



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-10783
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

May 27, 2009

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F, arising from a delinquent credit card debt of about \$32,000. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his security clearance application on June 11, 2008 (Government Exhibit (GX) 5). On February 4, 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 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 February 12, 2009 (GX 3); answered it in an undated document; and requested determination on the record without a hearing (GX 4). Department Counsel submitted the government's written case on March 13, 2009. On March 17, 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 March 25, 2009, but he did not respond. The case was assigned to me on May 15, 2009.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the single allegation in the SOR. His admission is incorporated in my findings of fact.

Applicant is an unmarried 36-year-old field test supervisor employed by a federal contractor since October 2000. He served on active duty in the U.S. Navy from November 1994 to October 2000. He received a security clearance at some time in the past, but he did not indicate the date he received it on his security clearance application. The record does not reflect whether he currently holds a clearance.

Applicant disclosed a delinquent credit card debt of about \$30,000 on his security clearance application (GX 5 at 18). His credit bureau report (CBR) dated July 10, 2008, reflected a delinquent credit card debt of \$32,875 that was charged off as a bad debt and referred for collection (GX 7 at 4). His CBR dated December 24, 2008, reflected a delinquent credit card debt of about \$32,000 (GX 6 at 1). He admitted the debt in his answer to the SOR (GX 4). He has submitted nothing to explain, refute, mitigate, or extenuate the adverse information on his two CBRs.

### **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 one delinquent credit card debt of about \$32,000, and Applicant admitted the debt. 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.

The potentially disqualifying condition in AG ¶ 19(a) is raised by “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised by “a history of not meeting financial obligations.” Applicant’s admission and his two CBRs are sufficient to raise both disqualifying conditions, shifting the burden to him 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). Applicant submitted no mitigating evidence, and the record establishes none of the enumerated mitigating conditions under this guideline.

### **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. My whole person analysis in this case is limited, because the record reflects only the information disclosed by Applicant in his security clearance application. He disclosed no information about himself or the circumstances of his indebtedness in his answer to the SOR or his response to the FORM.

After weighing the disqualifying conditions under Guideline F and the absence of mitigating evidence, and having evaluated 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 or continue his eligibility for access to classified information.

## **Formal Findings**

I make the following formal findings on the allegation 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

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge