



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



In the matter of:)
)
) ISCR Case No. 10-04179
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

June 10, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant owes three delinquent debts, totaling \$72,857, all of which are unresolved. He presented no documentary evidence to show financial responsibility in the acquisition of the debts, good-faith efforts in the resolution of the debts, or a current track record of financial responsibility. There are no clear indications that his financial problems are being resolved or are under control. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 2, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On November 22, 2010, DOHA issued Applicant a Statement of Reasons (SOR) which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).²

Applicant answered the SOR on February 18, 2011. He elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 24, 2011, was provided to him by transmittal letter dated March 28, 2011. Applicant received his copy of the FORM on April 9, 2011. He was allowed a period of 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. He did not respond to the FORM. The case was assigned to me on June 3, 2011, to determine whether a clearance should be granted or denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1a through 1.c. His admissions are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 61-year-old principal technician specialist employed by a defense contractor. He enlisted in the U.S. Air Force in November 1969, and served on active duty until November 1973. His service was characterized as honorable. In 1985-1986 he attended college for approximately one year, but did not complete a degree. Applicant married his wife in January 1983, and they were divorced in July 1992. He has no children.

Applicant stated in his SCA that he was granted access to classified information at the top secret level in August 1971, while serving in the Air Force; and that he was granted secret clearances in September 1987 and February 1991. There is no evidence as to how long he held these clearances. His SCA's work history indicates that he was self-employed and worked part-time as a consultant from July 2002 until June 2008. He was hired by his current employer, a government contractor, in June 2008.

Applicant disclosed in his February 2010 SCA that he was having financial trouble. Specifically, he disclosed that he had debts turned over to collection agencies; credit cards suspended, charged off, or cancelled for failing to pay as agreed; and that he was over 180 days delinquent on some debts, and currently 90 days delinquent on some debts.

In March 2010, Applicant was interviewed by a Government investigator about the three delinquent and charged-off debts alleged in the SOR and his overall financial situation. During the interview, he explained that he retired from a job in 2001, and started living off his investments. Because of the decline of the stock market his

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

investments did not do well. He was living in a high-cost living area and, in 2007, his investments and retirement savings started to run out. He looked for a job, but was not successful. He used the credit cards alleged in the SOR to pay for his day-to-day living expenses. By late 2007, all of the alleged accounts were already over 180 days delinquent and in collection. In March 2008, he was evicted from his apartment for failure to pay his rent.

Applicant borrowed \$3,000 from each of his siblings and moved to his current state seeking employment. He has been living with his sister since. After he started working in June 2008, he paid the loans to both of his siblings. He claimed that after he repaid the loans, he continued to provide \$500 in financial assistance to both of his siblings because they are having financial difficulties.

Applicant explained that he did not contact his creditors or make any payments toward his delinquent debts because he was providing financial assistance to his siblings and he does not have the financial means to pay his day-to-day living expenses and his delinquent debts. He anticipated a pay bonus in April 2010. He promised to pay his delinquent debts sometime in the near future and to acquire no additional financial obligations.

Applicant presented no evidence that he has participated in financial counseling or that he is following a budget. His July 2010 personal financial statement indicates that since June 2008, he has earned a monthly gross income of \$5,892; deductions of \$2,928; and monthly expenses of \$1,150. He indicated a monthly net remainder of approximately \$1,800. He has \$30,000 in bank savings. His plans were to use his bonus and bank savings to make \$5,000 lump-sum payments to each alleged creditor and then make monthly payments of \$250. As of June 2011, Applicant presented no documentary evidence of any efforts to contact creditors, settle his debts, make payments, or otherwise resolve his financial obligations.

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 (4th 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

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18.

The SOR alleges and the evidence established that Applicant owes three delinquent debts, totaling \$72,857, all of which are unresolved. AG ¶ 19(a) “inability or unwillingness to satisfy debts” and AG ¶ 19(c) “a history of not meeting financial obligations” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant’s sparse favorable evidence fails to fully raise the applicability of any mitigating condition. His financial problems are ongoing, and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond his control contributing to his inability to pay his debts, the downturn of the financial markets and his inability to find a job in 2007. Notwithstanding, Applicant’s presented no documentary evidence showing that he acted responsibly in the acquisition of his debts, that he made good-faith efforts to resolve his debts, or that he has a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not apply because there are no clear indications that his financial problem is being resolved or is under control. He has not participated in financial counseling, and there is no documentary evidence he follows a budget. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited evidence of efforts to resolve his financial obligations, Applicant's information is insufficient to establish that his financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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 the 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). I have incorporated in my whole-person analysis my comments on the analysis of Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for his years of honorable service in the defense of the United States and for his good work for a government contractor. Additionally, he is a good brother who provides financial support for his siblings. These factors show some responsibility.

Notwithstanding, security concerns remain about Applicant's current financial responsibility. Applicant's documentary evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve his financial problems in a timely manner, or a current track record of financial responsibility. His failure to address any of the SOR debts indicates he is probably financially overextended. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge