



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



In the matter of: )  
(Redacted) ) ISCR Case No. 10-05152  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

March 24, 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 his security clearance application (SCA) on February 18, 2010. On November 10, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 received the SOR on November 29, 2010; answered it on the same day; and requested a determination on the record without a hearing. Department

Counsel submitted the Government's written case on January 3, 2011. On the same day, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 5, 2011, and did not respond. The case was assigned to me on February 28, 2011.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a-1.d and 1.g. He denied debts alleged in SOR ¶¶ 1.e and 1.f. He denied falsifying his SCA as alleged in SOR ¶ 2.a. His admissions are incorporated in my findings of fact.

Applicant is a 46-year-old technician employed by federal contractors since December 2007. He has worked for his current employer since June 2008. He worked in the private sector from March 1996 to September 2007. He was unemployed from September to December 2007. His security clearance application reflects that he received a security clearance in December 1982. The record does not reflect whether he currently holds a clearance.

Applicant married in August 1983. He and his wife have three children, ages, 26, 22, and 18. Applicant's two younger children and his 79-year-old mother live with him and his wife.

Applicant attributes his current financial problems to several events that occurred in 2007-2008. He changed jobs and was unemployed for a short period. He borrowed money to add a room to their house for his mother, who required full-time care. His wife and two daughters suffered a serious eye infection that caused his wife to lose her job and required him to be at home to administer medications. Finally, his son was seriously injured in a motorcycle accident that required hospitalization for two weeks and two months of physical therapy. (Answer to SOR.)

During his period of unemployment in late 2007, Applicant tried to start his own business. The record does not reflect whether he was involuntarily laid off or chose to leave his job and start his own business. Due to the attention his family required, he was unable to build his business, and it failed. (Item 6 at 6.)

In an interview with a security investigator in March 2010, Applicant stated that the cell phone debt alleged in SOR ¶ 1.a is duplicated in ¶ 1.f, and that he disputes the debt because it is due to an accounting error by the cell phone provider. His credit reports (Items 7 and 8) do not reflect that the debt is disputed. He provided no documentation to support his dispute. He told the investigator that the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d are credit card accounts on which he has been making \$50 payments since January or February 2010. (Item 6 at 6.) He provided no documentary evidence of payments. He claimed that the collection account alleged in SOR ¶ 1.e

duplicates the credit card debts alleged in ¶¶ 1.b and 1.c., but he submitted no evidence supporting his claim. (Item 6 at 6-7.)

Applicant's personal financial statement reflects net monthly income of \$2,400 and expenses of \$2,385, leaving a remainder of \$15. His debt payments include a mortgage debt of \$59,500 for the addition to his home, on which the monthly payments are \$680. (Item 6 at 11.) The mortgage is not among the delinquent debts alleged in the SOR.

When Applicant submitted his SCA in February 2010, he did not disclose any delinquent debts. He denied falsifying his SCA, and claimed that he wrote down several delinquent debts and submitted them with his SCA. He attributed his omissions to not having the complete information and not knowing how to report the information that he had. (Item 6 at 7.)

### **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, these guidelines are applied 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 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).

## **Guideline F, Financial Considerations**

The SOR alleges seven delinquent debts totaling \$24,635. Applicant’s admissions, corroborated by his credit reports, establish the delinquent debts alleged in SOR ¶¶ 1.a-1.d and 1.g. Applicant denied the delinquent debts alleged in ¶¶ 1.e and 1.f, but he offered no documentary evidence to refute the credit reports submitted by Department Counsel and no evidence that he had disputed the debts. Thus, I conclude that the delinquent debts alleged in SOR ¶¶ 1.e and 1.f are established by the credit reports.

The concern under this guideline is set out in AG ¶ 18 as follows:

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”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). Thus, the burden shifted to Applicant to refute, 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 debts are ongoing and numerous, but he receives some credit under this mitigating condition because the failure of his business and the additional expenses he incurred to take care of his ailing mother are not likely 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. The record does not reflect whether Applicant lost his job or voluntarily left it to start his own business. The family emergencies that diverted his attention from his new business and his wife’s temporary loss of employment were circumstances beyond his control. His mother’s failing health was a circumstance beyond his control, but the record does not show why an expensive addition to his house was a necessary or reasonable expense to provide the care she needs. I conclude that this mitigating condition is not fully 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). 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.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). There is no evidence of any efforts to resolve the delinquent debts. Applicant told a security investigator that he was making monthly \$50 payments on the three delinquent credit card accounts, but he submitted no documentary evidence of payments. Thus, I conclude that this mitigating condition is not established.

Security concerns under this guideline also can be mitigating by showing that “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 claimed that the debt alleged in SOR ¶ 1.a was the same as the debt in SOR ¶ 1.f, and that the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.e were the same debt, but he provided no evidence to support his claims. Thus, I conclude that AG ¶ 20(e) is not established.

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15 as follows:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant admitted to a security investigator that he was in financial distress. He submitted a personal financial statement showing that he was living paycheck to paycheck. He claimed in his answer to the SOR that he submitted a list of debts along with his security clearance application, but he has provided no evidence to support his claim. He has provided no cogent and plausible explanation to answering "No" to straightforward questions about his financial history. I conclude that AG ¶ 16(a) is established.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). This mitigating condition is not established because there is no evidence that Applicant attempted to correct his security clearance application until he was interviewed by a security investigator in March 2010.

Security concerns based on 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). There is no evidence of other falsifications, but Applicant's conduct was serious, recent, and did not occur under unique circumstances. Thus, I conclude that this mitigating condition 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 Guidelines 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.

The record reflects that Applicant is a mature adult who has held a security clearance in the past and was gainfully employed for many years until September 2007. He suffered financial setbacks in 2007 and 2008 because of conditions beyond his control. However, he has failed to document his efforts to resolve the three delinquent credit card accounts, failed to document his claims that some of the debts alleged are duplicates, failed to show why a major addition to his home was necessary to care for his ailing mother, and failed to provide a plausible and credible explanation for his failure to disclose his delinquent debts on his security clearance application.

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 not mitigated the security concerns based on financial considerations and personal conduct. Accordingly, I conclude he has not 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): AGAINST APPLICANT

Subparagraphs 1.a-1.g:

Against Applicant

