



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 10-02444
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

December 8, 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 on October 7, 2009. On April 27, 2011, 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 answered the SOR on May 31, 2011, and requested a decision on the record without a hearing before an administrative judge. On August 11, 2011, he requested a hearing. (Hearing Exhibit (HX) I.) Department Counsel was ready to

proceed on August 23, 2011. The case was assigned to me on September 12, 2011. DOHA issued a hearing notice on September 27, 2011, scheduling it for October 20, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through O, which were admitted without objection. DOHA received the transcript (Tr.) on October 31, 2011.

I kept the record open until November 14, 2011, to enable Applicant to submit additional documentary evidence. He timely submitted AX P through Y, which were admitted without objection. Department Counsel's comments regarding AX P through Y are attached to the record as HX II.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c. He denied the allegations in SOR ¶¶ 1.d and 1.e on the ground that the alleged debts had been paid in full. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old computer systems analyst. He has worked for his current employer since July 2009. He has worked as a computer systems analyst for various federal contractors since July 2000. He served in the U.S. Navy from March 1991 to March 1995 and received an honorable discharge. He has held a security clearance since September 2001.

Applicant attended a technical school from September 1999 to May 2000 and received a diploma in computer programming. He attended college courses from September 2000 to November 2005 but did not receive a degree.

Applicant married in May 2000. He and his wife have two children, ages nine and four. His wife is not employed outside the home. (Tr. 44.)

Applicant fell behind on his financial obligations because of uninsured medical expenses related to the birth of his daughter in December 2007, his unemployment for about three weeks after being laid off in January 2008, and a reduction in annual salary from about \$85,000 to \$65,000 when he found a new job. After he returned to work, one month elapsed before he received his first paycheck. (GX 2 at 11-14.) His daughter was born with serious medical problems and required intensive medical care for the first two weeks of her life. Because Applicant had just started a new job, he had not accrued any leave, and he took leave without pay to help care for his daughter. About a month after his daughter's birth, he discovered that his medical insurance covered only half of the labor and delivery costs and none of his daughter's medical bills. (Tr. 40-41.)

As a result of their loss of income and unexpected medical expenses, Applicant and his wife fell behind on credit card payments. The credit card companies raised their interest rate and minimum payments, compounding their financial problems. (Tr. 41.) In

hindsight, Applicant believes that they were carrying too much credit card debt, although it was manageable until they encountered the unexpected medical expenses and his short period of unemployment. (Tr. 45.)

Applicant and his wife enrolled in a 13-week credit counseling course in the fall of 2008, and they immediately began contacting their creditors. They completed the course in January 2009. As a result of the lessons learned during the counseling course, they reduced their expenses and sold unnecessary household items at yard sales, consignment sales, and on the Internet. They rented out their guest room for a short time, and they disposed of their truck and now have only one car. They adopted the "Dave Ramsey Debt Snowball" plan, in which they make minimum payments on all debts, pay as much as they can on the smallest debt until it is resolved, and then concentrate on the next smallest debt. (AX S; AX T.)

Applicant's home mortgage, utilities, state and federal taxes, and all other living expenses are current. He does not have a car payment. He earns about \$77,000 per year in his current job. (Tr. 47.) About a month before the hearing, he began working a second job, earning between \$1,000 and \$1,500 per month. (Tr. 54- 55.)

Applicant now leads credit counseling workshops. A recent graduate of Applicant's workshops is employed by a defense contractor, has known Applicant socially for two years, and describes him as a man of great integrity. (AX O at 1.) Applicant's pastor, who is familiar with his financial problems and his response to those problems, describes him as a man of integrity, totally trustworthy, and a devoted husband and father. (AX O at 2.) A former supervisor, who has known Applicant for 20 years and served with him in the Navy, considers him a "man of high character and convictions," who "understands what is proper behavior, discipline, and fortitude." (AX O at 3.) Applicant's current program manager, who has known him for about a year, regards him as dependable, hard-working, dedicated, and ethical. (AX U.)

A retired Army officer, who is now employed by a defense contractor and has held a security clearance 33 years, has known Applicant for about five years and works with him on church-related activities. He testified that Applicant is his "right-hand man," and he regards him as a person of high integrity and good character. (Tr. 64-65.) The witness is familiar with Applicant's role in the credit counseling workshops and has enrolled his daughter in one of the workshops. (Tr. 64-66.) Another of Applicant's church associates, a retired city employee and a former student in one of Applicant's workshops, testified that he regards Applicant as a good friend, a good citizen, and a very trustworthy person. (Tr. 71-72.)

Applicant and his wife plan to be out of debt by the spring of 2013. Their family budget as of March 2011 provided \$760 per month to pay off their delinquent debts. (AX R.) Applicant's new part-time job will increase the funds available to resolve their delinquent debts. The evidence concerning the five delinquent debts alleged in the SOR is summarized below.

**SOR ¶ 1.a (credit card--\$9,750).** This account was closed and referred for collection after it became 180 days past due. (GX 3 at 10.) Applicant made a \$500 payment to the collection agency in May 2009, and monthly \$115 payments in August, September, and November of 2009, and in January 2010. Applicant stopped making payments when another collection agency took over the account and Applicant was unable to contact it. He resumed the \$115 payments in May 2010. (GX 2 at 13-21; AX E at 1-11.) He continued to make \$115 payments through January 2011, when the collection agency filed a lawsuit to collect the debt. Applicant and the collection agency negotiated a new payment agreement providing for monthly \$152 payments, and Applicant made the agreed payments from March 2011 through the date of the hearing. (AX F; AX P.)

**SOR ¶ 1.b (credit card--\$12,706).** This account was closed and referred for collection after it became 150 days past due. (GX 3 at 10.) Applicant began making monthly \$162 payments to the original creditor in February 2009. In July 2009, he was notified by the original creditor that their payment agreement was terminated. A collection agency took over the account, and Applicant continued to make the monthly payments to the collection agency. The account was transferred again, Applicant initiated direct payments from his checking account to the successor collection agency, and he continued the payments through the date of the hearing. (AX D.) On November 3, 2011, the collection agency offered to accept \$4,000 to satisfy the balance of \$11,526. (AX X.) The record closed on November 14, 2011, and does not reflect whether Applicant accepted the settlement offer.

**SOR ¶ 1.c (credit card--\$11,740).** This account was closed in July 2008 with a balance of \$11,858. (GX 3 at 4.) Applicant made a \$47 payment in January 2009, and in February 2009 he began a 12-month payment plan providing for monthly \$104 payments. (AX I.) In July 2010, Applicant began making monthly \$150 payments. In July 2011, he increased his monthly payments to \$161, and the payments continued through the date of the hearing. (AX F; AX G; AX P; AX J.) On November 9, 2011, Applicant received an offer to settle the \$10,240 balance on this debt for \$4,475. (AX Y.) The record closed on November 14, 2011, and does not reflect whether Applicant accepted the settlement offer.

**SOR ¶ 1.d (medical bill--\$295).** This bill became delinquent because Applicant erroneously thought it had been paid by his insurance company. It has been paid in full. (GX 2 at 13-14; AX A at 1-3.)

**SOR ¶ 1.d (medical bill--\$115).** This bill was referred to a collection agency in March 2008. (GX 3 at 8.) Applicant made a partial payment in January 2010 and paid the balance due in March 2010. (GX 2 at 14, 24; AX 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

Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a-1.c, and his admissions are corroborated by his credit reports. He produced evidence that he is making payments on these three debts. He denied the debts in alleged in SOR ¶¶ 1.d and 1.e. His credit reports reflect that these debts were delinquent, but that they have been resolved.

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 establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) AG ¶ 19(c) (“a history of not meeting financial obligations”). Thus, the burden shifted to Applicant to rebut, explain, extenuate, or mitigate the facts.

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 were numerous and are not fully resolved. Applicant’s financial situation, while under control, is still precarious. It is possible that that Applicant will encounter unexpected medical expenses, pay reduction, or loss of employment in the future. Thus, I conclude that this mitigating condition 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. When Applicant was confronted with unexpected medical expenses and loss of employment, he reacted by seeking financial counseling, contacting his creditors, resolving two debts, and negotiating

payment arrangements for the remaining three debts. I conclude that this mitigating condition 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). Applicant has resolved the two smaller debts alleged in SOR ¶¶ 1.d and 1.e. He has adopted a realistic plan to resolve the three larger debts alleged in SOR ¶¶ 1.a-1.c, established a track record of payments, and is making steady progress toward resolving his remaining debts. I conclude that this mitigating condition is 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). 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). For the reasons set out in the above discussions of AG ¶¶ 20(b) and (c), I conclude that this mitigating condition 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). This mitigating condition is not relevant, because Applicant has not disputed any of the debts alleged in the SOR.

### **Whole-Person Concept**

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. In applying 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

