



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



In the matter of:)
)
(Redacted)) ISCR Case No. 09-08400
)
Applicant for Security Clearance)

Appearances

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

January 31, 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 March 27, 2008. On June 8, 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 July 17, 2010; answered it on July 29, 2010; and requested a hearing before an administrative judge. DOHA received the request on August 2, 2010. On August 26, 2010, Department Counsel amended the SOR to add

two additional allegations under Guideline F. Department Counsel was ready to proceed on August 26, 2010, and the case was assigned to me on September 20, 2010.

DOHA issued a notice of hearing on October 8, 2010, scheduling it for October 25, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Department Counsel submitted a demonstrative exhibit summarizing the evidence, which was attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. I kept the record open until November 10, 2010, to enable Applicant to submit additional documentary evidence. He did not timely submit any additional evidence. However, on January 21, 2011, he submitted one additional document. Department Counsel did not object to the untimely submission, and I admitted it as AX K. Department Counsel's comments regarding AX K are attached to the record as HX II. DOHA received the transcript (Tr.) on November 2, 2010.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.g, and 1.j-1.m. He did not respond to the two additional allegations in the amendment to the SOR, and for the purpose of the hearing I treated his failure to respond as a denial of the two additional allegations. (Tr. 17-18.) His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is 33 years old. He worked as a correctional officer from January 1999 to January 2002. He worked as a police officer from January 2002 to January 2004. He injured his right hand in an off-duty accident, leaving it weakened and making it difficult for him to work as a police officer. (Tr. 57.) He left the police force and worked as a security guard from January 2004 to January 2006. He attended a technical school from January 2005 to January 2006, received a diploma in network administration, and began working in the information technology field.

Applicant worked in computer technical support jobs from January 2006 until he was struck by a car on June 20, 2007, seriously injured, and hospitalized until October 2, 2007. (Tr. 49-51.) He was in a medically-induced coma for four weeks and underwent multiple operations on his left arm. He still has limited use of his right hand. (Tr. 44; AX B, H, and I.) He incurred numerous medical debts and he fell behind on his student loans while he was unable to work. He was hired as a computer support technician for a defense contractor in March 2008, and he was able to begin working in April 2008. He was suspended in July 2010, pending a decision on his security clearance. He has never held a security clearance. (Tr. 53-55; GX 2 at 9; AX A.)

Two police sergeants who worked with Applicant describe him as organized, efficient, competent, and dependable. (AX D and E.) His supervisor while he was working as a security guard praised him for his honesty, integrity, good judgment, and strong leadership skills. (AX F.) His supervisor for his current position commented

favorably on his integrity, honesty, clarity in judgment, and good leadership skills. (AX G.)

Applicant married in May 2002. He and his wife have a five-year-old daughter and a newborn son. (Tr. 48.) His wife graduated from nursing school in 2008 and is employed as a registered nurse. (Tr. 48.) A substantial part of her income is devoted to repaying her student loans, which are current. (Tr. 97.)

The SOR, as amended, alleges 16 delinquent debts totaling about \$37,000. The evidence concerning these debts is summarized below. Fourteen of these debts (SOR ¶¶ 1.a-1.n) are reflected on Applicant's credit reports, and two (SOR ¶¶ 1.o and 1.p) are reflected in court records of unsatisfied judgments.

Applicant admitted the four delinquent medical debts alleged in SOR ¶¶ 1.a (\$165), 1.b (\$56), 1.j (\$75), and 1.k (\$52). All four debts have been delinquent since 2008. Applicant has not made any payments or otherwise attempted to resolve them.

Applicant admitted the debt for technical training, alleged in SOR ¶ 1.c. He testified that the tuition was being paid by his employer until he was suspended in July 2010. (Tr. 61-63.) The debt is unresolved.

Applicant denied three debts to a credit union, alleged in SOR ¶¶ 1.d-1.f, which have been delinquent since 2003. The largest, alleged in SOR ¶ 1.e, is a deficiency of \$8,094 after a voluntary repossession of a car. He disputed the repossession debt because the credit union has not told him how much it received from the auction of the repossessed car. (Tr. 69.) He also denied two debts to the same credit union, alleged in SOR ¶¶ 1.h and 1.i, which have been delinquent since January 2006. He testified that he had hired a law firm in September 2010 to verify the delinquent debts in SOR ¶¶ 1.d-1.f and 1.h-1.k. (Tr. 68-69, 75.) He pays the firm \$150 per month. (Tr. 95.) A letter from the law firm recites that they have been retained "for the purpose of working with the credit bureaus to audit and verify the status of his credit reports." (AX J.) Applicant did not provide evidence that any of the debts referred to the law firm have yet been disputed, compromised, or otherwise resolved.

Applicant admitted the three delinquent student loans alleged in SOR ¶ 1.g (\$8,524), 1.l (\$2,625), and 1.m (\$3,999). The lenders allowed him to make minimal payments while he was hospitalized, but the loans became delinquent in September 2008, when he stopped making payments, even though he had returned to work in April 2008. He attributed his failure to continue making payments after September 2008 to negligence. He testified he had made some payments on the debts in SOR ¶¶ 1.l and 1.m, but he did not present any documentary proof of payment. (Tr. 70-73.)

Applicant denied the jewelry store debt alleged in SOR ¶ 1.n and testified that he had paid it in full. He promised to submit his receipts after the hearing. (Tr. 81-82.) However, he did not submit any receipts.

Applicant testified he was unaware of the two unsatisfied judgments alleged in SOR ¶¶ 1.o and 1.p until he received copies of the court documents from Department Counsel. (Tr. 83-85.) They remain unresolved.

Applicant's untimely submission of January 21, 2011, appears to pertain to a creditor reflected on his most recent credit report. The credit report reflects that the debt was paid in full, and it was not alleged in the SOR. (AX K; GX 3 at 1.)

Applicant engaged a financial advisor in early 2008, who assisted him in preparing a five-year plan for accomplishing his financial goals. (Tr. 85.) In accordance with the plan, he disposed of an expensive luxury car, terminated his cell phone service, and cancelled his cable service. (Tr. 93.) He now drives an 11-year-old compact car and has no car payments. With the help of his mother, who works for the electric company, he enrolled in a payment program for unemployed or underemployed customers. The mortgage on the family home is in his wife's name, and the mortgage payments are current. (Tr. 94-95.) His five-year plan provides for improving the resale value of the home by installing a new roof, new front and rear doors, and all the windows. (AX C; Tr. 45-46). The five-year plan does not set out a plan for resolving the delinquent debts alleged in the SOR.

Applicant consulted with a debt consolidation firm, which developed a plan for paying \$243 per month. He decided not to hire the debt consolidation firm because they could not help him improve his credit rating. (Tr. 96-97.)

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 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, established by his admissions, credit reports, and the court records, 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 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). Applicant’s delinquent debts are ongoing and numerous. The medical debts and the defaults on his student loan payments were related to his serious injury in 2008, but he admitted that his student loan delinquencies after he returned to work were due to his own negligence. He offered no cogent explanation for not resolving the four medical debts, three of which are for less than \$100, after he returned to work. His failure to resolve the medical debts and to resume payments on his student loans after he returned to work casts doubt on his current reliability, trustworthiness, and good judgment. I conclude 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’s injuries were conditions beyond his control, thus establishing the first prong of this mitigating condition for the medical debts in SOR ¶¶ 1.a, 1.b, 1.j, and 1.k, and the student loans in SOR ¶¶ 1.g, 1.l, and 1.m. It is not established for the other debts alleged in the SOR, because they were already delinquent before his injury. However, the second prong is not established for the medical debts and the student loans, because Applicant has not acted responsibly. To the contrary, he admitted that the student loans became delinquent because of his negligence.

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). The first prong of this mitigating condition is established, because Applicant sought advice from a financial advisor and engaged a law firm to assist him in challenging some of the debts reflected on his credit reports. However, the second prong is not established because his financial problems are not being resolved.

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). The concept of good faith “requires a showing that a person acts 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 taken significant steps to avoid further financial delinquencies. He eliminated his car payment, cell phone bill, and cable bill. He enrolled in a program that makes his utility bills affordable. He consulted with a financial advisor and a debt consolidator. He has hired a law firm, but the scope of that firm’s representation appears to be limited to validating his delinquent debts. There is no evidence that the law firm is involved in negotiating, compromising, or otherwise resolving the delinquent debts. Even though he is living frugally and keeping up with his current living expenses, he presented no plan to resolve the longstanding delinquent debts that he admitted in his answer to the SOR. I conclude that AG ¶ 20(d) is not 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). In his answer to the SOR and at the hearing, Applicant disputed the amount due to the credit union after his car was repossessed. However, he presented no evidence showing that he owes less than the amount claimed, no written evidence that he or his law firm has contacted the creditor and challenged the amount claimed, and no evidence that he or his law firm has filed a dispute with the credit reporting agencies. Although he has successfully disputed some debts not alleged in the SOR, I conclude that AG ¶ 20(e) is not established for any of the debts alleged in the SOR.

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, well-educated adult. He was sincere and candid at the hearing. He has suffered serious injuries that have interfered with his employment. He has taken significant steps toward financial stability, but he has not acted responsibly toward his delinquent debts, several of which have been delinquent since 2003. After consulting with a financial advisor, a debt consolidation firm, and a law firm, he still has no plan for resolving the delinquent debts alleged in the SOR.

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.p:

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