



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 10-01130  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: Daniel T. Dedeo, Personal Representative

June 14, 2011

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On September 30, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On October 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. The action was taken 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) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on October 28, 2010, and DOHA received his answer on November 1, 2010. Department Counsel was prepared to proceed on January 13, 2011. The case was assigned to me on February 1, 2011. DOHA issued a

notice of hearing on February 11, 2011, scheduling the hearing for March 2, 2011. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 9, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through D, which were received without objection; called one witness; and testified on his own behalf.

I held the record open until March 16, 2011, to afford the Applicant the opportunity to submit additional evidence. Applicant timely submitted AE E through H, which were received without objection. DOHA received the hearing transcript (Tr.) on March 17, 2011. The record closed on March 17, 2011.

### **Findings of Fact**

Applicant denied all of the SOR allegations except for SOR ¶ 1i. His answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 51-year-old physical security officer, who has been employed by a defense contractor since July 2005. He seeks to retain his secret security clearance, which is a condition of his continued employment. Applicant has continuously held a security clearance since 1980. He was granted his first security clearance when he enlisted in the U.S. Navy, discussed *infra*. During the past 21 years, he has held a security clearance; he has never had a security violation. (GE 1, Tr. 24, 27-29.)

Applicant graduated from high school in June 1978. He has no formal education beyond high school. Applicant has, however, attended various Navy service schools and job-related training courses. (GE 1, Tr. 25-26.) Applicant served in the Navy from October 1980 to October 1984, and was honorably discharged as a radioman third class (pay grade E-4). (GE 1, 25-26.) Applicant has never married and has no dependents. (GE 1, Tr. 27.)

### **Financial Considerations**

Applicant's SOR alleges nine separate allegations. The first eight allegations include six credit card-related debts and two condominium mortgage-related past-due debts. These eight debts total \$72,526. The ninth allegation is a January 1997 chapter 7 bankruptcy with a May 1997 discharge. (SOR ¶¶ 1a – 1i.) (Tr. 12.)

Applicant encountered financial problems in the late 1990s when he was working as physical security officer, living in a high-cost area, and was laid off. Unable to locate work, he fell deeper and deeper into debt and after consulting with a bankruptcy attorney, he filed chapter 7 bankruptcy in January 1997 and was awarded

a discharge in May 1997. (SOR ¶ 1i.) Per his 1997 summary of schedules, \$24,415 in debt was discharged. (GE 5.)

After his 1997 chapter 7 bankruptcy, Applicant reestablished himself financially and remained current on his debts for nine years. However, in August 2008, he lost overtime opportunities that reduced his annual income by \$5,000 to \$8,000. As before, Applicant was living in a high-cost area and the loss of income on his then-salary impacted him significantly. His financial situation continued to deteriorate and he again fell deeper and deeper into debt. Applicant was unsuccessful when he attempted to work with his creditors. He initially consulted a credit counseling firm and later he consulted with a bankruptcy attorney. Applicant filed chapter 7 bankruptcy in July 2010 and was awarded a discharge in November 2010. Per his 2010 summary of schedules, \$163,766 in debt was discharged. (GE 6, Tr. 13-18, 30-31.) The erratic increases in condominium association fees also led to Applicant's financial difficulties. He had purchased a condominium in 1999 for \$27,000. When several other units were unable to pay their association fees, the association doubled the dues of the other residents "to make things work." (Tr. 31-35.) Applicant lost his condominium after filing chapter 7 bankruptcy in 2010. (Tr. 35-37.)

All of the debts alleged in the SOR were discharged in Applicant's 2010 chapter 7 bankruptcy. (SOR ¶¶ 1a – 1h., GE 6.) In conjunction with filing bankruptcy, Applicant completed mandatory consumer credit counseling in March 2010. (AE G, AE H.) Currently, Applicant's annual gross salary is \$35,040. He submitted a budget that reflects he is living a very modest lifestyle in a high-cost area. His net monthly remainder after he has paid all of his monthly bills is \$513. (AE E.) Since his November 2010 bankruptcy discharge, he has been able to regain financial stability. (Tr. 37-44.) Applicant is also undergoing financial counseling through his employee assistance program. (AE F, Tr. 48-49.)

## **Character Evidence**

A long-time friend testified on Applicant's behalf. He served on both active duty and the reserves as a commissioned officer and held several positions of significant responsibility. Most recently, he worked as a special agent for the Defense Security Service and as an investigator with the Office of Personnel Management conducting background investigations on applicants. He currently is employed by the U.S. Marshall's Service as a Court Security Officer. (Tr. 52, 54-55.) He has never worked with Applicant, but has known him socially for 13 years. He described Applicant as, "honest, loyal to a fault, would do anything for you." (Tr. 53.) He corroborated the circumstances that led to Applicant's financial situation as beyond his control. (Tr. 53-55.)

Applicant submitted three reference letters: (1) a former security manager, who has known Applicant since 1996; (2) a former work associate and long-time friend since the "early 1980s;" and (3) his current supervisor. All of these individuals spoke of Applicant's integrity, honesty, loyalty, and trustworthiness. All individuals strongly

recommend Applicant for a security clearance. Lastly, Applicant submitted his most recent employee performance review covering the period of March 2010 to March 2011. This evaluation documents Applicant's above average performance as a defense contract employee. (AE A – D.)

## **Policies**

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 (4<sup>th</sup> Cir. 1994). The

guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline F (financial considerations).

AG ¶ 18 articulates the security concern relating to financial problems, "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."

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is established by the evidence presented. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(a) 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;

(b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. It was not until November 2010 when he was awarded his bankruptcy discharge that his debts were resolved. Therefore, his debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt "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." Under AG ¶ 20(b), he receives full credit because the downfall in the economy and loss of overtime were largely beyond his control. When faced with shortfalls of income, he acted responsibly under the circumstances by attempting to work with his creditors and consulting a credit counseling service.<sup>1</sup>

AG ¶ 20(c) is applicable because Applicant did seek financial counseling in conjunction with his 2010 chapter 7 bankruptcy and more recently through his employee assistance program. He has produced evidence in the form of a current budget that reflects he is living within his means and has regained financial responsibility. Furthermore, AG ¶ 20(d) is partially applicable given the fact Applicant attempted to work with his creditors and consulted with a credit counseling service before he filed chapter 7 bankruptcy. Albeit, this was not his first choice, but the only choice he had after evaluating his options.<sup>2</sup> AG ¶ 20(e) is not applicable because Applicant did not dispute the legitimacy of any of his debts.

---

<sup>1</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

<sup>2</sup>The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

## Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists eight debts totalling \$72,526 that were at one time or another in various states of delinquency. Furthermore, Applicant filed two chapter 7 bankruptcies in 1997 and 2010. His financial track record raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of military service and good employment weighs in his favor. There is no evidence of any security violation during the 21 years that Applicant has held a security clearance. Circumstances beyond Applicant's control led to both of his bankruptcy filings. He is a law-abiding citizen. All of his SOR debts are resolved. His monthly expenses are current.

---

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that 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.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. He made mistakes, and his debts became delinquent. His evidence strongly supports the notion that he is a trustworthy individual and his past financial difficulties were caused by conditions truly beyond his control. His track record of debt payments was only interrupted when faced with those conditions. Collectively, these factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                   FOR APPLICANT

Subparagraphs 1a. to 1i:               For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

---

Robert J. Tuider  
Administrative Judge