



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-04198  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: James F. Duffy, Esq., Department Counsel  
For Applicant: *Pro se*

July 30, 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 denied.

**Statement of the Case**

Applicant submitted a security clearance application on April 14, 2009. On February 25, 2010, 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR on March 3, 2010; answered it on March 23, 2010; and requested a hearing before an administrative judge. DOHA received the request on

March 26, 2010. Department Counsel was ready to proceed on April 13, 2010, and the case was assigned to me on April 16, 2010. DOHA issued a notice of hearing on April 23, 2010, scheduling the hearing for May 12, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. I kept the record open until June 1, 2010, to enable him to present documentary evidence. DOHA received the transcript (Tr.) on May 20, 2010. Applicant timely submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. AX D through F were received on June 2, 2010, having been mailed on May 28, 2010. Department Counsel did not object to the untimely submission, and AX D through F were admitted. Department Counsel's comments regarding AX A through F are attached to the record a Hearing Exhibit I. The record closed on June 2, 2010.

### **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 36-year-old welder employed by a defense contractor at a U.S. Navy shipyard. He has worked for his current employer since June 2008. He has never held a security clearance.

Applicant's coworkers consider him a hard-working, conscientious employee with high integrity and dependability. (AX E at 1, 4, 5) His supervisors describe him as courteous, cooperative, skilled, dedicated, and reliable. (AX E at 2, 3, 6.)

Applicant dropped out of high school in June 1992. He completed his GED in 2002, He attended a community college for a year and a half, and a four-year college for a year but did not receive a degree (Tr. 33.) He was unemployed from January 1999 to November 2001 and worked intermittently from November 2002 to February 2005. (Tr. 34-36.)

Applicant married in 1995 and divorced in 1999 (Tr. 31.) He married his current spouse in December 2006. He has one child by his current spouse, one stepchild, and four other children. The child by his current spouse and his stepchild live with him. He pays child support for the four children who do not live with him. (Tr. 26, 31-32.)

The SOR alleges 20 delinquent debts. Applicant has initiated automatic payroll deductions to pay five debts related to child support. Three delinquent student loans are being collected by involuntary deductions from his pay. Applicant has consulted with a lawyer about bankruptcy, but he has taken no steps toward filing a bankruptcy petition. (Tr. 58.) He hopes to return to school, in which case his student loan debts will be deferred and his employer will subsidize his education, but he had not yet enrolled in school on the date of the hearing. (Tr. 57.)

Applicant's wife has been unable to work for the past year because of medical complications during childbirth. The medical bills alleged in the SOR are unrelated to her medical problems. (Tr. 60-61.)

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

SOR	Debt	Amount	Status	Evidence
1.a	Child Support (judgment)	\$6,006	Paid by automatic payroll deduction	Tr. 38; AX E
1.b	Child Support (judgment)	\$2,436	Same as 1.a	Same as 1.a
1.c	Medical bill	\$331	Unpaid	Tr. 43
1.d	Medical bill	\$2,986	Unpaid	Tr. 43
1.e	Telephone bill	\$428	Unpaid	Tr. 43-44
1.f	College textbook	\$161	Unpaid	Tr. 44
1.g	Medical bill	\$152	Unpaid	Tr. 44
1.h	Medical bill	\$364	Unpaid	Tr. 44
1.i	Medical bill	\$480	Unpaid	Tr. 45
1.j	Medical bill	\$44	Unpaid	Tr. 45
1.k	Student loan	\$4,312	Pay garnished	Tr. 45; AX C
1.l	Student loan	\$2,127	Same as 1.k	Tr. 46-47
1.m	Telephone bill	\$465	Unpaid	Tr. 48
1.n	Cell phone	\$34	Unpaid	Tr. 48
1.o	State tax lien	\$4,661	Same debt as 1.a, 1.b, and 1.g	Tr. 50
1.p	State tax lien	\$2,700	Same debt as 1.a, 1.b, and 1.g	Tr. 50
1.q	Child support	\$4,661	Same as 1.a	Tr. 52
1.r	Cell phone	\$356	Unpaid	Tr. 53
1.s	Cell phone	\$530	Unpaid	Tr. 53
1.t	Student loan	\$2,625	Same as 1.k	Tr. 55

Applicant signed a contract with a law firm offering debt counseling services on May 23, 2010, about two weeks after the hearing, but there is no evidence that the debt counseling firm is resolving any of Applicant's delinquent debts. (AX B.) The state tax liens alleged in SOR ¶¶ 1.o and 1.p were filed to collect Applicant's child support arrearage by seizing any state tax refunds to which he may be entitled. Applicant asserted that he owed only \$100 on the cell phone debt alleged in SOR ¶ 1.s, but he presented no documentary evidence to support his assertion.

### 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 about 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 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 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.

Applicant's financial history raises three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(e) ("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").

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (e), the burden shifted 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). This mitigating condition is not established because Applicant's delinquent debts are recent, numerous, and did not occur under circumstances making them unlikely to recur.

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's spouse has been unable to work outside the home for about a year because of medical problems, but the child support obligations and student loan debts were incurred before his marriage. Applicant's work history before his current job was intermittent, but he has now been employed for more than two years. He has not resolved any of the debts alleged in SOR ¶¶ 1.c-1.n, 1.r, and 1.s, even though most of them are for relatively small amounts. He has acted responsibly by setting up an

automatic payroll deduction for his child support obligations. I conclude AG ¶ 20(b) is established for the child support debts alleged in SOR ¶¶ 1.a, 1.b, and 1.q, and the related tax liens in SOR ¶¶ 1.o and 1.p. It is not established for the remaining debts alleged in the SOR, because he has not acted responsibly regarding those debts.

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 hired a debt counseling firm after the hearing, but there is no evidence that any debts are being resolved through a debt counseling program. I conclude 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). 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). This mitigating condition is established for the child support debts (SOR ¶¶ 1.a, 1.b, and 1.q) and the related tax liens (SOR ¶¶ 1.o and 1.p). It is not established for the delinquent student loans (SOR ¶¶ 1.k, 1.l, and 1.t), which are being collected by involuntary deductions from Applicant’s pay. Involuntary collection does not amount to good faith, nor does it demonstrate a sense of duty or obligation. It is not established for the remaining delinquent debts (SOR ¶¶ 1.c-1.n and 1.r-1.t), because Applicant has not yet initiated any resolution of those debts.

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 disputed the amount due on the cell phone debt in SOR ¶ 1.s, and he was uncertain about some of his student loans, but he has presented no documentary evidence showing a reasonable basis to dispute any of the debts alleged in the SOR. I conclude that this mitigating condition 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 adult who has finally found a stable job offering good pay and career potential. He enjoys a good reputation among his supervisors and coworkers. He was sincere and candid at the hearing. Unfortunately, his unfocused and undisciplined past has saddled him with large child support debts and delinquent student loans, and he has not yet demonstrated the level of financial responsibility expected of individuals entrusted with a security clearance.

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 grant him 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): **AGAINST APPLICANT**

Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c-1.n:	Against Applicant
Subparagraphs 1.o-1.q:	For Applicant
Subparagraphs 1.r-1.t:	Against Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge