



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11551
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

August 27, 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 February 14, 2007. On February 13, 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 25, 2009; answered it on April 21, 2009; and requested a hearing before an administrative judge. DOHA received the request on

April 22, 2009. Department Counsel was ready to proceed on June 17, 2009, and the case was assigned to me on June 29, 2009. DOHA issued a notice of hearing on June 30, 2009, scheduling the hearing for July 28, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through V, which were admitted without objection. I kept the record open until August 14, 2009, to enable Applicant to submit additional documentary evidence. DOHA received the transcript (Tr.) on August 5, 2009. On August 10, 2009, Applicant submitted AX W. The record closed on August 14, 2009.

Amendment of SOR

Applicant's middle name was inadvertently omitted from the SOR. On my own motion and without objection, the SOR was amended to insert his middle name (Tr. 19). The amendment is handwritten on the SOR.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 33-year-old security guard employed part-time by a federal contractor. He also works as a security clerk for another employer (Tr. 57-58). He expects to work full-time as a security guard when the status of his security clearance is resolved (Tr. 57). He has worked in his security guard position since May 2009. He recently applied for an additional part-time position as an access control officer or security escort (AX U). He has completed numerous courses, many of them online, to improve his professional qualifications (AX M through T).

Applicant attended college from the fall of 1995 until the spring of 1997. He deployed to Bosnia as a member of the Army National Guard in August 1997. He returned to school in the fall of 1998 and remained until the fall of 2000, but he did not graduate (Tr. 70-71).

Applicant worked as a store manager from January 2000 to November 2001, and was unemployed from November 2001 to January 2002. He worked as a loss prevention agent at a record and video store from January to August 2002 and as a financial specialist at a loan company from August 2002 to August 2003. He worked as a security specialist from August 2003 to June 2004. He worked as an executive chauffeur for a federal contractor from June 2004 to September 2006, and as a consultant for a federal contractor from September 2006 until he began his current employment in May 2009. He held a security clearance during his two previous jobs with federal contractors.

Applicant was married in October 2005, while he and his wife were students. They have never lived together. They have a seven-year-old son, born before they were

married. Applicant pays child support, which is automatically deducted from his pay (Tr. 69). He has obtained an apartment and hopes to have his wife and son join him in the near future (Tr. 52-53). His son suffers from a high-functioning level of autism (Tr. 65).

Applicant has experienced financial difficulties since mid-2002. Between July 2002 and December 2004, Applicant's landlord obtained three judgments against him for unpaid rent (GX 2 at 3). All three judgments were paid (Tr. 75-76). He was evicted for nonpayment of rent in February 2004 and January 2007 (Tr. 79-80).

There have been no payments on Applicant's student loan, alleged in SOR ¶ 1.f, since December 2002 (Tr. 94). He testified he was unable to negotiate a payment plan for the student loan, because the collection agencies insisted on payment in full. The loan is being transferred to the Department of Education, and he hopes to negotiate a payment plan after the loan is transferred (Tr. 50; AX W).

In April 2009, Applicant enrolled in a debt consolidation program (AX A; AX D; Tr. 82). The program provides for monthly payments of about \$188 for 40 months (AX D at 10; Tr. 104). The first four payments cover the program fee, and after the fee is paid, payments will be disbursed to creditors (AX D at 7; Tr. 105). Applicant made the first payment in May, and no funds have yet been disbursed to creditors. The medical bill alleged in SOR ¶ 1.c and the deficiency from the auto repossession alleged in SOR ¶ 1.h are included in the debt consolidation program.

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

SOR	Debt	Amount	Status	Evidence
1.a	Collection (DLA ¹ Mar. 07)	\$59	Unpaid	GX 4 at 1
1.b	Tuition (DLA Jul. 06)	\$134	Paid by offset from state tax refund	AX V; Tr. 108
1.c	Medical (DLA Nov. 03)	\$703	Debt consolidation program	AX D at 5; Tr. 89-90
1.d	Telephone (DLA Jan. 04)	\$538	Unpaid	GX 4 at 1; AX W; Tr. 93
1.e	Cable Service (DLA Feb. 07)	\$1,286	Unpaid	GX 4 at 1
1.f	Student Loan (DLA Dec. 02)	\$19,221	Unpaid; hopes to negotiate payment plan	GX 2 at 5; AX W; Tr. 50
1.g	Telephone Bill	\$265	Paid, Mar. 09	AX B at 5; Tr. 81
1.h	Auto repossession In Aug. 06	\$11,702	Debt consolidation program	AX D at 5; Tr. 82, 94

¹ DLA is the date of last activity. The date is reflected by month and year.

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 SOR alleges eight delinquent debts totaling about \$33,908. 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 by an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised by “a history of not meeting financial obligations.” AG ¶ 19(e) is raised by “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 these three disqualifying conditions, 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). This mitigating condition is not applicable because Applicant’s delinquent debts are ongoing, numerous, and not the product of unusual circumstances.

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 has experienced several conditions beyond his control. He was unemployed from November 2001 to

January 2002. He is incurring the expenses of maintaining two households because he and his family are geographically separated. His son has special medical needs. On the other hand, he has been employed continuously since January 2002, but he has not adjusted his spending to his income. He does not have a good grasp of his financial situation and is dependent on others, such as the managers of his debt consolidation program, to manage his money for him. He did not act responsibly until April 2009, after he received the SOR, when he finally sought professional help. This mitigating condition is not 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). Although Applicant has enrolled in a debt consolidation program, there is no evidence he has sought or obtained financial counseling. Four debts, including the student loan, his largest debt, are not included in his debt consolidation program, and they remain unresolved. This mitigating condition 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). Evidence of past irresponsibility is not mitigated by payment of debts because of 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.*

The tuition debt alleged in SOR ¶ 1.b was paid by withholding Applicant’s tax returns, not by voluntary action on his part. His involuntary payment of the debt resolves the security concern arising from it, but it does not establish the good-faith effort contemplated by AG ¶ 20(d). He receives credit for paying the delinquent telephone bill alleged in SOR ¶ 1.g. He has included the debts in SOR ¶¶ 1.c and 1.h in his debt consolidation program, but as of the date of the hearing no funds had been disbursed in payment of those debts. His actions to resolve his delinquent debts were prompted by his receipt of the SOR rather than a sense of duty or obligation. I conclude AG ¶ 20(d) 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 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 adult who has held a security clearance for several years, apparently without incident. He has worked for federal contractors for about five years. Although he has been employed steadily since January 2002, he has a long record of financial difficulty.² His recent enrollment in a debt consolidation program may be a step in the right direction, but insufficient time has passed to determine if he will adhere to his plan and establish a track record of financial responsibility. He has yet to resolve his student loan and several other smaller debts.

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 continue his 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:

² The three judgments for unpaid rent and the two evictions for nonpayment of rent were not alleged in the SOR. Conduct not alleged in the SOR may be considered to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the uncharged misconduct for those limited purposes.

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge