



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



In the matter of:)) -----) SSN: -----)) Applicant for Security Clearance)	ISCR Case No. 08-11366
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Appearances

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

November 13, 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 granted.

Statement of the Case

Applicant submitted a security clearance application on January 9, 2007. On May 19, 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 28, 2009; answered it on June 9, 2009; and requested a hearing before an administrative judge. DOHA received the request on

June 12, 2009. Department Counsel was ready to proceed on July 24, 2009, and the case was assigned to me on July 27, 2009. DOHA issued a notice of hearing on August 5, 2009, scheduling the hearing for August 31, 2009.

On August 25, 2009, Department Counsel withdrew the allegations in SOR ¶¶ 1.k and 1.o-1.s. I treated Department Counsel's action as a motion to amend the SOR and I granted it, with no objection by Applicant (Tr. 14-15).

I convened the hearing as scheduled. Government Exhibits (GX) 1 through 14 were admitted in evidence without objection. Applicant testified but presented no documents. The record closed upon adjournment of the hearing. DOHA received the transcript (Tr.) on September 10, 2009.

Jurisdiction

On my own motion, I raised the question of jurisdiction after Applicant testified he was "terminated" when he lost his security clearance, but his employer was holding his position for him if his clearance was reinstated (Tr. 72, 78). After the hearing, I requested Department Counsel to produce documentation from the Joint Personnel Adjudication System (JPAS) supporting jurisdiction in light of ISCR Case No. 08-09776 (App. Bd. Sep. 11, 2009) (Hearing Exhibit I).

Department Counsel responded on November 4, 2009 (HX II). Attached to Department Counsel's response were JPAS documents dated August 19, 2009, and November 4, 2009, reflecting that Applicant was not separated and was still being sponsored for a clearance by his employer, even though he is not working or being paid. I admitted the JPAS documents as GX 15 and 16, without objection from Applicant. Based on the JPAS documents and Applicant's testimony, I am satisfied that DOHA had jurisdiction at the time the hearing commenced and as of the date of this decision.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.b, 1.f-1.j, 1.l-1.n, 1.t, and 1.w. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old intelligence analyst employed by a federal contractor. In 2002, he retired from the U.S. Air Force as a master sergeant (pay grade E-7) after more than 20 years of active duty. He received a security clearance in 1980 and eligibility for access to Sensitive Compartmented Information (SCI) in 1989. While on active duty, he obtained a bachelor's degree in April 2001 (GX 7 at 4).

In August 2008, Applicant's SCI access was revoked based on financial considerations (Tr. 7; GX 10). He requested a personal appearance before an administrative judge in accordance with Department of Defense Regulation 5200.2-R,

Personnel Security Program, dated January 1987, as amended. Notwithstanding the administrative judge's favorable recommendation, the Air Force Personnel Security Appeals Board upheld the revocation. Department Counsel and Applicant agreed that the administrative judge's findings of fact at the personal appearance were true as of the date of the personal appearance and could be considered at this hearing without resubmission of the evidence presented at the personal appearance (Tr. 65-66). The administrative judge's recommended decision is included in the record as GX 10.

While Applicant was on active duty, he deployed frequently and relied on his wife to handle the family finances. He learned that she was not a good money manager (Tr. 31). Their financial difficulties started around 1995, when he returned from deployment and found out his wife had "maxed out" their credit card accounts (Tr. 55; GX 13). Although he and his wife obtained financial counseling while he was on active duty, they continued to have financial problems until his retirement (GX 13; GX 14).

After Applicant retired, he accepted a civilian job in a location away from his last duty station. His wife and daughter decided not to move with him because his daughter wanted to finish high school without moving and changing schools (Tr. 32). He rented an apartment for his wife and daughter, and he rented a town home at his new job site. Although his wife was working and receiving up to \$3,500 per month from Applicant, she did not always pay the bills when they were due (Tr. 32).

After about a year, Applicant's father passed away, and Applicant decided to return to his former location and be with his family. His wife decided she wanted a divorce. She moved out of the apartment without paying the last month's rent for the apartment and a storage unit (Tr. 33). The three judgments alleged in SOR ¶¶ 1.a, 1.b, and 1.c were for unpaid rent.

When the divorce was granted, Applicant was ordered to provide his wife and daughter with a car. He purchased the car and sent her money for the car payments, but she did not make the payments and the car was repossessed (Tr. 34-35).

After Applicant learned the extent of his indebtedness, he contacted a debt management company and started to make payments to resolve the debts alleged in SOR ¶¶ 1.f, 1.g, 1.h, 1.n, 1.t, and 1.v (GX 10-4-5). The debt management agency did not include the judgments in SOR ¶¶ 1.a, 1.b, and 1.c in its plan for Applicant (Tr. 53), but he made an arrangement to pay \$300 per month on the judgments (Tr. 41; GX 8 at 6; GX 10 at 4-5). After his clearance was revoked in August 2008, he could no longer work on classified contracts, and he was forced to "take a vacation" without pay beginning in October 2008. Without any income other than his military retirement, he could not continue to make the payments. He still was not working or drawing pay as of the date of the hearing (Tr. 38-39).

At the personal appearance, Applicant submitted evidence that the debts alleged in SOR ¶¶ 1.a, 1.f, 1.g, 1.h, 1.n, 1.t, and 1.v were included in a negotiated payment plan and he was making regular payments pursuant to it (GX 10 at 4-5). At the hearing, he

testified he had suspended payments under the plan because he could no longer afford them.

The table below summarizes the evidence concerning the delinquent debts alleged in the SOR. The debts alleged in SOR ¶¶ 1.k and 1.o-1.s are not listed because those allegations were withdrawn by Department Counsel.

SOR	Debt	Amount	Status	Evidence
1.a 1.b 1.c	Apartment and Storage Unit (judgments)	\$3,318	Payment plan (suspended)	GX 8 at 6; GX 10 at 4-5; Tr. 41
1.d	Collection	\$1,417	Contacted creditor; unresolved	GX 6 at 3; GX 9 at 3; Tr. 41-42
1.e	Health Club	\$1,513	Disputed; unresolved	GX 5 at 8; GX 8 at 6; Tr. 44
1.f	Credit card	\$518	Payment plan (suspended)	GX 10 at 5
1.g	Credit card	\$1,077	Payment plan (suspended)	GX 10 at 5
1.h	Credit card	\$1,782	Payment plan (suspended)	GX 10 at 5
1.i	Credit card	\$758	Paid	GX 10 at 4
1.j	Credit card	\$570	Paid	GX 10 at 4
1.l	Car repossession	\$7,504	Ex-wife's debt; attempting to resolve	GX 10 at 3; Tr. 46-47
1.m	Credit card	\$212	Making monthly payments	GX 8 at 9; Tr. 47
1.n	Credit union	\$390	Payment plan (suspended)	GX 8 at 110
1.t	Car repossession	\$9,988	Payment plan (suspended)	GX 8 at 113; GX 10 at 5
1.u	Collection	\$283	Paid	GX 10 at 4; Tr. 50
1.v	Collection	\$1,417	Payment plan (suspended)	GX 8 at 121
1.w	Dish TV	\$152	Wife's debt; unresolved	GX 5 at 8; Tr. 51-52

Applicant testified at the hearing that he disputed the health club debt alleged in SOR ¶ 1.e. It arose when he moved back to his family's location and informed the club that he was moving (Tr. 44). He testified he was assured by the club owner that there was no problem with terminating his membership, but the debt appeared on his credit report after another company took over the club (Tr. 44). He did not present any documentation of his dispute.

Department Counsel questioned the administrative judge's finding at the personal appearance that the debt alleged in SOR ¶ 1.u was paid, pointing out the discrepancy in account numbers (HX 1). I have accepted the administrative judge's finding that it was paid, because there are no debts to that creditor on the credit reports dated after the personal appearance (GX 6; GX 9).

Applicant has exhausted the funds in his retirement account (Tr. 60), and he is living very frugally. He lives in a friend's house and contributes to the household

expenses when he can, but he does not pay rent. His car was damaged in an accident, the insurance company paid off the balance due on the car loan, and Applicant has not replaced it (Tr. 59). His son dropped out of college because he and his parents could no longer afford to pay for his education (Tr. 60). He is dating a woman who is “very good with money,” and she has been helping him prepare a budget and apply his limited income to his expenses (Tr. 59-60).

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.

Several 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." 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 has a long history of financial problems dating back to about 1995. AG ¶¶ 19(a), (c), and (e) are raised by his financial history, 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 delinquent debts are recent and frequent. However, many of his financial problems were the product of frequent deployments and reassignments, maintaining two households,

and his ex-wife's financial irresponsibility. Now that he is retired from the Air Force and divorced, these circumstances are not likely to recur. Until he lost his clearance in October 2008, he was gainfully employed, had obtained professional assistance with his finances, and was executing a realistic plan to regain financial stability. I conclude AG ¶ 20(a) is 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.

Applicant encountered numerous conditions beyond his control: numerous deployments and reassignments, his ex-wife's mismanagement of their finances, a divorce, and loss of employment. He did not act responsibly when he first learned that his then-wife was mismanaging their finances and spending money irresponsibly. After the break-up of his marriage, however, he sought professional help and was well on his way to financial stability until he lost his clearance and his income. I conclude AG ¶ 20(b) is 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). Applicant received financial counseling in the Air Force, but it apparently was not effective, because his problems persisted even after he retired. More recently, however, he engaged the services of a debt-management agency, and his financial problems were under control until he lost his clearance and stopped working. At the moment, his problems are not being resolved or under control. 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). 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).

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 had a plan in place and was carrying it out until he lost his clearance. His track record as of the date of his personal appearance in August 2008

demonstrated the good-faith effort required to establish AG ¶ 20(d). He went beyond his legal obligations trying to resolve the car repossession debt in SOR ¶ 1.1, even though the domestic relations judge found that the debt was solely his ex-wife's responsibility. I am confident that he will resume execution of his plan if he regains his clearance and can resume working for his employer. I conclude AG ¶ 20(d) is 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). Applicant disputed the health club debt alleged in SOR ¶ 1.e, but he provided no "documented proof" of the dispute or evidence of actions to resolve it. AG ¶ 20(e) is not established.

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, well-educated adult. He held a security clearance for about 28 years and SCI access for about 19 years before they were revoked. He also has a long history of financial problems dating back to about 1995. He had finally adopted a realistic plan to regain his financial health when his clearance was revoked, putting him in a Catch-22 situation: he needed his clearance to resolve his financial problems, but he could not keep his clearance because of his financial problems.

Applicant was sincere, candid, and credible at the hearing. He cannot work in his specialty without a clearance, but the financial impact of losing his clearance is not relevant. See ISCR Case No. 02-09220 (App. Bd. Sep. 28, 2004). However, the significant steps he took to resolve his financial problems before his clearance was

revoked are relevant. I am confident that, if he is able to resume his job, he will resolve his remaining financial problems.

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve doubtful cases in favor of national security, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to restore 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): FOR APPLICANT

Subparagraphs 1.a-1.j:	For Applicant
Subparagraph 1.k:	For Applicant (withdrawn)
Subparagraph 1.l-1.n:	For Applicant
Subparagraphs 1.o-1.s:	For Applicant (withdrawn)
Subparagraphs 1.t-1.w:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to restore Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge