense contractor. He has worked for his current employer since March 2008. He previously worked for a private company as an equipment operator from February 1995 to July 2004, and as a warehouse foreman in Kuwait from July 2004 to December 2007. He has never held a security clearance.

Applicant's e-QIP reflects that he has been married since November 2005 and has no children. It also reflects a previous marriage in November 1990, but it does not reflect the date of his divorce (GX 1 at 21).

The delinquent debts alleged in SOR ¶¶ 1.a and 1.b, totaling \$16,038, are being handled by a debt settlement program. Applicant has made one payment of \$375 to the attorney handling his program. The payment was due on December 21, 2008, but was made two days later (GX 4 at 4-6; GX 6 at 6). There is no evidence of subsequent payments in January or February 2009.

The delinquent debt for \$5,352, alleged in SOR ¶ 1.c, arose when Applicant co-signed a car loan for his ex-brother-in-law, who failed to make the payments. The car was repossessed (GX 4 at 7-10). In response to the FORM, Applicant submitted a copy of an email exchange in which his ex-brother-in-law acknowledged responsibility for the debt and promised to start making "minor payments" as soon as he starts working. There is no evidence that any payments have been made or that the ex-brother-in-law has started working.

The delinquent debt for \$34,981, alleged in SOR ¶ 1.d, arose from a home mortgage that was foreclosed. The court records in the FORM reflect that no deficiency was assessed against Applicant. Department Counsel conceded the debt was satisfied by the foreclosure sale.

A personal financial statement submitted by Applicant in response to DOHA interrogatories reflects a net monthly household income of \$4,338, expenses of \$2,198,

debt payments of \$839, and a net remainder of \$1,301 (GX 6 at 4). The debts alleged in the SOR are not included in the personal financial statement.

## 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 totalling \$56,371. 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.

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.” The evidence reflects that the delinquent home mortgage alleged in SOR ¶ 1.d was satisfied by the foreclosure sale, and I have resolved that allegation in Applicant’s favor. I have considered the foreclosure, however, in determining whether Applicant has “a history of not meeting financial obligations.” I conclude that 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). Applicant’s debts are multiple and not yet resolved. With the possible exception of the car loan, they did not occur under circumstances that are unlikely to recur. All the debts, including the car loan, cast doubt on Applicant’s current reliability 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. The failure of Applicant’s ex-brother-in-law to make payments on the car loan was a circumstance beyond his control. It appears that Applicant reacted responsibly when he learned about the delinquent debt, by contacting the creditor and his ex-brother-in-law to find out what happened. I conclude AG ¶ 20(b) is established for the car loan but not for the other delinquent debts.

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 has engaged a lawyer and enrolled in a debt settlement program, but the program does not include the delinquent car loan alleged in SOR ¶ 1.c. Furthermore, Applicant has not established a track record of timely payments under the program. He responded to the FORM in March 2009, but he submitted no evidence that he made the January and February payments due under the program. 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). 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). I conclude this mitigating condition is not established. Applicant has not established a record of compliance with his debt settlement program. No payments have been made on the delinquent car loan. The delinquent mortgage was not resolved through any voluntary action by Applicant, but rather by involuntary foreclosure and sale of the house.

### **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 adult with a steady employment record. He has offered no explanation for his inability to make his home mortgage payments. His financial history raises doubt whether he will comply with his debt settlement program. He has not established a track record of financial responsibility. 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 his financial history. 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**

Subparagraphs 1.a-1.c:

Against Applicant

Subparagraph 1.d:

For 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