



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-08490
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

September 21, 2010

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 23, 2009. On April 6, 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 April 12, 2010; answered it on April 26, 2010; and requested a hearing before an administrative judge. DOHA received the request on

April 28, 2010. Department Counsel was ready to proceed on May 5, 2010, and the case was assigned to me on May 11, 2010. DOHA issued a notice of hearing on May 24, 2010, scheduling the hearing for June 25, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. I kept the record open until July 23, 2010, to enable Applicant to submit additional evidence. He did not submit any additional evidence. DOHA received the transcript (Tr.) on July 7, 2010.

Findings of Fact

The SOR alleges 26 delinquent debts (SOR ¶¶ 1.a-1.z). It also alleges Applicant failed to file state income tax returns for tax years 2004-2007 (SOR ¶ 1.aa), and he received a Chapter 7 bankruptcy discharge in February 1997 (SOR ¶ 1.ab). In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.h-1.m, 1.p-1.s, 1.v, 1.w, 1.z, and 1.ab. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old reproduction clerk employed by a defense contractor since May 2009. He does not have a security clearance.

Applicant filed a Chapter 7 petition for bankruptcy in October 1996 and received a discharge in February 1997. The record does not reflect the nature or amount of debts that were discharged. (GX 4.)

Applicant has never married, but he has three children by two different women. Until recently, he was obligated to pay \$461 per month for two children, but he is no longer required to pay child support for these two children because they are over the age of 18. However, he owes an arrearage for these two children. He is obligated to pay \$426 per month for the third child, and he is in arrears on these payments. (AX A; Tr. 62). His child support arrearages for all three children total about \$12,712. (AX B; AX C.) The child-support judgments and liens alleged in SOR ¶¶ 1.h, 1.i, 1.p-1.s, and 1.z are for the arrearages. (GX 3 at 1-3, 6-8.) His current child-support obligation and payments on the arrearage are being automatically withheld from his pay. (Answer to SOR; AX D.)

Applicant lived in an apartment from September 2003 to March 2007. His lease renewed automatically on a year-to-year basis unless he gave one month's notice of intent to vacate. Applicant misunderstood the lease terms, thinking the lease became a month-to-month lease after the first year. He decided to live with his father after his father had a heart attack. (Tr. 36.) He gave less than a month's notice to the landlord, moved out, and agreed to pay the remainder of the month's rent. The landlord obtained the judgments alleged in SOR ¶¶ 1.a-1.g, 1.t, and 1.u for the rent due for each month remaining on the lease. (Answer to SOR; GX 3 at 9-17.) The judgments are unsatisfied.

Applicant testified that his landlord orally told him that he would have no further obligation if he paid the current month's rent in full. Applicant found out about the judgments when he saw them on his credit report. He called his former landlord and was met with a "whole different attitude," holding him responsible for breaking his lease. (Tr. 38-39.) Applicant believes the judgments are unfair, but he has not taken any action to contest or resolve them. (Tr. 47.)

The delinquent medical bill alleged in SOR ¶ 1.j and the cable service bills alleged in SOR ¶¶ 1.k, 1.v, and 1.w are unpaid. Applicant testified that he cannot pay these bills until his federal tax debt and child-support arrearages are resolved. (Tr. 34-36.) His take-home pay is about \$280 per week. His monthly expenses usually exceed his income by \$175-200 per month. (Tr. 64; GX 2 at 4.)

Applicant's personal financial statement dated March 1, 2010 reflects rent payments of \$450 per month, even though he lives with his father. He testified his rent payments are not consistent, because he sometimes pays the rent on his father's apartment, and sometimes pays part of the utility bill when his father's income falls short. (Tr. 76.)

Applicant's federal tax refund for tax year 2009 was applied to taxes owed for tax years 2005 and 2007. His debt for 2007 is now satisfied, but he still owes \$158.65 for 2005. (AX F.) His federal income tax debt is not alleged in the SOR.

Applicant incurred the student loans alleged in SOR ¶¶ 1.l and 1.m by attending a technical college at night for about eight months. He dropped out when his driver's license was suspended because of the child-support arrearages. The student loans have not been resolved. (GX 1 at 12; Tr. 39-42.)

Applicant testified the telephone bill alleged in SOR ¶ 1.n was an account that his girlfriend opened in his name. He acknowledged at the hearing that he is obligated to pay it, but this debt is not resolved. (Tr. 47-48.)

The delinquent car loan alleged in SOR ¶ 1.o and the judgment in SOR ¶ 1.y appear to be related to the same debt. Applicant provided evidence that the debt was paid, and the car title was released to him. (Answer to SOR; AX E; Tr. 53-55.)

The bank overdraft alleged in SOR ¶ 1.x occurred when Applicant lost his bank card, someone else withdrew all the funds from his account without his knowledge, and he was charged an overdraft fee for a check he wrote on the overdrawn account. He has not paid the debt because he believes the bank was at fault for allowing the fraudulent withdrawals from his account. He testified he disputed the debt, but he submitted no documentation of the dispute. (Tr. 50-51.)

The summary of Applicant's interview with a security investigator in October 2009 indicates that he told the investigator he was making payments on a federal tax debt for tax years 2004-2007, but that, "After subject finishes paying his federal tax debt, subject

will have to file his [redacted] state taxes for the same years and may owe state tax as well.” (GX 2 at 7.) At the hearing, Applicant admitted he had been “kind of negligent with filing” his tax returns. (Tr. 40.) However, he recanted his admission to the investigator and denied the allegation (SOR ¶ 1.aa) that he failed to file state income tax returns for tax years 2004-2007. He testified that he had copies of his returns at home and would provide them. (Tr. 57, 77.) However, he did not submit any evidence during the period that the record remained open.

Applicant testified that he has not sought consumer credit counseling because he has little spare time after working at his job, caring for his father, and making sure his children are cared for. (Tr. 69.) He made a few calls to creditors but has not negotiated any payment arrangements. (Tr. 70.)

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 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:

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.

The evidence raises 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”), 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”), and AG ¶ 19(g) (“failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same”). Since the Government produced substantial evidence to raise these disqualifying conditions, 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). This mitigating condition is not established because Applicant's delinquent debts are ongoing, 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. This mitigating condition is not established because Applicant's financial problems are the result of his voluntary decisions to father three children and break his lease.

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 met because Applicant has not sought or received financial counseling since his bankruptcy discharge in February 1997.

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). Applicant is making regular payments, albeit through an involuntary deduction from his pay, on his child-support arrearage that is the basis for SOR ¶¶ 1.h, 1.i, and 1.p-1.s, and 1.z. He resolved the car loan underlying the debts alleged in SOR ¶¶ 1.o and 1.y. Although he recanted his admission to a security investigator that he had not filed state income taxes and promised to provide copies of his tax returns, he failed to submit any evidence regarding his state taxes. I conclude this mitigating condition is applicable for the delinquent debts alleged in SOR ¶¶ 1.h, 1.i, 1.o-1.s, 1.y, and 1.z, but not for the remaining 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.

To his credit, Applicant resolved the delinquent car loan and is slowly making progress in discharging the child-support arrearage and the federal income tax debt, but he has no viable plan to resolve his remaining delinquent debts. 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.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.n:	Against Applicant
Subparagraphs 1.o-1.s:	For Applicant
Subparagraphs 1.t-1.x:	Against Applicant
Subparagraph 1.y-1.z:	For Applicant
Subparagraphs 1.aa-1.ab:	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