



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



In the matter of:)
)
) ISCR Case No. 09-00148
)
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: Sheila Lucas, Personal Representative

December 6, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems are the result of circumstances beyond his control. He understands the importance of maintaining financial responsibility and what it is expected of him to be eligible for a security clearance. He did not engage in questionable behavior in the acquisition of his debts. Given his circumstances, he has made reasonable efforts to resolve his financial problems, and given the opportunity, he will establish full financial responsibility. On balance, Applicant’s current financial problems do not cast doubts on his reliability, trustworthiness, or judgment. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on July 23, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On June 4, 2010, DOHA issued Applicant an SOR, which specified the basis for its decision -- security concerns addressed in the Directive under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).²

On July 10, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 20, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on August 26, 2010. The hearing was convened as scheduled on September 15, 2010. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant and two witnesses testified, and he presented Exhibits (AE) 1 through 8, which were admitted without objection. I kept the record open allowing Applicant an additional period to submit documentary evidence. He timely submitted AE 9, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 21, 2010.

Findings of Fact

Applicant admitted all 15 factual allegations in the SOR. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 38-year-old physical security guard working for a government contractor. He requires a security clearance to continue his job. He attended college from 1989 until 1993, but is four classes short of a degree. He paid for his college education with student loans. He has been married for 11 years, and has three stepchildren and one grandchild.

Applicant employment history shows that he was employed from May 2001 until September 2004; unemployed from September 2004 until July 2005; part-time employed (underemployed) from July 2005 until April 2006; employed from April 2006 until February 2008; unemployed from February 2008 until July 2008; and employed by his current employer, a government contractor, from July 2008 until around July 2010. He received an interim security clearance shortly after he was hired. His interim security clearance was withdrawn as a result of the pending SOR, and he was suspended from his employment. He has been working on a limited part-time basis for his current employer pending the resolution of his security clearance. This is his first time applying

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as revised.

² Adjudication of this case is controlled by the AGs, implemented by the DoD on September 1, 2006.

for a security clearance. There is no evidence that he has compromised or caused others to compromise classified information, or that he has been involved in any security violations.

In his July 2008 security clearance application, Applicant disclosed he had financial problems. His background investigation revealed, and Applicant admitted, the 15 delinquent or charged-off debts alleged in the SOR, totaling approximately \$42,000. Applicant explained that he and his wife were providing financial support to two of his stepchildren and a grandchild. His then 15-year-old stepdaughter had a child out of wedlock eight years ago, and they have been living with Applicant and his wife until recently. Additionally, Applicant and his wife were providing financial support to another stepchild who is attending college. When he and his wife were both working, they were in a tight budget, but they were able to pay for their family's day-to-day living expenses and to pay their debts. When Applicant was unemployed, they had trouble making ends meet with his wife's income, his unemployment benefits, and his sporadic income from odd jobs.

Applicant's wife was employed full time from May 1994 until around April 2007, when she broke her foot and had to go into short-term disability, earning only 60% (\$19,200 a year) of her regular pay (\$32,000 a year). From September 2007 until December 2009, her employer placed her on a part-time schedule because of the employer's financial situation, and in December 2009, she was let go from her position because of a reduction in force. Applicant's and his wife's periods of unemployment made it almost financially impossible for them to pay their family's day-to-day living expenses and their debts.

SOR ¶ 1.a alleges a \$1,886 judgment filed against Applicant for his failure to pay his homeowner association fees. Applicant acknowledged the debt, and testified he had not been able to pay the debt because of his precarious financial situation. In September 2010, he sent a letter to the creditor stating he was currently unemployed, but that he wanted to establish a payment plan to resolve the debt. (AE 4) SOR ¶¶ 1.b (\$593), 1.e (\$112), and 1.k (\$527) were settled and paid by Applicant in September 2010. (AE 9)

Concerning the three alleged delinquent medical accounts (SOR ¶¶ 1.c (\$191), 1.d (\$208), and 1.o (\$155)), Applicant initially admitted them as his debts in his answer to the SOR. However, he later realized he could not identify the medical provider and could not determine whether these were his or his wife's medical debts. In September 2010, he sent written disputes to the three credit bureaus of the accounts and requested confirmation that these were his debts. At the same time, Applicant also disputed the delinquent debts alleged in SOR ¶¶ 1.f (\$2,008), 1.g (\$500), 1.h (\$1,805), 1.i (\$555), and 1.j (\$888), which he had admitted in his answer to the SOR. As of his hearing, he had not received a response concerning these accounts.

Regarding SOR ¶ 1.l, Applicant testified that he and his wife purchased a home in 2002 for around \$175,000. Because of their unemployment situation, they fell behind

on the mortgage payments and the account became delinquent for \$12,606 (SOR ¶ 1.i). Applicant remained in contact with his mortgage creditor and informed the bank of his financial problems. In June 2010, Applicant established a new mortgage payment arrangement agreeing to pay \$1,240 a month for four months, and then to make a lump sum payment to bring the account current. Applicant made the first two payments on his plan, and intended to comply with the third payment after the hearing. (AE 6)

SOR ¶ 1.m alleges a student loan in collection for around \$14,000. Applicant acknowledged the debt, and testified he had not been able to pay it because of his financial situation. He presented documentary evidence showing that in the past, when he was financially able, he made some payments on his student loan. AE 9 shows \$100 payments made in January 2002, May 2003, and June 2003. Additionally, a 2005 Department of Education statement shows he paid \$715 towards accrued interest. And, in 2005, the U.S. Treasury Department offset \$1,785 from his income tax refund and applied it to his student loan debt. In September 2010, Applicant sent a letter to the Department of Education requesting to establish a new payment schedule. (AE 5)

SOR ¶ 1.n alleges a delinquent car loan for \$1,046. In 2007, Applicant purchased a 2003 car for around \$23,000. He became delinquent on his \$16,000 note in 2009-2010. Around June 2010, he sent a letter to the creditor explaining his financial situation and established a new payment plan. He made payments in July and August 2010 in compliance with his new loan rehabilitation payment plan. (AE 7)

Applicant's pastor and his wife testified on his behalf. The pastor considers him to be reliable, trustworthy, faithful, and a good family man. Applicant stated he is an asset to his employer and the agency he serves. Because of his dependability and performance during the last two years, his employer continues to call him to work on a part-time basis until his security clearance eligibility is adjudicated.

Applicant was sincerely remorseful and contrite about his financial situation. At times, his demeanor indicated he is frustrated about his circumstances. He would like to pay his delinquent debts but finds himself in a "catch 22" situation. He has been the primary provider for his family and he is not earning sufficient money to pay for his family's day-to-day living expenses and his delinquent debts. His take-home pay from his current job was around \$1,800 to \$2,000 a month. He and his wife are making changes in their lifestyle to save money to pay for their debts. Because his stepdaughter and grandchild recently moved to their own apartment, he believes he will now have some additional money at the end of the month to pay his debts. He has participated in financial counseling through his church and has identified other ways to save money.

Applicant acknowledged he should have been more diligent in contacting his creditors and establishing payment plans. However, he correctly noted that, because he did not have any money left at the end of the month, it would not have been reasonable for him to attempt to establish payment plans he could not fulfill. Applicant has been most concerned about providing for the day-to-day expenses of his family and making sure that he keeps his house and car. In early 2009, Applicant started to pay his small

debts. He intends to contact the larger creditors to establish viable payment plans. His wife is also looking for a job. With both of them working, they will be able to better address their delinquent debts. Considering the totality of his circumstances, Applicant is doing all he can do to resolve his debts. Applicant's credit reports do not show he has been making frivolous purchases or spending beyond his financial means.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any expressed or implied determination about Applicant's allegiance, loyalty, or patriotism. It is merely an indication that 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 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 or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Under Guideline F, the security concern is that 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 ¶ 18.

The SOR alleged 15 delinquent debts in collection or charged off, totaling approximately \$42,000, which have been delinquent for several years. Applicant admitted, and the record evidence confirms that these are his delinquent accounts, but he disputed the validity of the total charges for some of the accounts. AG ¶ 19(a): “inability or unwillingness to satisfy debts;” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (a) 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;
- (b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and

(f) the affluence resulted from a legal source of income.

Between September 2004 and April 2006, Applicant was unemployed for 11 months and underemployed in temporary or part-time jobs for 10 months. He was unemployed from February to July 2008, and he was suspended and placed on part-time employment when his interim security clearance was suspended in July 2010. His wife broke her foot in April 2007, and was placed on short-term disability earning only 60% of her regular pay. From September 2007 until December 2009, her employer placed her on a part-time schedule because of the employer's financial situation, and in December 2009, she was let go from her position because of a reduction in force.

Applicant disclosed his financial problems in his security clearance application. He paid three of the SOR debts in September 2010 (SOR ¶¶ 1.b (\$593), 1.e (\$112), and 1.k (\$527)). He made payment arrangements with the creditors of the debts alleged in SOR ¶¶ 1.l (\$12,606) and 1.n (\$1,046), and as of the day of his hearing, he had made two monthly payments towards the rehabilitation of both accounts. He also contacted the Department of Education seeking to establish a new payment plan. Applicant disputed in writing all remaining accounts. In sum, Applicant resolved three of the 15 debts alleged in the SOR, and is making payments on two other debts. Outside of the 15 delinquent debts discussed above, there is no evidence Applicant had other delinquent debts, or that he was living beyond his financial means.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because most of the SOR debts are unresolved (recent behavior). It partially applies because he resolved three of the delinquent debts, is making payments on two other debts, and appears to have a valid reason to dispute the three medical SOR debts. The evidence established circumstances beyond his control contributing to his inability to pay his debts, i.e., his and his wife's periods of unemployment and underemployment, and her injury. AG ¶ 20(b) is fully established by the evidence. Applicant presented sufficient evidence showing his efforts to contact creditors and pay his debts.

AG ¶ 20(c) applies. Applicant participated in financial counseling through his church. He demonstrated he has the desire to resolve his debts by paying three debts, establishing payment plans for two other debts, and disputing the remaining debts. His

actions establish partial mitigation under AG ¶ 20(d). He receives only partial credit because he should have been more diligent and aggressive in the resolution of his debts. AG ¶ 20(e) partially applies because he is in the process of disputing the interest and charges on some of the SOR debts, and three medical debts may not be established.

Considering the evidence as a whole, Applicant has a plan to resolve his financial problem, albeit dependent on his continued employment. His evidence shows that through the years, he maintained contact with the Department of Education and made payments towards his student loan. He also recently paid three debts and made payment arrangements for two other debts. He has a plan to resolve his other SOR debts.³ He intends to pay the smaller debts first and then address the larger debts.

Applicant understands the possible adverse security clearance consequences of not maintaining financial responsibility. I believe that given time, Applicant will resolve the remaining SOR debts and avoid similar financial problems in the future. Although Applicant should have been more diligent addressing his debts, and he still has several unresolved SOR debts, his past behavior and current financial situation do not raise doubts about his current reliability, trustworthiness, and judgment. Financial considerations concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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. AG ¶ 2(c). I have incorporated my comments

³ “[A]n applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009), citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(c) were addressed under that guideline, but some warrant additional comment.

Applicant is a good husband and father. He has been taking care of his stepchildren and grandchild for the last 11 years. He has been successful in his job for a government contractor since 2008. He is a mature man and a good worker. He has sought counseling to overcome his financial problems and understands the importance of maintaining financial responsibility. There is no evidence he has ever compromised or caused others to compromise classified information. His financial problems do not seem to be the result of his living beyond his means or frivolous spending. His financial problems appear to be the result of his and his wife's periods of unemployment and underemployment. He is doing all he can do under his circumstances to resolve his financial problems. He has been working hard at his current job, and he and his wife have made life-style changes to resolve their financial problems.

I find Applicant's testimony credible. He understands the importance of maintaining financial responsibility and what it is expected of him to be eligible for a security clearance. He disclosed his financial problems in his security clearance application. Applicant did not engage in questionable behavior in the acquisition of his debts. His delinquent debts were primarily the result of circumstances beyond his control. Considering his circumstances, he has made reasonable efforts to resolve his financial problems. He started to resolve his financial problems and given the opportunity, I believe he will continue to resolve his financial problems and establish full financial responsibility. Under the whole-person concept, this 38-year-old security guard's current financial problems do not cast doubts on his reliability, trustworthiness, or judgment.

The record evidence establishes Applicant's eligibility and suitability for a security clearance. Applicant mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.o:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

JUAN J. RIVERA
Administrative Judge