



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00473
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: David P. Price, Esq.

June 22, 2010

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 August 21, 2008. On December 10, 2009, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline F. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on December 15, 2009; answered it in an undated document; and requested a hearing before an administrative judge. DOHA received the

request on January 4, 2010. Department Counsel was ready to proceed on January 31, 2020, and the case was assigned to me on February 5, 2010. DOHA issued a notice of hearing on March 5, 2010, scheduling the hearing for March 30, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 14 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. Department Counsel and Applicant both submitted demonstrative exhibits summarizing the evidence, which are attached to the record as Hearing Exhibits (HX) I and II. DOHA received the transcript (Tr.) on April 5, 2010.

I kept the record open until April 19, 2010, to enable Applicant to submit additional documentary evidence. He timely submitted AX H through X. On April 28, 2010, he submitted AX Y. Department Counsel did not object to AX H through X or the untimely submission of AX Y, and they were admitted. Department Counsel's comments regarding AX H through X are attached to the record as HX III. The record closed on April 28, 2010.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.e-1.h, and 1.j-1.n. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 58-year-old engineer employed by a defense contractor. He has worked for his current employer since August 1996. He received a bachelor's degree in business management in June 2004, and he expects to receive a master's degree in engineering management in the spring of 2011. (AX B; AX G-17; Tr. 54.)

Applicant married in August 1973 and divorced in February 1989. He remarried in March 1990 and separated in December 2005. Since November 2006, he has been cohabiting and in a committed relationship with a woman who was a family friend before she divorced her husband and Applicant separated from his wife. (AX C-21; Tr. 29-31.)

Applicant served on active duty in the U.S. Air Force from August 1970 to May 1974. (AX F-1.) He was discharged from the Air Force and enlisted in the Army National Guard in January 1975. (AX F-2; AX F-3.) He served in the Army National Guard from September 1975 to June 1982. (AX F-5.) He has held a clearance since October 1981. (GX 3, Item 31.)

Applicant lost his job shortly after his divorce in 1989. He then had custody of the three children from his first marriage. On the advice of his lawyer, he filed for Chapter 7 bankruptcy and received a discharge in March 1992. (GX 7; Tr. 66, 106.)

Applicant's second wife, who had a business background, managed the family finances until they separated in December 2005. Between 2002 and 2004, Applicant discovered his wife had opened at least six credit card accounts without his knowledge

and was “floating” the account balances, using one credit card account to pay the balance on another. (Tr. 69.) After they separated, he found that their financial records were in disarray. He asked a friend with experience as a bookkeeper (now his cohabitant) to assist him in early 2006, but she could not reconcile the accounts. Applicant opened a new bank account because of his inability to reconcile the marital account. (Tr. 31-34; 71-74.) Applicant was aware of two auto loans that were in arrears and some delinquent medical bills. (Tr. 35, 72.)

After his separation, Applicant was ordered to pay spousal support of \$2,711 per month, which is collected directly from his pay. (GX 6 at 9.) From 2006 to 2008, his spouse refused to sell the marital home, and the market value of the home declined during that period. (AX C-19.) When the home was eventually sold in May 2009, the proceeds were held in escrow. (GX 6 at 18; Tr. 40.) In December 2009, Applicant received \$20,000 from the sale of the marital home, which he used to resolve as many delinquent debts as possible. (Tr. 40. 75-77.) He recently received his income tax refund of \$8,597, which he has used to resolve the debt for apartment rent alleged in SOR ¶¶ 1.d and 1.h. (Tr. 86.)

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

SOR	Debt	Amount	Answer to SOR	Status	Evidence
1.a	Medical	\$25	Admit	Paid	GX 14 at 1; Tr. 11
1.b	Medical	\$354	Admit	Paid	GX 14 at 1; Tr. 11
1.c	Medical	\$110	Admit	Paid	AX A-2 at 1
1.d	Collection	\$1,347	Deny	Paid; same as 1.h	AX P thru V; Tr. 80
1.e	Cell phone	\$362	Admit	Paid	AX A-2 at 1
1.f	Collection	\$80	Admit	Paid	AX Y
1.g	Cable	\$87	Admit	Paid	GX 14 at 2; Tr. 11
1.h	Apartment rent	\$1,347	Admit	Paid	GX 11; AX A-4; AX P thru V
1.i	Auto repossession	\$18,745	Deny	Amount disputed	AX J; AX C-19; Tr. 83
1.j	Auto repossession	\$3,017	Admit	Paid	GX 14 at 2; Tr. 11
1.k	Credit card	\$296	Admit	Paid	GX 14 at 2; Tr. 11
1.l	Computer	\$2,629	Admit	Settled	AX H, K, & L; Tr. 84
1.m	Telephone	\$93	Admit	Paid	AX A-2 at 1; AX A-5
1.n	Cell phone	\$144	Admit	Paid	AX M

Applicant has disputed the amount of auto repossession deficiency alleged in SOR ¶ 1.i, on the ground that the amount claimed is the full amount that was due before

the vehicle was repossessed and sold. He has filed a complaint with the state attorney general's office. (AX J.)

In response to DOHA interrogatories, Applicant submitted a personal financial statement in July 2009. It reflects gross monthly income of about \$10,808, net monthly income after deductions (including a deduction of \$2,713 for spousal support) of \$3,102, monthly expenses of \$2,501, and a net remainder of \$601. (GX 6 at 4.) His cohabitant's income is limited to monthly Social Security payments and disability payments from the state. The record does not reflect the amounts of those payments.

At the hearing, Applicant testified he expected that his divorce would be final within about a month. When it is final, his spousal support payments will be reduced by at least \$450 per month. (AX C-19 at 3; Tr. 68.)

Applicant and his cohabitant share all household expenses and jointly manage the household budget. Before he received his share of the proceeds from the sale of the marital home, he borrowed money from his cohabitant to pay his share of the household expenses, but he has since repaid her. His cohabitant testified he has not incurred any delinquent accounts since they began cohabiting (Tr. 41-43.)

Applicant's credit report dated March 30, 2010 reflected a medical collection account for \$895. (GX 14 at 1.) Applicant could not explain this collection account at the hearing. (Tr. 88.) However, after the hearing, he submitted evidence that he had disputed the credit report entry, and it had been removed from his credit report. (AX X.)

Applicant is a talented, well-trained, creative, experienced engineer who has received numerous awards for leadership and engineering excellence. (AX C-1 through C-12; AX D; AX E; AX G-1 through G-16.) He is highly respected among supervisors, project managers, and peers. Numerous colleagues and supervisors submitted testimonials to Applicant's candor, honesty, diligence, and reliability. All held current security clearances and were aware of his pending divorce and his financial situation. (AX C-13 through C-18.)

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 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 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 14 delinquent debts. Two of those debts (SOR ¶¶ 1.d and 1.h) are duplicates. All but one have been resolved. One debt arising from an automobile repossession (SOR ¶ 1.i) is disputed.

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." All three disqualifying conditions are raised by the evidence, shifting the burden to Applicant 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 were recent and numerous. They occurred because he did not pay attention to the family finances and his wife was financially irresponsible. Applicant has learned his lesson about neglecting his financial responsibilities, and he and his irresponsible wife have parted ways, making another financial disaster unlikely to recur. He acted responsibly after the marital breakup, enlisting the help of his cohabitant to use her bookkeeping experience to evaluate his financial situation, minimizing his living expenses, borrowing money from his cohabitant to pay current expenses, and resolving his delinquent debts when the proceeds from the sale of the marital home finally became available. 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 several conditions beyond his control: his spouse's financial irresponsibility, the high costs of an acrimonious divorce, the refusal of his spouse to dispose of the marital home until the real estate market plummeted, and the refusal of the domestic relations court to release the proceeds from the sale of the

family home until all issues in the divorce were resolved. He acted responsibly by reviewing his financial records, reducing his living expenses, borrowing money from his cohabitant to pay some of his debts and living expenses. Once the marital assets were released, he repaid his cohabitant and paid as many delinquent debts as he could. I conclude AG ¶ 20(b) is 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). 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 was living on a tight budget until the marital home was sold and the proceeds distributed in January 2010. He has paid or resolved all his delinquent debts except the auto repossession in SOR ¶ 1.i, which he has disputed. I conclude AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.a-1.h and 1.j-1.n.

Security concerns under this guideline also can be mitigated 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 has disputed the amount of the debt alleged in SOR ¶ 1.i because he has not received credit for the sale of the repossessed property. He has documented the basis for the dispute. I conclude AG ¶ 20(e) is established for the debt alleged in SOR ¶ 1.i.

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 an intelligent, talented, well-educated man. He has served his country for many years in the armed forces and as an employee of a defense contractor. He has held a clearance for many years without incident. He is devoted to his work, to the extent that he completely entrusted his financial well-being to his spouse while he focused exclusively on being an engineer. He has learned, however, that his responsibilities extend beyond the workplace, and he now actively participates in the financial management of his household. He has a reputation for being candid, truthful, and reliable. He was candid, sincere, and credible at the hearing.

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 close 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 continue 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.n:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge