



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 09-07574
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O’Neil, Esq., Department Counsel
For Applicant: *Pro se*

May 5, 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 July 9, 2009. On September 10, 2010,¹ 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.

¹ The typewritten date on the SOR is September 1, 2010, but the document reflects a handwritten change to September 10, 2010. The record does not reflect the reason for the change or who made it.

Applicant received the SOR on November 8, 2010; answered it on November 18, 2010; and requested a hearing before an administrative judge. DOHA received the request on November 24, 2010. Department Counsel was ready to proceed on February 1, 2011, and the case was assigned to me on February 3, 2011. DOHA issued a notice of hearing on February 14, 2011, scheduling it for March 8, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and presented the testimony of one witness. I kept the record open until March 24, 2011, to enable Applicant to submit documentary evidence. At his telephonic request, I extended the deadline until March 31, 2011. He timely submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. Department Counsel's comments regarding AX A through E are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on March 16, 2011. The record closed on March 31, 2011.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.f, 1.i-1.k, 1.m, and 1.o-1.u. He denied SOR ¶¶ 1.g, 1.h, 1.l, and 1.n. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 45-year-old field mechanical technician employed by a federal contractor. He has worked for his current employer since July 2008. He has worked for federal contractors since March 2005. He served in the U.S. Army from September 1986 to June 1990 and received an honorable discharge. He has never held a security clearance. (Tr. 8.)

Applicant married in September 1986 and divorced in October 1993. He married again in July 1998 and divorced in November 2007. He has cohabited with a woman since September 2007. He has one adult child, born during his first marriage. He was obligated to pay child support, and he accumulated an arrearage of about \$9,000, which is alleged in SOR ¶ 1.u.

When Applicant was interviewed by a security investigator in August 2009, he attributed his financial problems to a costly divorce in November 2007 and being out of work for six months after a serious automobile accident in January 2008. (GX 2 at 5.)

The SOR alleges 21 delinquent debts totaling more than \$30,000. The four debts denied by Applicant total only about \$382. Applicant submitted evidence showing that the \$2,947 judgment alleged in SOR ¶ 1.b is being paid by garnishment and the balance has been reduced to \$1,190. (AX B.) He submitted evidence that the two judgments in SOR ¶¶ 1.c and 1.t have been paid in full. (AX A.) The \$249 credit union debt alleged in SOR ¶ 1.m was paid in May 2008 (AX C.) He has been making payments on the child support arrearage alleged in SOR ¶ 1.u, and he has reduced the balance from \$9,000 to \$2,659. (AX D.) The remaining debts are unpaid, the largest of which is a deficiency of \$9,807 after an automobile repossession, alleged in SOR ¶ 1.q.

Applicant testified that his son paid the cable service debts alleged in SOR ¶¶ 1.g, 1.h, and 1.i, but he provided no documentary evidence of payment. (Tr. 29-30.) He disputed the \$42 telephone bill alleged in SOR ¶ 1.n, contending that he never had service with that provider. However, he submitted no evidence to show that he had contacted the creditor to dispute the debt or asked the credit reporting agencies to delete the debt from his credit reports. (Tr. 59; GX 2 at 7.)

At the hearing and in his post-hearing submission, Applicant stated that he was in the process of arranging credit counseling with his credit union and intended to consult with a financial specialist at his bank. (Tr. 49-50; AX E.) As of the date the record closed, there was no evidence that he had received any credit or financial counseling.

In July 2010, Applicant submitted a personal financial statement in response to DOHA interrogatories. He reported gross monthly income of \$1,350, expenses of \$896, and debt payments of \$200, including biweekly child support payments of \$46. (GX 2 at 15; AX D at 2.) He has a 15-year-old car but no car payments. (Tr. 62.)

Applicant's supervisor is a retired Navy chief petty officer. He has known Applicant for three or four years. He testified that he regards Applicant as very dependable, depends on him heavily, and would like to promote him. (Tr. 69-71.)

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 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 SOR alleges 21 debts totaling more than \$30,000. Applicant admitted 17 debts, of which five have been resolved or are being resolved by regular payments. All alleged debts are reflected on his credit reports.

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 establishes 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"). Thus, the burden shifted to him to rebut or explain the facts or mitigate the security concerns raised by his delinquent debts.

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 arise 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 loss of employment after his automobile accident and his divorce were conditions beyond his control. He paid the credit union debt alleged in SOR ¶ 1.m in May 2008, after his accident but before his divorce. Since his divorce, he has paid about two-thirds of the judgment alleged in SOR ¶ 1.b, fully satisfied the judgments alleged in SOR ¶¶ 1.c and 1.t, and reduced his child support arrearage from \$9,000 to \$2,659. The judgment in SOR ¶ 1.b is being paid by garnishment, which is not necessarily mitigating. See ISCR Case No. 08-06059 at 6 (App. Bd. Sep. 21, 2009). However, he has acted responsibly regarding the two of the three judgments against him, the credit union debt, and his child support arrearage. He has taken no actions and has no plan to resolve the other debts alleged in the SOR. I conclude that AG ¶ 20(b) is established only for the debts alleged in SOR ¶¶ 1.c, 1.m, 1.t, and 1.u, but not for the other debts alleged in the SOR.

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 Applicant has not yet received counseling and his financial problems are not 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). 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). The judgment alleged in SOR ¶ 1.b is being paid by garnishment, which does not demonstrate good faith. However, Applicant has voluntarily resolved or is resolving the four delinquent debts alleged in SOR ¶¶ 1.c, 1.m, 1.t, and 1.u. He has no specific plan and has taken no actions to resolve the remaining delinquent debts. Thus, I conclude that AG ¶ 20(d) is established only for the four debts alleged in SOR ¶¶ 1.c, 1.m, 1.t, and 1.u.

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 has denied the \$42 telephone bill alleged in SOR ¶ 1.d, but he has done nothing to resolve the dispute. Thus, 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 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 federal contractors for six years. He has earned the respect and support of his supervisor, a retired Navy chief petty officer. He has resolved or is resolving five of his six largest debts. He is living modestly. He was candid, sincere, and credible at the hearing. On the other hand, he has not sought or received counseling and has no clear plan for resolving his remaining debts, including the deficiency of \$9,807 from the automobile repossession. He has good intentions, but he has not yet established a track record of financial responsibility.

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**

Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n-1.s:	Against Applicant
Subparagraphs 1.t-1.u:	For 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