



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 09-06465
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
For Applicant: *Pro se*

March 28, 2011

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 30, 2009. On September 16, 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on October 18, 2010; answered it on October 27, 2010; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 30, 2010, and the case was assigned to me on

December 6, 2010. DOHA issued a notice of hearing on January 5, 2011, scheduling it for January 20, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified but presented no other witnesses or documentary evidence. I kept the record open until February 22, 2011, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A, B, and a cover letter marked as AX C, which were admitted without objection.¹ Department Counsel's comments regarding AX A, B, and the cover letter are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on January 31, 2011.

Findings of Fact

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

Applicant is a 33-year-old flight simulator operator hired by a defense contractor in March 2009. He worked for about a month and a half, but he is now suspended without pay, because his job requires a clearance. (GX 4 at 6; Tr. 63.) He also has been working as a flight attendant for a regional airline since August 2007. He served on active duty in the U.S. Marine Corps (USMC) from October 1985 to September 1988, and he received an honorable discharge. He graduated from college with a bachelor's degree in exercise physiology in May 1994. (Tr. 27-28.)

Applicant married in February 1992. He and his wife have two daughters, ages 16 and 14. Both children suffer from psychological and behavioral problems. His wife suffers from chronic depression. He testified that his wife also has a bipolar disorder. (Tr. 28.)

Until the spring of 2002, Applicant and his wife lived in a large metropolitan area, were both employed, and had an annual joint income of about \$160,000. He was working for an internet service provider and she was working for a utility company. (Tr. 42.) In March 2002, his wife decided that she needed a slower pace of life and moved to a rural area. Applicant remained at his job in the metropolitan area. In the summer of 2002, Applicant and their children also moved to the rural area, and he worked from home and commuted to his job two days a week. Applicant's wife began working as a technical writer in May 2002, earning about \$75,000 per year. In September 2002, they purchased a 35-acre farm. They financed the purchase by using all their savings and obtaining a loan. In October 2002, Applicant quit his job to work on the farm, but his wife continued to work. (GX 4 at 3-4.) At the hearing, Applicant was unsure how much they borrowed, because his wife handled all the details of the transaction. (Tr. 43, 65.)

¹ Applicant did not mark his cover letter as an exhibit. However, I marked it as an exhibit because it contains substantive evidentiary comments. Applicant had already marked the two documents attached to his cover letter as AX A and B. Hence, I have marked the cover letter as AX C even though it is the first document in his post-hearing submission.

In January 2003, Applicant and his wife decided to raise emus, large birds that are valuable for their meat and other byproducts. They obtained two additional loans totaling about \$75,000 to finance their business plan. At the same time, his wife quit her job in order to devote her time to their new business. (Tr. 44-45.)

In the summer of 2003, Applicant and his wife decided use the fat from the emus to manufacture skin care products. They borrowed \$150,000 and contracted with a laboratory to manufacture the products. (GX 4 at 3-5.)

Both business ventures failed. They were unable to find a market for the skin care products. The cost of raising and marketing the emus exceeded what they anticipated, and eventually they gave them away to avoid the cost of feeding them, slaughtering, and marketing them. (Tr. 47-49.)

Applicant and his wife filed a petition for Chapter 7 bankruptcy in August 2004 and received a discharge in June 2005. (AX A.) They included state taxes and student loans in their petition. Debts totaling about \$300,000 were discharged. (GX 4 at 5.) In his discharge order, Applicant was advised that most delinquent taxes and student loans are not discharged in a Chapter 7 bankruptcy. (AX A at 2.)

Applicant and his wife initially included the family home in the bankruptcy petition, but they later removed it. They were able to modify the loan to reduce their monthly payments. (GX 4 at 5.) The mortgage on the farm and the family home was foreclosed in February 2008, but the family was allowed to remain in the home until May 2008. (AX C at 2; GX 4 at 6.)

Applicant worked as a coal miner from February to November 2005. He left this job after being sexually harassed by a supervisor. He was unable to find another miner's job because he was blackballed for reporting his supervisor's conduct. He was unemployed until August 2007, when he began working for a regional airline.

Starting in late 2005, Applicant's wife began working as a mortgage loan officer and was dependent on commissions for her income. She initially made good money, clearing \$16,000 by December 2005. However, when the real estate market collapsed, she lost her source of income. (GX 4 at 5-6.)

Applicant purchased a minivan in June or July 2005 for about \$30,000, after he began working as a coal miner. (Tr. 50.) The minivan was repossessed in 2006.

In January 2008, Applicant was offered a job in another state. His prospective employer offered to pay moving expenses and arrange for a rental home. However, when Applicant and his family arrived, they found that there was no job, no rental home, and the prospective employer did not have the funds to pay the moving company. Applicant and his family moved across the country to live with his parents, where they lived for about eight months, while making large payments to the moving company, which was holding all their possessions. (GX 1 at 63; GX 4 at 6.)

In December 2008, Applicant's parents asked them to move out, in large part because of the behavioral problems of their two daughters. (GX 4 at 6.) Applicant and his family moved into an apartment. In January 2010, they moved into a townhouse under a subsidized housing program for veterans. (Tr. 73.) Shortly thereafter, Applicant discovered that his wife was having an affair. They separated in May 2010, and he has filed for divorce. He no longer lives in the family home, and he has been unable to gain access to his financial records. (Answer at 1; Tr. 23-25.)

Applicant's only current income is his net pay of about \$1,500 per month as a flight attendant. His personal financial statement submitted in November 2009 reflected net family income of \$1,130 and expenses of about \$1,490, leaving a monthly shortfall of about \$360. (GX 3 at 8.) He has contacted his creditors and received settlement proposals from many of them, but he has been unable to accept any of the offers because of his low income.

During their marriage, Applicant always followed his wife's career because she had greater earning potential. (Tr. 30.) He was unfamiliar with many of the details of the purchase of the farm or their unsuccessful business ventures because his wife handled the family finances. (Tr. 43.)

The SOR ¶ 1.a alleges Applicant's Chapter 7 bankruptcy. It also alleges an unsatisfied state tax lien for \$470 (SOR ¶ 1.b), and 12 delinquent debts (SOR ¶1.c-1.n). The largest debts alleged are delinquent student loans totaling \$136,000 (SOR ¶ 1.f), a deficiency of \$16,636 from an automobile repossession (SOR ¶ 1.h), and a deficiency of \$36,028 from a home mortgage foreclosure (SOR ¶ 1.n).

As of the date the record closed, Applicant produced evidence that he has reduced the state tax lien (SOR ¶ 1.b) from \$427 to \$27. (AX B; GX 3 at 6.) He claimed it was paid in full but was unable to produce any documentation. His credit report dated May 19, 2009, reflects that the \$28 medical bill (SOR ¶ 1.d) was included in his Chapter 7 bankruptcy. (GX 7 at 5.) His response to DOHA interrogatories and attached documents reflect that he has negotiated a payment plan for \$10 per month on his student loans that will rehabilitate them after nine consecutive payments. (GX 3 at 7.) The other debts alleged in the SOR, including the deficiency from the automobile repossession and the deficiency of from the foreclosure on his home, are unresolved.

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 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.

Three disqualifying conditions under this guideline are relevant: 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"). Applicant's financial history, established by his admissions, the record of his Chapter 7 bankruptcy, and his credit reports, establishes AG ¶¶ 19(a) and (c). Applicant's two business ventures related to his purchase of the farm also establish AG ¶ 19(e), because they were over-leveraged, speculative, and incurred costs significantly greater than the income they generated. Thus, the burden shifted to Applicant to rebut, 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). Applicant's delinquent debts are numerous and ongoing. While it is unlikely that he will try another speculative business venture, his participation in the two risky, speculative ventures that caused his financial downfall raises doubts about his good judgment. He did not begin managing his own financial affairs until he and his wife separated in May 2010, and he has not had sufficient time to establish a track record of sound financial management and good judgment. I conclude that AG ¶ 20(a) is not 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: the decision by Applicant's wife to quit her job in June 2003, leaving the family with no dependable source of income; her loss of income as a mortgage loan officer due to the collapse of

the real estate market; and the failure of a prospective employer to keep his promise to offer Applicant a job, pay his moving expenses, and arrange for a rental home. Applicant encountered several other conditions he did not expect, but they were not beyond his control. He voluntarily quit his job to work full time on the farm. He voluntarily participated in the plan to raise emus and to manufacture and market skin care products, without adequately considering the costs of doing business. He voluntarily borrowed money to finance the two risky business ventures. The failure of his businesses was not due to a business downturn, but to inadequate business planning. The breakup of his marriage occurred long after the delinquent debts alleged in the SOR were incurred.

To his credit, Applicant has obtained other employment, maintained contact with his creditors, arranged to rehabilitate his delinquent student loans, and partially resolved the state tax lien, and lived with his parents for about eight months to minimize his living expenses. I conclude that AG ¶ 20(b) is partially established.

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 received legal advice in connection with his Chapter 7 bankruptcy, but there is no evidence that he sought counseling for the debts incurred after his bankruptcy. I conclude that this mitigating condition is established for the bankruptcy alleged in SOR ¶ 1.a, but not for the delinquent debts alleged in the SOR.

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. 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 partially resolved the state tax lien and rehabilitated his delinquent student loans. The medical debt was resolved by his Chapter 7 bankruptcy. However, he does not have a plan to resolve his remaining debts and is unable to take any significant steps to resolve them. I conclude that AG ¶ 20(d) is not fully 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). Applicant

asserted that the state tax lien was paid in full, but was unable to provide any documentation. He initially believed that there was no deficiency from the mortgage foreclosure, but he has now accepted the fact that he owes the debt. In his post-hearing submission, he stated he is disputing the student loans because they were included in his bankruptcy. However, he was advised on his bankruptcy discharge order that most student loans are not discharged in a Chapter 7 bankruptcy, and he has provided nothing to show that his student loans were discharged. He has not requested the credit reporting agencies to validate or delete any of the debts listed on his credit reports. I conclude that AG ¶ 20(e) 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, educated adult. He served honorably in the U.S. Marine Corps. He left a comfortable lifestyle with steady employment to support his wife's esoteric and ill-advised business ventures. He voluntarily joined his wife in borrowing large sums of money to fund those ventures. He relied on her judgment rather than personally evaluating the financial risks he was taking. He played a passive role in the family finances for all of his marriage. Once their business ventures failed, he has worked hard at jobs for which he is overqualified in an effort to salvage his financial situation. He was candid, sincere, and contrite at the hearing, but he is far away from having a concrete, feasible plan. His overwhelming level of indebtedness places him at risk of pressure, coercion, exploitation, or duress.

In some respects, Applicant has been left "holding the bag" for his estranged wife who indulged her dreams at his expense. Nevertheless, his voluntary assumption of excessive indebtedness to fund two esoteric and risky business ventures raises serious

doubts about his current reliability and good judgment. As noted above, he did not begin managing his own financial affairs until he and his wife separated in May 2010, and he has not had sufficient time to demonstrate sound financial management and good judgment.

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**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.n:	Against Applicant

Conclusion

I conclude that 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