



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 09-05653
)
 Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2012

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 January 8, 2009. On October 14, 2011, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to continue his access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to revoke his clearance. DOHA set forth the basis for its action in a Statement of Reasons (SOR), 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 October 24, 2011; answered it on December 8, 2011; and requested a hearing before an administrative judge. DOHA received the request on December 13, 2011. Department Counsel was ready to proceed on January 26, 2012, and the case was assigned to me on February 21, 2012. DOHA issued a notice of hearing on March 5, 2012, scheduling it for March 22, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through N, which were admitted without objection. I kept the record open until April 16, 2012, to enable Applicant to present additional documentary evidence. He timely submitted AX O through R. Department Counsel's comments regarding AX O through R are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on April 2, 2012.

Findings of Fact

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

Applicant is a 49-year-old information technology specialist employed by a federal contractor. He joined the U.S. Navy immediately after graduating from high school, and he served on active duty from February 1981 to February 2003, retiring as a petty officer first class (pay grade E-6). He was employed by federal contractors from February 2003 until he began his current employment in September 2006, except for a brief period of unemployment in June 2006. He held a security clearance in the Navy, and he received a clearance as a contract employee in November 2004.

Applicant married in June 1984. He and his spouse have two daughters, ages 22 and 17. He has a 28-year-old daughter from a previous relationship, for whom he paid child support until she became an adult.

Applicant and his wife separated in 2002 and reunited at a date not reflected in the record. They filed separate income tax returns for tax years 2003 through 2006. (Tr. 53.) Applicant failed to timely file a federal income tax return for tax year 2005, for which he owed \$24,904. He filed the 2005 return in February 2007 but was unable to pay the taxes due. The Internal Revenue Service (IRS) filed a tax lien in April 2009 for the amount of taxes due. In September 2009, Applicant initiated a voluntary allotment from his military retired pay for \$500 per month to pay the tax lien. (GX 4 at 5-6.) In May 2010, Applicant negotiated an installment agreement with the IRS providing for monthly \$500 payments, and he has been making the agreed payments. His account balance as of April 2, 2012, including accrued interest and penalties, was \$18,241. (AX R at 1-2.) He has hired a law firm to assist him in negotiating a lump sum settlement, but a settlement had not been reached as of the date the record closed. (AX E; Tr. 40.)

Applicant and his wife began having additional financial problems after they moved to a high-cost area and purchased a home in October 2006. They paid about \$650,000 for their home. They made a \$10,000 down payment, paid in four \$2,500

installments over two months. (Tr. 121-22.) They had a first mortgage for \$460,000 and a second mortgage of about \$180,000. Their monthly payments totaled about \$5,100 for both mortgages, including insurance and taxes. At the time they purchased their home, Applicant was earning about \$106,000 per year and his wife was earning about \$29,000 per year. (Tr. 73-76.)

Applicant testified that he and his wife did not purchase a less expensive home because the housing market was at its peak, and there were no less expensive homes available. (Tr. 78.) Applicant admitted at the hearing that they took on more debt than they could handle, and he characterized the home purchase and related financing as a “bonehead move.” (Tr. 81.)

Applicant began falling behind on his mortgage payments in January or February 2007, and he and his wife began accumulating credit card debt for living expenses. His wife was laid off from her job in October 2008 and was unemployed until January 2009. (GX 5 at 3.)

Applicant contacted his mortgage lender as soon as he began falling behind, and he went through several forbearance plans lasting four to six months. He unsuccessfully tried to modify his loans with assistance from the Urban League and the Neighborhood Assistance Corporation of American (NACA). He filed an application for loan modification through NACA in February 2010. (Answer to SOR at 15-25.) He consulted with a non-profit credit counseling service in November 2011. (Answer to SOR at 7-10.) He sought help from his congressman. In January 2012, he filed an application for a loan modification through the Home Affordable Modification Program (HAMP), but he had not received a decision as of the date the record closed. (AX F through AX I; Tr. 82-86.) His balance on his home mortgages is about \$599,468. (AX I at 9.) His home is assessed at a value of \$608,470 for county tax purposes. (AX H.)

Applicant’s wife purchased a car, apparently without his knowledge, shortly after they bought the house, and she listed him as the joint owner. The payments became delinquent, and a judgment for \$8,448 was entered against Applicant in August 2010. As of the date of the hearing, he had reduced the balance to \$6,665 and accepted an offer to settle the debt for \$3,332 in twelve monthly installments.¹ (AX D; Tr. 47-50.) He made two payments by check and has established an allotment from his military retired pay to make the remaining monthly payments. (AX O through Q.)

In 2008, several of Applicant’s family members suffered storm damage to their homes. Applicant financially assisted them in a total amount of about \$35,000. He had the cash available because he was trying to modify his home mortgage loans and was not making house payments. (Tr. 101-03.)

¹ Applicant’s testimony regarding this debt was somewhat confused, because Department Counsel questioned him about a credit card issued by the same lender. Applicant paid the past-due balance on the credit card account, the account was closed, and it does not appear on his most recent credit report. (GX 2; GX 3; GX 5 at 3.)

Applicant opened the military exchange account alleged in SOR ¶ 1.g in 1993, while he was on active duty. It became delinquent in June 2003, shortly after he retired. He initiated a monthly allotment from his retired pay in September 2009, and the debt was satisfied in November 2010. (GX 4 at 5; AX B.)

Applicant filled out several personal financial statements during the course of his security investigation and his attempts to obtain a loan modification. He testified that his most accurate budget was prepared with the assistance of the credit counseling service. It includes monthly payments on his two delinquent mortgages, and it reflects a net monthly remainder of \$2,450. (Answer to SOR at 8-9; Tr. 97.) He testified that he is using this remainder to address his remaining debts in a “snowball” plan, paying off smaller debts and then progressing to larger debts. In accordance with his “snowball” plan, he has paid the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.g; negotiated payment plans for the debts alleged in SOR ¶¶ 1.a and 1.b; and intends to double the agreed payments on these two debts. (Tr. 98-99.) He is awaiting a decision on his application for modification of the first and second mortgages, both with the same lender, alleged in SOR ¶¶ 1.e and 1.f.

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

SOR	Debt	Amount	Status	Evidence
1.a	Car loan	\$8,448 (judgment)	Balance paid down to \$6,665; settled in March 2012 for \$3,332 in 12 installments being paid by allotment	AX D; AX O through Q; Tr. 47-50, Tr. 104-05
1.b	Federal income tax	\$28,707 (tax lien)	Paying \$500 per month by allotment; seeking a lump-sum settlement	AX E; AX R; Tr. 40
1.c	Cable TV	\$210	Paid in December 2011	AX A
1.d	Telephone	\$85	Settled in March 2012	AX C
1.e	2 nd mortgage on home	Past due \$26,277	Seeking loan modification	AX F through AX I; Tr. 82-86
1.f	1 st mortgage on home	Past due \$93,188	Seeking loan modification	AX F through AX I; Tr. 82-86
1.g	Military exchange	\$3,355	Allotment started in September 2009; satisfied in November 2010	GX 4 at 5; AX B

Applicant submitted a character reference from an Air Force major general, describing him as an experienced and trustworthy employee. The letter is undated, and the first paragraph indicates that it was prepared to support a job application. (AX J.)

Applicant also submitted three recent letters from the government agency supported by Applicant’s employer. The chief information security officer, who has

known Applicant for several years, states that Applicant's performance has been "absolutely stellar," his honesty, loyalty, and integrity are "above reproach," and "[h]is knowledge and professionalism are to be emulated." (AX K.) The deputy chief information security officer submitted a letter stating that Applicant "is an intelligent, high caliber, trustworthy, and dependable individual and team player." (AX L.) A former supervisor, who has known applicant for more than seven years, stated that Applicant's "steadfast determination, thoroughness, and exemplary ethical behavior forged a lasting relationship between [them] personally and professionally." (AX M.) Applicant's pastor described him as "a man of great character" who has been active in the church, and is a "well-respected and much loved member" of the congregation. (AX N.)

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, an administrative judge applies these guidelines 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 that 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 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).

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 admissions, hearing testimony, and credit reports establish the following 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”). Thus, the burden shifted to Applicant to refute, explain, extenuate, or mitigate the facts.

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 numerous, not yet fully resolved, and did not occur under circumstances making recurrence unlikely.

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. He and his wife separated in 2002, causing him to incur additional housing expenses and adverse income tax consequences. He suffered a brief period of unemployment in 2006, but it did not significantly contribute to his current financial problems. His wife, apparently on her own initiative, purchased a car in 2008, at a time when they were having difficulty making their mortgage payments. Applicant's family members suffered storm damage in 2008, but Applicant's decision to assist them financially was a voluntary act. Applicant has acted responsibly with respect to his tax problems, the delinquent car loan, and the delinquent mortgage payments. He has stayed in contact with his creditors, negotiated payment plans, sought and received financial counseling, and applied for a mortgage loan modification. I conclude that AG ¶ 20(b) is established for the car loan, federal income tax debt, and delinquent mortgages alleged in SOR ¶¶ 1.a, 1.b, 1.e, and 1.f; but it is not established for the cable TV bill, telephone bill, and delinquent military exchange account alleged in SOR ¶¶ 1.c, 1.d, and 1.g.

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 received counseling and developed a realistic budget, but this mitigating condition is not fully established because his delinquent home mortgages are not yet under control.

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).

A security clearance adjudication is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a plan to resolve his debts. Three debts (SOR ¶¶ 1.c, 1.d, and 1.g) have been resolved. He has payment plans in place for two debts (SOR ¶¶ 1.a and 1.b), and he is making payments pursuant to those plans. He has applied for loan modifications on the debts alleged in SOR ¶¶ 1.e and 1.f. His current budget provides for making payments on his first and second mortgages, and his “snowball” plan will allow him to address the past-due payments or any deficiency if the property is foreclosed. I conclude that AG ¶ 20(d) is established.

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 applicable because Applicant has not disputed any of the debts alleged in the SOR.

Whole-Person Concept

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. In applying 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 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.

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 served honorably in the U.S. Navy for 20 years and has continued to serve the United States as a federal contractor. He was candid, sincere, and credible at the personal appearance. He has held a security clearance for all of his adult life, apparently without incident. He is trusted and respected by his supervisors. After his retirement from the Navy, he did not easily adjust to the financial challenges of life as a civilian, and he did not appreciate the challenges of finding housing in a high-cost area. He did not fully appreciate the depth of his financial problems until he applied for revalidation of his security clearance in January 2009. He

has obtained financial counseling, acknowledged his mistakes, learned from them, and adopted a realistic plan to achieve financial stability. The delinquent home mortgages are not resolved, but he has adopted a budget that will allow him to continue his monthly payments if necessary, resolve the past-due payments after his other debts are under control, and resolve any deficiency if there is a foreclosure.

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 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.g: For Applicant

Conclusion

I conclude that 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