



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



In the matter of:)
)
-----) ISCR Case No. 09-05398
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 29, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application on April 7, 2009 (Item 4). On July 20, 2010, 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 Guidelines F and E. 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 July 23, 2010; answered it on August 3, 2010; and requested a determination on the record without a hearing. Department Counsel submitted the Government's written case on September 9, 2010. On the same day, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. He received the FORM on September 13, 2010, and timely submitted additional material, which was incorporated in the record without objection from Department Counsel. The case was assigned to me on October 19, 2010.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. His admissions are incorporated in my findings of fact.

Applicant is a 47-year-old technical support coordinator employed by a defense contractor since September 2004. He has held a security clearance since November 2004. (Item 4 at 23.)

Applicant married in August 1988. He and his spouse separated in 2003 and divorced in April 2007. They had one child, who was born in December 1992.

When Applicant submitted his security clearance application in April 2009, he answered "No" to question 27d, asking if, in the last seven years, he had any judgments against him that were unpaid. (Item 4 at 24.) He did not disclose that his credit union obtained a judgment against him for \$9,824 in April 2008, which is not yet fully satisfied. The credit union judgment is alleged in SOR ¶ 1.a, and Applicant's failure to disclose it is alleged in SOR ¶ 2.a.

Applicant also answered "No" to question 28a, asking if, in the last seven years, he had ever been more than 180 days delinquent on any debt. Finally, he answered "No" to question 28b, asking if he was currently more than 90 days delinquent on any debts. (Item 4 at 25.) He did not disclose three debts reflected on his credit reports: a delinquent credit card debt for about \$6,301; a second credit card debt for \$126, and a debt to a credit union (the same credit union that obtained the \$9,824 judgment). The three delinquent debts are alleged in SOR ¶¶ 1.b, 1.c, and 1.d. Applicant's failure to disclose them is alleged in SOR ¶ 2.b. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a (unpaid judgment for \$9,824). Applicant admitted this debt. His credit union obtained a judgment against him in February 2008 for a delinquent loan. (Item 5.) Initially, his pay was garnished to satisfy the judgment. The collection attorney's ledger reflects that a wage attachment and notice of lien were filed in September 2008. Applicant began making payments of \$500 per month in January 2010, and he has made payments every month through September 2010. The unpaid balance is about \$5,800. (Enclosure to Answer; Response to FORM.)

SOR ¶ 1.b (delinquent credit card account for \$6,301). Applicant admitted this debt. In November 2009, he hired a debt settlement service to resolve this debt. (Enclosure to Answer.) However, he submitted no documentary evidence of payments to this creditor, before or after he hired the debt settlement service. The debt is unpaid.

SOR ¶ 1.c (delinquent credit card account for \$126). Applicant denied this debt in his answer to the SOR, asserting that it was paid. However, the documentation he provided in his answer pertains to a different debt. It reflects settlement of a previous judgment obtained by the same creditor in April 2006 and satisfied in April 2007. Applicant's credit report dated September 8, 2010, reflects that the delinquent debt alleged in the SOR was charged off in May 2007. (Item 9 at 2.) He has not disputed the credit report entry. The debt is unresolved.

SOR ¶ 1.d (delinquent credit union account for \$2,658). Applicant denied this debt in his answer to the SOR, asserting that he had only one loan from the credit union, which is alleged in SOR ¶ 1.a. He provided no documentary evidence to support his denial. This debt is unresolved.

When Applicant was interviewed by a security investigator in May 2009, he stated that he fell behind on his debt payments while going through his divorce. (Item 6 at 5.) His security clearance application reflects that he has been continuously employed since at least 1997. (Item 4.) His personal financial statement submitted in response to DOHA interrogatories reflects that he has net monthly income of \$5,019, expenses of \$3,319, debt payments of \$1,306, and a remainder of about \$393. (Item 6.)

Applicant has resolved several delinquent debts not alleged in the SOR. A judgment for \$3,310 was entered against him in April 2006 and satisfied in April 2007. (Item 5 at 2; Enclosure to Answer.) In his response to the FORM, he presented evidence that he was paying \$200 per month to resolve a delinquent account with a furniture company. His most recent credit report reflects that a delinquent department store account was settled in November 2005. (Item 9 at 2.)

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.

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:

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 two disqualifying conditions: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). Thus, 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 considerations may be mitigated if "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 has multiple debts that are not yet resolved 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 divorce was a condition beyond his control. He receives some mitigation credit because he has resolved several debts not alleged in the SOR, is making regular payments on the debt alleged in SOR ¶ 1.a, and has hired a debt resolution company to resolve the debt alleged in SOR ¶ 1.b.

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 has hired a debt resolution company to assist him with one debt, but this mitigating condition is not established because he has not obtained the type of counseling contemplated by this mitigating condition, and there is no evidence of payments or other resolution of the debt being handled by the debt resolution company.

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 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 receives some credit under this mitigating condition because he has resolved several debts not alleged in the SOR and is making regular payments on the debt alleged in SOR ¶ 1.a. On the other hand, he has denied the debts alleged in SOR ¶¶ 1.c and 1.d and has not demonstrated any plan to resolve them, either by payment, compromise, or by filing a formal dispute with the credit bureaus.

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). This mitigating condition is not established, because Applicant presented no documentary evidence that he has disputed the debts alleged in SOR ¶¶ 1.c and 1.d, either by contacting the creditors or by utilizing the credit bureau dispute process.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.” AG ¶ 16(a). When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant has denied falsifying his security clearance application. He appears to have believed that the credit card debt alleged in SOR ¶ 1.c was settled in April 2007, but he has offered no explanation for not disclosing the unsatisfied judgment alleged in SOR ¶ 1.a, or not disclosing that his loan from the credit union was delinquent. The evidence shows that his wages were garnished and he was sent a notice of lien about eight months before he submitted his application. I conclude AG ¶ 16(a) is raised.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted

with the facts.” AG ¶ 17(a). This mitigating condition is not established because there is no evidence that Applicant tried to correct his omissions before being confronted with the evidence.

Security concerns raised by personal conduct may be mitigated if “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” AG ¶ 17(c). Applicant's falsifications all occurred at the same time, but they were not “minor” because they threatened the integrity of the security clearance process. They did not occur under unique circumstances making them unlikely to recur. I conclude that this mitigating condition is not established.

Security concerns under this guideline also may be mitigated if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). This mitigating condition is established for the debt alleged in SOR ¶¶ 1.a, because Applicant has taken positive steps to resolve this debt and reduce his vulnerability to exploitation, manipulation, or duress. It is not established for the unresolved debts or the falsification of his security clearance application.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature adult who has worked for his current employer for six years and held a security clearance for most of that time. However, his lack of candor on his

most recent security clearance application raises grave doubts about his reliability and trustworthiness. My ability to evaluate his credibility and sincerity or to question him about his state of mind was limited because he requested a decision on the record without a hearing.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial history and personal conduct. 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 in the SOR:

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

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a-2.b:	Against Applicant
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Conclusion

I conclude that 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