



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 09-07460
)
 Applicant for Security Clearance)

Appearances

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

May 12, 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 May 28, 2009. On September 21, 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 September 29, 2010; answered it on October 26, 2010; and requested a hearing before an administrative judge. DOHA received the request on October 27, 2010. Department Counsel was ready to proceed on January 1,

2011, and the case was assigned to me on January 13, 2011. DOHA issued a notice of hearing on February 10, 2011, scheduling it for March 2, 2011. DOHA issued an amended notice of hearing on February 17, 2011, rescheduling the hearing for March 14, 2011, and changing the venue. I convened the hearing as rescheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection, and a demonstrative exhibit summarizing the Government evidence was attached to the record as Hearing Exhibit (HX) I. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until March 31, 2011, to enable Applicant to submit additional documentary evidence. At his telephonic request, I extended the deadline until April 15, 2011. He timely submitted AX C through G, which were admitted without objection. Department Counsel's comments regarding AX C through G are attached to the record as HX II. DOHA received the transcript (Tr.) on March 22, 2011.

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 53-year-old machinist employed by a defense contractor. He has worked for his current employer since February 2009. He has never held a security clearance.

Applicant worked in a casino from August 2001 to June 2007, when he was separated for excessive absenteeism caused by medical problems. He worked for another casino from June to December 2007 and then for a construction company from December 2007 to July 2008. He was laid off from his construction job and unemployed from July 2008 until he began his current job. (Tr. 31-32.)

Applicant married in September 1977 and divorced in June 1998. He married his current spouse in November 2004. His current spouse has an adult daughter. Applicant has no children from his marriages. His wife's daughter and two children live with him in a two-bedroom apartment. (Tr. 58-59.)

Applicant's net monthly pay is about \$1,900, and his wife's net monthly pay is about \$1,200. His stepdaughter is not employed outside the home. (Tr. 29, 32-33.) His stepdaughter receives child support payments of \$50 per week for each child. (Tr. 38.) After paying all his bills, he has a net monthly remainder of about \$180. (Tr. 41; GX 3 at 11.) He drives a 16-year-old car that is debt free, and his wife drives a four-year-old economy car for which they are paying about \$400 per month.

Applicant disclosed numerous delinquent debts on his security clearance application. The SOR alleges 11 delinquent debts totaling about \$17,500. His largest delinquent debt is a deficiency of \$13,930 after a car repossession.

Applicant admitted the car repossession debt in his answer to the SOR, but he disputed it at the hearing. In June 2010, he responded to DOHA financial interrogatories about the status of this debt by attaching a letter from the creditor reciting that he and the creditor had agreed to a payment schedule of \$100 per month. (GX 2 at 3.) At the hearing, he testified that he was never notified of any deficiency after the car was repossessed, that he never received any demands for payment, that the debt does not appear on his recent credit report, and that he has been advised by a lawyer that collection is barred by the statute of limitations. (Tr. 25-27; AX A; AX B.)

Applicant admitted all the other debts alleged in the SOR. He testified that he has contacted all the creditors alleged in the SOR but has been unable to negotiate payment arrangements with any of them. (Tr. 35-36.) He presented evidence that he had made small payments on two debts and settled one, but he did not present any documentation of his efforts regarding the eight other delinquent debts.

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

SOR	Debt	Amount	Date Delinquent	Status	Evidence
1.a	Telephone	\$471	6-04	\$20 payment	GX 4 at 1; GX 5 at 1; AX E
1.b	Medical	\$799	1-09	Unpaid	GX 4 at 1; GX 5 at 1; GX 7 at 1
1.c	Cell phone	\$53	3-07	Settled	GX 4 at 1; GX 5 at 1; GX 7 at 1; AX C-D
1.d	Cable	\$185	6-07	\$5 payment	GX 4 at 1; GX 5 at 1; GX 6 at 5; GX 7 at 1; AX F-G
1.e	Cell phone	\$136	3-04	Unpaid	GX 2 at 3; GX 6 at 4; AX A at 6
1.f	Car repossession	\$13,930	3-03	Unpaid	GX 2 at 3; GX 6 at 4
1.g	Cell phone	\$300	1-09	Unpaid	GX 6 at 6
1.h	Telephone	\$449	11-03	Unpaid	GX 6 at 6
1.i	Telephone	\$470	9-04	Unpaid	GX 6 at 6
1.j	Telephone	\$138	6-07	Unpaid	GX 6 at 7
1.k	Electric bill	\$570	12-07	Unpaid	GX 6 at 8; AX B at 2

Applicant's father-in-law testified that Applicant loves his job. He described Applicant as a "decent guy" who is "always helping everybody." (Tr. 65-66.)

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 SOR alleges 11 delinquent debts. The security 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 and his credit reports establish 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"). Thus, the burden shifted to Applicant to rebut, explain, extenuate, or mitigate the facts established by the evidence.

"A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness in order to make a decision about an applicant's security eligibility." ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.)

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, recent, 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 experienced a marital breakup in 1998, but the debts alleged in the SOR did not become delinquent until several years later. Applicant's largest debt, arising from the repossession, became delinquent in 2003 after he bought a car he could not afford. His unemployment in July 2008 occurred well after his debts were already delinquent, except the medical debt

alleged in SOR ¶ 1.b and the cell phone bill alleged in SOR ¶ 1.g. I conclude AG ¶ 20(b) is not 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). This mitigating condition is not established because there is no evidence that Applicant has sought or received financial counseling.

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 settled the cell phone bill alleged in SOR ¶ 1.c, and he has made small payments on the telephone bill alleged in SOR ¶ 1.a and the cable bill alleged in SOR ¶ 1.d. He has no clear plan to resolve the other debts alleged in the SOR and has not taken any significant action to resolve them. I conclude that AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d, but it is not established for the other debts alleged in the SOR.

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). At the hearing, Applicant disputed the deficiency due on the automobile repossession, on the ground that he was not contacted and notified of the deficiency and on the ground that the statute of limitations has run. This assertion is contradicted by the letter from the creditor in May 2010, reciting that Applicant and the creditor had agreed to a payment arrangement of \$100 per month. The fact that the debt is uncollectable under state law does not affect the legitimacy of the debt or its relevance to Applicant’s suitability for a security clearance. See ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). 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 an intelligent, mature adult, but he has neglected his financial obligations for many years. The SOR reflects delinquent debts dating back to 2003 and 2004. He is living frugally, but he is overwhelmed by the magnitude of his indebtedness and unable to formulate a realistic plan to overcome it.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e-1-k:	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