



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-06023
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

June 23, 2010

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**Decision**

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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 April 7, 2009. On December 4, 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) implement by the Department of Defense on September 1, 2006.

Applicant received the SOR on December 11, 2009; answered it on January 6, 2010; and requested a hearing before an administrative judge. DOHA received the request on January 8, 2010. Department Counsel was ready to proceed on January 31, 2010, and the case was assigned to me on February 5, 2010. DOHA issued a notice of hearing on March 2, 2010, scheduling the hearing for March 31, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through S, which were admitted without objection. DOHA received the transcript (Tr.) on April 6, 2010.

I kept the record open until April 15, 2010, to enable Applicant to submit additional documentary evidence. On April 12, 2010, I granted Applicant's request to extend the deadline until April 23, 2010. He timely submitted AX T through Z, which were admitted without objection. Department Counsel's comments regarding AX T through Z are attached to the record as Hearing Exhibit I. The record closed on April 22, 2010, the date of Applicant's last post-hearing submission.

### **Findings of Fact**

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

Applicant is a 49-year-old instrumentation engineering technician employed by a defense contractor. He has worked for his current employer since October 2008. He received an associate's degree in science in 1982. He received a security clearance in May 1982 and held it for about 14 years, but he does not have a current clearance. (Tr. 6.) He has a reputation for being a skilled, dependable, hard-working employee. (AX D through I.)

Applicant married in April 1985 and divorced in February 2005. He remarried in September 2006. He has three children from previous relationships and one child with his current spouse, born in March 2006. He voluntarily pays his ex-wife about \$1,500 in child support and spousal support. (Tr. 33-34.)

During his previous marriage, Applicant used a credit card from a home improvement store, alleged in SOR ¶ 1.a, to make home repairs and buy a shed. He also opened a credit card in his name for his wife's use, alleged in SOR ¶ 1.c. When they divorced, his ex-wife agreed to pay the balance on the credit card, but she reneged on her agreement. (GX 3 at 6.)

In 2006, Applicant used a credit card, alleged in SOR ¶ 1.d, to purchase his second wife's wedding ring. He also purchased a home and financed it with an interest-only mortgage, alleged in SOR ¶ 1.b. His wife lost her job in January 2008. He and his wife incurred about \$6,000 in medical bills not covered by insurance after the premature

birth of their son in March 2008. Due to a business downturn his overtime was reduced, and he was laid off August 2008.

In late August 2008, Applicant sent a "hardship letter" to the lender, seeking a loan modification. (AX M at 1.) The lender did not respond. He and his wife tried to find renters for their home, without success. They listed it for sale, asking \$240,000, but received no offers. They consulted with a bankruptcy attorney, who advised them to stop making payments on all their debts.

In late October 2008, Applicant was hired by his current employer for a job in a different part of the country but at significantly higher pay than he previously earned. (GX 3 at 4-5; AX M; Tr. 39-40, 54.) They incurred moving expenses for a cross-country move, but they abandoned their plan to file for bankruptcy because of Applicant's anticipated pay increase. They made no further payments on the delinquent mortgage, which was foreclosed in July 2009. The home was auctioned in September 2009. (AX M at 2; Tr. 44.) The balance due on the mortgage was about \$167,000. (GX 4 at 2.) The record does not reflect the sale price. Applicant has not been notified that his debt was cancelled, nor has he received any correspondence regarding a deficiency. (Tr. 45-46.)

Applicant has negotiated a payment agreement on the debt to the home improvement store, alleged in SOR ¶¶ 1.a and 1.e. (AX U.) He settled the debt for the wedding ring alleged in SOR ¶ 1.d. (AX N.) The credit card debt alleged in SOR ¶ 1.c, on which his ex-wife reneged on her payment agreement, is unresolved because the creditor will not accept partial payments. (AX T.)

Beginning in January 2009, Applicant resolved several delinquent debts not alleged in the SOR. (GX 3 at 16-26; AX P through R.) For creditors who refused to accept partial payments, he saved enough money to make lump-sum offers and resolved the debts. He intends to take the same approach with the unresolved credit card debt in SOR ¶ 1.c. (Tr. 58.) He is regarded by his current and former landlords as a responsible tenant. (AX B; AX C.)

In response to DOHA interrogatories, Applicant submitted a personal financial statement in October 2009. It reflected net monthly income of \$7,724, expenses of \$5,749, and debt payments of \$300, leaving a net remainder of \$1,675. The debt payments do not include any of the delinquent debts alleged in the SOR.

Applicant does not have health insurance or any retirement funds. He owns three cars, a 2001 Toyota, a 1985 Chevrolet Camaro, and a 1982 Jeep, but he has no car loans. His wife keeps a meticulous handwritten budget in a small spiral notebook. (AX V.) As of the date of the hearing, he and his wife had savings of around \$2,000 or \$3,000, and a balance of about \$2,000 in their checking account. (Tr. 51.)

## 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 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 two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”), shifting the burden to him 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 encountered several conditions beyond his control: his spouse's loss of employment, unexpected medical bills from the premature birth of his son, his loss of employment, and a substantial downturn in the housing market. He acted responsibly by trying to rent or sell his home, seeking other employment, maintaining contact with his creditors, living modestly and carefully, and eventually settling most of his delinquent debts. 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).

The purpose of the security clearance process is to evaluate an applicant’s judgment, reliability, and trustworthiness, not to collect personal debts. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). 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 has aggressively addressed his delinquent debts. He explored all options to avoid the foreclosure on his home. He has established a realistic plan to resolve his delinquent debts and he has taken significant steps to implement his plan. Based on his track record of methodically resolving his financial problems, I am confident that he will resolve the delinquent credit card account alleged in SOR ¶ 1.c and any deficiency that may remain on his foreclosed mortgage. I conclude AG ¶ 20(d) is 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 worked for defense contractors and held clearances for many years. He takes his family, financial, and professional responsibilities very seriously. He has responded to financial hardship resiliently and diligently. He was candid and sincere at the hearing and responsive in his post-hearing submissions.

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 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):                      FOR APPLICANT

Subparagraphs 1.a-1.e:    For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge