



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 10-00788
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
For Applicant: Mary Vandall, Personal Representative

March 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 granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 20, 2009. On October 20, 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 November 13, 2010; answered it on November 24, 2010; denied all the allegations in the SOR; and requested a hearing before an administrative judge. DOHA received the request on November 29, 2010. Department

Counsel was ready to proceed on December 16, 2010, and the case was assigned to me on December 22, 2010. Applicant was timely notified of the time and place of the hearing, and I conducted it as scheduled on January 5, 2011. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. I kept the record open until February 4, 2011, to enable Applicant to submit additional documentary evidence. He timely submitted AX K through P, which were admitted without objection. Department Counsel's comments regarding AX K through P are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on January 28, 2011.

Findings of Fact

Applicant is a 27-year-old security officer employed by a defense contractor. He has worked for his current employer since September 2009. He has never held a security clearance.

Applicant graduated from high school in May 2002 and worked in several low-paying jobs at various locations throughout the country. His SCA reflects that he was unemployed from April to September 2009, when he was hired by his current employer. He also was unemployed from June to August 2008 and January 2003 to June 2004. He had at least three jobs that were only part time. He was a part-time cashier from July 2005 to February 2006, a part-time waiter and bartender from February 2007 to June 2008, and a part-time cashier from August 2008 to December 2009. He testified that he was terminated from one job, which he could not identify, for missing too much work after he had the flu for a week but had no doctor's note to prove it. (Tr. 38.)

Applicant married in July 2003 and divorced in March 2006. He remarried in May 2007 and divorced in February 2009. He married his current spouse in May 2009, and they are currently separated (Tr. 42.) He has a 7-year-old daughter from his first marriage, for whom he pays child support. He was 19 years old when his daughter was born and 22 years old when he was divorced.

Applicant disclosed his child support arrearage and two other delinquent debts on his SCA. In an interview with a security investigator in December 2009, he acknowledged the debts, stated his intention to pay his child support by payroll deduction, and promised to resolve the other debts. (GX 2 at 3.)

The SOR alleges four delinquent debts. The evidence concerning these debts is discussed below.

Medical Bill for \$1,812. In his answer to the SOR, Applicant stated he was unaware of this debt before receiving the SOR. This debt was not reflected on his credit reports dated November 3, 2009 or September 10, 2010, but it was reflected on his credit report dated October 5, 2010. (GX 3; GX 5; GX 6.) The debt was paid in full on November 24, 2010. (AX F.)

Cell Phone Bill for \$407. Applicant told a security investigator that he stopped paying this bill in 2005 because he was being billed for services not provided. (GX 2 at 3.) He did not provide any more details, nor did he document the basis for his dispute. In his answer to the SOR, Applicant stated he had previously made payments of \$237, and that he had paid the balance of \$170 at the time of his answer. He attached a copy of a certified check for \$170, and he submitted a copy of the same check at the hearing. (AX H.) After the hearing, he submitted copies of three personal checks issued before the date of the SOR and two personal checks issued after the date of the SOR. (AX K through P.) These checks, along with the check attached to his answer, show that the debt has been paid in full. At the hearing, he submitted a statement showing a zero balance on this account. (AX J.)

Delinquent Child Support Payments Totaling \$14,408. In his answer to the SOR, Applicant attributed the child support arrearage to his periods of unemployment. He testified that child support was deducted from his pay when he was working. (Tr. 30-31.) He stated that he timely paid his child support payments and some of the arrearage after beginning his current job, and that all arrearages were paid as of the date of his answer to the SOR. He attached a copy of a certified check for \$13,898.85. A copy of the same check was submitted at the hearing. (AX C.) At the hearing, he submitted a statement of his child support account, showing that \$13,898.85 was the total amount due as of November 17, 2010. (AX D.) His pay voucher from his current employer reflects that \$173.96 is being deducted from his pay every two weeks. (GX 4.) Records from the state child support enforcement office reflect the payments by payroll deduction. (AX E.)

Telephone-Internet Bill for \$479. In his answer to the SOR, Applicant stated he had made payments of \$278.79, and that the balance was paid as of the date of his answer. His personal financial statement submitted to DOHA in September 2010 reflected payments of \$60 per month on this debt. At the hearing, he submitted a copy of a certified check for \$200, dated November 24, 2010, and marked "Payment in Full." (AX G.)

Applicant submitted a letter from his grandfather, stating that his grandfather gave him a gift of the full amount due on all his delinquent debts, with no expectation of repayment. His grandfather expressed hope that Applicant would be able to obtain a security clearance if all his delinquent debts were satisfied. (AX A.) Applicant's grandparents and mother accompanied him to the hearing but did not testify.

Applicant's current net pay is about \$1,280 per month, after deduction of payments for child support. In response to DOHA interrogatories, he submitted a personal financial statement reflecting the following expenses: rent (\$525), groceries (\$250), utilities (\$310), car expenses (\$320), and miscellaneous expenses (\$160). He noted that he shares living expenses with a roommate. Assuming that all expenses except the car expenses are shared equally, he should have a net monthly remainder of about \$35.

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 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 to a security investigator in December 2009 and the credit reports submitted by Department Counsel establish 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 Applicant to rebut, explain, extenuate, or mitigate the facts established by his admissions and the evidence.

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 debts were 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). Applicant became a father at age 19, and he incurred the obligation to pay child support at age 22. He encountered three periods of unemployment and three periods of underemployment. He has undergone multiple marital breakups, but there is no evidence that he incurred additional expenses as a result of them. He acted responsibly during his unemployment by looking for other jobs.

He paid his child support through payroll deduction whenever possible. I conclude that AG ¶ 20(b) is 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 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).

The evidence indicates that Applicant was aimlessly drifting from the time he graduated from high school until he found his current job. His current job is the first that offers him financial stability and an opportunity for advancement. After starting his current job, he initiated a payroll deduction to make his regular child-support payments, and he began making payments on the arrearage. Even before he received the SOR, he was making payments on two of the debts alleged in the SOR in addition to his child support. Before his generous grandparents stepped in, he was making good-faith efforts to resolve his debts in spite of his limited income. I conclude that AG ¶ 20(d) is 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 stopped paying the creditor alleged in SOR ¶ 1.b in 2005, because he thought he was being charged for services not received and was not receiving satisfactory responses from the service provider. He did not document the basis of 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 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 young and financially unsophisticated. Until he found his current job, he was aimlessly drifting through dead-end jobs and several marriages. He incurred his child-support obligation when he was only 22 years old, with limited earning potential. He has been candid about his financial past throughout the security clearance process. He was candid, sincere, and credible at the hearing. He was accompanied to the hearing by his mother and his grandparents, demonstrating that he has strong family support. Thanks to the support of his family, he is no longer vulnerable to pressure, coercion, exploitation, or duress. The ultimate question is whether he will be financially responsible now that his grandparents have lifted him out of his financial quagmire. Based on his demeanor at the hearing, the efforts he took to address his debts after starting his current job and before his grandparents' intervention, and the strong family support he enjoys, I am satisfied that he will continue to act responsibly and will not disappoint his very generous grandparents.

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a-1.d:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge