



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 10-02109
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

June 15, 2011

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 24, 2009. On December 14, 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 Guidelines F and E. 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 answered the SOR on January 18, 2011, denied all the allegations in the SOR, and requested a hearing before an administrative judge. DOHA received the

request on January 20, 2011. Department Counsel was ready to proceed on February 25, 2011, and the case was assigned to me on March 2, 2011. DOHA issued a notice of hearing on March 17, 2011, scheduling the hearing for April 7, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 9 were admitted without objection. Applicant testified but did not present any witnesses or documentary evidence. I kept the record open until April 29, 2011, to enable him to present documentary evidence. He timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection, Department Counsel's comments regarding AX A through D are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on April 18, 2011.

Findings of Fact

Applicant is a 38-year-old communications technician employed by a defense contractor since July 2006. He worked as a network technician for another defense contractor before his current job. He served on active duty in the U.S. Air Force from June 1991 to November 2002. He served in the Air National Guard from November 2002 to January 2004 and in the U.S. Air Force Reserve from January 2004 to November 2008. He received a security clearance in July 1991. (GX 2 at 8.)

Applicant married in November 1992, divorced in September 1997, and had one child during this marriage. He married again in September 1998, divorced in September 2002, and had two children during this marriage. (GX 2 at 3-4.) Applicant had a relationship with another woman from June 2000 to June 2003, and they had one child. He had a relationship with another woman from April 2004 to August 2008 and they had one child. He pays child support for the two children from his second marriage, and his payments are current. (Tr. 37.) He has joint custody of his oldest child and has no financial obligations for his support. (GX 2 at 3-7.) His oldest son, now age 18, lives with him. (Tr. 37-38.)

Applicant told a security investigator in September 2009 that two states were garnishing his pay for child support but that his payments were current. (GX 2 at 7.) This child support obligation arose from the birth of a son in November 2002, after his second divorce. He was making payments to the child support enforcement office in his former state of residence, but he and the mother of his child had moved to another state, and the mother did not receive the payments. The child's mother obtained a child support order in their new state of residence, the child support records were transferred to the new state, and the records of the new state now reflect that Applicant's payments are current. (Tr. 56-59; AX C.) Applicant's most recent credit report, which was attached to his answer to the SOR, reports only the child support account in the new state. One credit reporting agency reports a zero balance and no past due payments, one agency reports that the account is closed, and the third agency reports that the account is past due. SOR ¶¶ 1.b and 1.c allege delinquent child support payments in both the old state and the new state.

Applicant testified that he enrolled in a college course but did not attend any classes because he received deployment orders and withdrew from the course before the classes began. The college charged him for the course, and the debt is alleged in SOR ¶ 1.c. He testified that the state tax liens alleged in SOR ¶ 1.i and 1.m are for the college tuition, but he submitted no documentation showing the connection. (Tr. 87.) He testified that he is disputing the debt, but he provided no documentation of the basis for the dispute or the actions taken to resolve it. (Tr. 39, 63-66.)

The table below summarizes the evidence concerning the delinquent debts alleged in the SOR.

SOR	Debt	Amount	Status	Evidence
1.a	Credit card	\$559	Amount disputed; unresolved	GX 9 at 1; CBR ¹ at 4; Tr. 51-56
1.b	Child support	\$11,223	Account is current	AX B; GX 2 at 7; CBR at 7; Tr. 56-59
1.c	College tuition	\$1,446	Disputed; unresolved	GX 7 at 2; CBR at 13; Tr. 63-66
1.d	Credit card (collection)	\$1,191	Disputed; unresolved	GX 7 at 3; CBR at 12; Tr. 66-69
1.e	Credit card (collection)	\$2,106	Unresolved	GX 7 at 3; CBR at 12
1.f	Voluntary car repossession	\$15,274	Unresolved	GX 9 at 2; AX D; CBR at 9; Tr. 76-78
1.g	Credit card	\$302	Duplicate of SOR ¶ 1.a (same account number)	GX 9 at 1; CBR at 2
1.h	Credit card	\$1,837	Unresolved	GX 9 at 1; CBR at 3
1.i	State tax lien	\$3,425	Unresolved	GX 7 at 2; CBR at 13
1.j	Penalty for lease termination (judgment)	\$1,283	Being paid by garnishment	GX 6 at 4; AX A
1.k	Utility bill (collection)	\$190	Paid	GX 6 at 4; AX C
1.l	Child support	\$2,806	Same debt as SOR ¶ 1.b	AX B; GX 2 at 7; CBR at 7; Tr. 56-59
1.m	State tax lien	\$4,939	Duplicate of SOR ¶ 1.i	GX 7 at 2; CBR at 13

Applicant consulted with a debt management agency but concluded that he paying an agency was a waste of money. He decided to resolve his debts himself. (Tr. 93-94.)

¹ Applicant submitted a consolidated credit report from all three credit reporting agencies, dated January 3, 2011, with his Answer to the SOR. It is listed as “CBR” in this table.

In July 2000, while Applicant was in the Air Force, he was disqualified from aviation service for “failure to maintain or attain professional aircrew qualification.” This action is alleged in SOR ¶ 2.a. (GX 4.) He testified that he was disqualified because his security clearance was revoked. (Tr. 30-31, 48.) There is no documentation in the record reflecting the factual basis for his disqualification or a revocation of his clearance. He answered “No” to question 26b on his security clearance application, asking if he had ever had a clearance denied, suspended or revoked. (GX 1 at 9.) He testified that his clearance was restored when he joined the Air National Guard. (Tr. 48.)

In August 2000, Applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, 10 U.S.C. § 815, for violating two “no-contact” orders, one to have no contact with the woman to whom he was then married and another to have no contact with a woman to whom he was not married. His punishment was a reduction in rank, a reprimand, and suspended forfeitures of pay. He did not appeal his punishment. (GX 5.) This action is alleged in SOR ¶ 2.b.

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 13 delinquent debts. Applicant denied all the debts in his answer to the SOR, but the debts are established by his credit reports and other documentary evidence presented by Department Counsel. 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 raises 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 mitigate the security concerns raised by his financial history.

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. Applicant was divorced twice and incurred child support obligations, and his child support obligations from his two marriages appear to be current. His current child support obligation arose from a voluntary relationship after his second divorce, which was a situation under his control. I conclude that this mitigating condition is not 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). Applicant enrolled in a debt management program but abandoned it. There is no evidence that he has received financial management counseling. His financial situation is not under control. I conclude that this mitigating condition is not established.

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).

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant’s judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) 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 encountered some accounting problems with his child support payments when he moved from one state to another, but those problems appear to be resolved. The judgment to collect a penalty for early lease termination, alleged in SOR ¶ 1.j, is being collected by garnishment rather than voluntary payments. He paid the delinquent utility bill alleged in SOR ¶ 1.k. I conclude that AG ¶ 20(d) is established for

the child support alleged in SOR ¶¶ 1.b and 1.l, and the utility bill alleged in SOR ¶ 1.k, but not for the other debts alleged in the SOR.

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 denied all the debts in his answer to the SOR and disputed several at the hearing. He provided documentation showing the basis for the disputed child support payments and the utility bill, but he produced no documentation of the basis for the disputes regarding the other debts. I conclude that this mitigating condition is established for the child support payments alleged in SOR ¶¶ 1.b and 1.l and the utility bill alleged in SOR ¶ 1.k, but not for the remaining debts alleged in the SOR.

When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). The same credit card debt is alleged in SOR ¶¶ 1.a and 1.g; the same child support obligation is alleged in SOR ¶¶ 1.b and 1.l; and the same tax lien is alleged in SOR ¶¶ 1.i and 1.m. I will resolve the duplication by resolving SOR ¶¶ 1.g, 1.i, and 1.l in Applicant’s favor.

Guideline E, Personal Conduct

The SOR alleges that Applicant was disqualified from aviation service duty while in the Air Force (SOR ¶ 2.a) and was punished for disobeying an order (SOR ¶ 2.b). The documentary evidence establishes both of these allegations.

The concern under this guideline is set out in AG ¶ 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. . . .”

The evidence establishes that Applicant was disqualified from aviation service duty, but there is no evidence that the disqualification was based on conduct having security significance. Applicant testified that his disqualification was based on revocation of his security clearance, but the record contains no documentation of a revocation and no indication of the basis for a revocation. I resolve SOR ¶ 2.a in Applicant’s favor.

On the other hand, the record of Applicant’s nonjudicial punishment reflects misconduct sufficient to raise a security concern. The following disqualifying conditions under this guideline are relevant:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available

information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's disobedience of a no-contact order was a single incident that happened 11 years ago. As such, it does not reflect a "pattern" of rule violations, but it does suggest an unwillingness to follow rules. In light of the low quantum of proof required by the Directive to raise a disqualifying condition, I conclude that AG ¶ 16(d) is raised by his punishment for disobedience.

Applicant's professional reputation in the military community might have been adversely affected at the time of his punishment, but it is unlikely that a military disciplinary action would affect his reputation 11 years later in the civilian community. However, the underlying conduct, an inappropriate extramarital relationship, might affect his reputation among civilians. Thus, I conclude that AG ¶ 16(e) is raised.

Security concerns raised by personal conduct may be mitigated if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶ 17(c). I conclude that this mitigating condition is raised because the conduct was an isolated episode that happened 11 years ago. No other enumerated mitigating conditions are relevant.

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 and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature adult with a long record of military and civilian service. He has held a security clearance for many years. While he has a history of multiple marriages and relationships, he appears devoted to his children. On the other hand, he also has a long history of financial neglect. After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the personal conduct concerns, but he 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 continue his 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**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraph 1.m:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **FOR APPLICANT**

Subparagraphs 2.a-2.b:	For Applicant
------------------------	---------------

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge