



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 10-05535
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on February 17, 2010. On April 4, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to grant or deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), 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 received the SOR on April 13, 2012; answered it on May 2, 2012; and requested a hearing before an administrative judge. DOHA received the request on May 3, 2012. Department Counsel was ready to proceed on May 21, 2012, and the case was assigned to me on May 29, 2012. DOHA issued a notice of hearing on June 1, 2012, scheduling it for June 21, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until July 9, 2012, to enable Applicant to submit additional documentary evidence. He timely submitted AX D and E. Department Counsel's comments concerning AX D and E are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on June 29, 2012.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.e, 1.f, 1.h-1.k, 1.n-1.u, 1.w, 1.y-1.dd, 1.hh, 1.kk-1.rr, 1.ww-1.yy, 1.bbb, 1.ddd, and 1.eee. He did not respond to SOR ¶¶ 1.tt-1.vv. He denied SOR ¶¶ 1.d, 1.g, 1.i, 1.m, 1.v, 1.x, 1.ee-1.gg, 1.ii-1.jj, 1.ss, 1.zz, 1.aaa, and 1.ccc. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 36-year-old mission controller employed by a federal contractor since May 2009. He served in the U.S. Air Force from November 1995 to September 2000, and he held a security clearance and eligibility for access to sensitive compartmented information during his military service. During his first enlistment, he received outstanding performance reports and received a Good Conduct Medal and Air Force Achievement Medal. (GX 3 at 8-12.) He reenlisted and received a \$15,000 reenlistment bonus. He was reassigned and began having conflicts with his new chain of command, which began when his dress uniform was lost during the move and he wore the wrong uniform at the ceremony during which he was given the Air Force Achievement Medal for his previous service. After several other conflicts with authority, he was discharged before completing his enlistment, and he received a general discharge under honorable conditions. (GX 3 at 22-26; Tr. 37-39.) Because he did not complete his enlistment, he was required to pay back about \$6,000 of his reenlistment bonus. He did not have sufficient funds to repay the bonus, and it eventually was collected by seizing his federal income tax refunds. (GX 3 at 6-7.)

Applicant was unemployed from September to December 2000. He worked in a fast-food restaurant from January 2001 to January 2006, when he was laid off. He worked as a part-time security officer for a night club from February to November 2006 and a part-time rural mail carrier for the U.S. Postal Service from June to November 2006. He was a full-time mail carrier from November 2006 to July 2008. He was injured in September 2007 and placed on administrative leave at reduced pay while the circumstances of his injury were investigated. (GX 3 at 21-22.) He worked as a network controller for a federal contractor from March 2008 until May 2009, when he began his current job as a mission controller.

Applicant married in March 1999. His wife had two children when they met. (Tr. 82.) Those children are now ages 16 and 14. They had two more children together, now ages 12 and 8. Applicant's niece, age 18, also resides with them. (Tr. 34.) Applicant and his wife had custody of his two younger brothers until one joined the Air Force and the other went to college. (Tr. 84.)

Around June 2001, he and his wife began to have serious marital problems due to her alcohol and drug abuse. There were several domestic disturbances and mutual accusations of marital infidelity. Applicant was jailed once for violating a restraining order. They separated in April 2004. In late 2004, Applicant's wife entered a drug treatment program and received psychiatric care for a bipolar condition. Applicant and his wife began seeing each other again in early 2004 and have been living together since September 2005. (GX 2 at 15-20.) Applicant's wife does not work outside the home.

The SOR alleges 57 delinquent debts totaling more than \$35,000. Some date back to 2003, but most became delinquent between 2006 and early 2010. In response to DOHA interrogatories in December 2011, he submitted evidence that the debt alleged in SOR ¶ 1.ll was resolved in February 2010. (GX 3 at 13.) In his response to the SOR, Applicant submitted evidence that the debts alleged in SOR ¶¶ 1.aa and 1.kk were resolved before the SOR was issued and the debt alleged in SOR ¶ 1.e was resolved after issuance of the SOR.

In mid-April 2012, after receiving the SOR, Applicant enrolled in a debt management program. A debt counselor reviewed his current income, expenses, assets, and liabilities, and prepared a customized budget and an action plan for resolving delinquent debts. (AX C.) Applicant decided not to proceed with this debt management plan because it required monthly payments of over \$600 and did not provide for missed payments. (Tr. 47-48.) Instead, he formulated his own budget and payment plan. They had not been reduced to writing as of the date of the hearing. (Tr. 48-49.)

After the hearing, Applicant reduced his budget to writing and submitted it. It reflects a monthly remainder of \$491 that is available to resolve his delinquent debts. (AX D at 2-3.) He had previously submitted a personal financial statement in response to DOHA interrogatories, reflecting a net monthly remainder of about \$112. (GX 3 at 62.) His new budget reflects a pay raise, an increase in his military disability pay, and reduced expenses due to the payoff of his car loan. (Tr. 68-70.)

After the hearing, Applicant also reduced to writing and submitted a plan providing for monthly payoffs of selected debts beginning in July 2012 and ending in April 2016. (AX D at 3-13; AX E.) The payment plan includes all debts alleged in the SOR, except those that have been resolved or disputed. Applicant did not present any evidence that his creditors have agreed to the payment plan.

In late April 2012, Applicant retained an attorney to determine the validity of the unsatisfied judgments alleged in SOR ¶¶ 1.b and 1.kk, even though he apparently had satisfied the judgment alleged in SOR ¶ 1.kk in February 2008. (Answer to SOR; AX A.) On June 23, 2012, two days after the hearing, Applicant sent letters to all three credit bureaus, disputing the debts alleged in SOR ¶ 1.g, 1.l, 1.m, 1.v, 1.tt, 1.zz, and 1.ccc on the ground that he has never had accounts with those creditors. He disputed the debt alleged in SOR ¶ 1.ss because it is a duplicate of the debt alleged in SOR ¶ 1.t. (GX 4 at 2; GX 6 at 7.) He disputed the medical debt alleged in SOR ¶ 1.x on the ground that this debt should have been covered by Workmen’s Compensation. He disputed the medical debts alleged in SOR ¶¶ 1.ee, 1.ff, 1.ii, 1.jj, 1.uu, and 1.vv. He testified that these medical debts were incurred at a location where he has not lived since childhood, and he believes that they are his father’s debts. He and his father have the same name, except for the “Junior” in Applicant’s name. (Tr. 56-57.) He disputed the debts alleged in SOR ¶¶ 1.kk, and 1.nn, on the ground that he contacted the creditors and was informed that they have no unpaid accounts in his name. (AX D at 9-13.) As of the date the record closed, the credit bureaus had not responded to his dispute letters.

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

SOR	Debt	Amount	Answer to SOR	Status	Evidence
1.a	Credit card (judgment)	\$2,822	Admit	Payment plan	AX E
1.b	Car repossession (judgment)	\$12,305	Admit	Payment plan	AX E
1.c	Medical	\$1,700	Admit	Payment plan	AX E
1.d	Collection	\$351	Deny	Disputed, no account with creditor	AX D
1.e	Medical	\$30	Admit	Paid, 4-24-12	Answer
1.f	Medical	\$100	Admit	Payment plan	AX E
1.g	Internet service	\$330	Deny	Disputed, no account with creditor	AX D
1.h	Medical	\$62	Admit	Payment plan	AX E
1.i	Medical	\$62	Admit	Payment plan	AX E
1.j	Medical	\$140	Admit	Payment plan	AX E
1.k	Utilities	\$836	Admit	Payment plan	AX E
1.l	Cell phone	\$1,127	Deny	Disputed, no account with creditor	AX D
1.m	Optical	\$97	Deny	Disputed, no account with creditor	AX D
1.n	Payday loan	\$1,220	Admit	Payment plan	AX E
1.o	Medical	\$370	Admit	Payment plan	AX E
1.p	Medical	\$100	Admit	Payment plan	AX E
1.q	Medical	\$100	Admit	Payment plan	AX E
1.r	Medical	\$100	Admit	Payment plan	AX E
1.s	Medical	\$100	Admit	Payment plan	AX E
1.t	Credit card	\$529	Admit	Payment plan	AX E
1.u	Car insurance	\$165	Admit	Payment plan	AX E
1.v	Cable service	\$869	Deny	Disputed, no account with creditor	AX E
1.w	Cable service	\$573	Admit	Payment plan	AX E
1.x	Medical	\$1,382	Deny	Disputed, covered by Workmen’s Compensation	AX E
1.y	Bad check	\$123	Admit	Payment plan	AX E

1.z	Bad check	\$100	Admit	Payment plan	AX E
1.aa	Credit card	\$466	Admit	Paid, 3-15-12	Answer
1.bb	Telephone	\$199	Admit	Payment plan	AX E
1.cc	Collection	\$360	Admit	Payment plan	AX E
1.dd	Loan	\$335	Admit	Payment plan	AX E
1.ee	Medical	\$76	Deny	Disputed, requested verification	AX D
1.ff	Medical	\$593	Deny	Disputed, requested verification	AX D
1.gg	Health club	\$336	Deny	Unresolved, no dispute filed	Answer
1.hh	Collection	\$406	Admit	Payment plan	AX E
1.ii	Medical	\$280	Deny	Disputed, requested verification	AX D
1.jj	Collection	\$123	Deny	Disputed, requested verification	AX D
1.kk	Judgment	\$583	Admit	Paid 2-13-08; creditor's records do not reflect an unpaid debt	Answer; AX D
1.ll	Cell phone	\$541	Admit	Resolved 2-26-10	GX 3 at 13
1.mm	Medical	\$179	Admit	Payment plan	AX E
1.nn	Pizzeria	\$67	Deny	Disputed, creditor's records to not reflect an unpaid debt	AX D
1.oo	Medical	\$44	Admit	Payment plan	AX E
1.pp	Collection	\$83	Admit	Payment plan	AX E
1.qq	Credit card	\$784	Admit	Payment plan	AX E
1.rr	Medical	\$520	Admit	Payment plan	AX E
1.ss	Credit card	\$529	Deny	Disputed, duplicate of ¶ SOR ¶ 1.t	AX D
1.tt	Music club	\$27	No response	Disputed, no account with creditor	AX D
1.uu	Medical	\$555	No response	Disputed, requested verification	AX D
1.vv	Medical	\$280	No response	Disputed, requested verification	AX D
1.wv	Video games	\$78	Admit	Paid, 11-12-08 and 11-26-08	Answer
1.xx	Cell phone	\$250	Admit	Payment plan	AX E
1.yy	Collection	\$73	Admit	Payment plan	AX E
1.zz	Collection	\$126	Deny	Disputed, no account with creditor	AX D
1.aaa	Collection	\$908	Deny	Unresolved	Answer
1.bbb	Collection	\$480	Admit	Payment plan	AX E
1.ccc	Collection	\$80	Deny	Disputed, no account with creditor	AX D
1.ddd	Trailer rental	\$318	Admit	Payment plan	AX E
1.ccc	Trash service	\$66	Admit	Payment plan	AX E

Applicant's most recent performance report rated his performance as 3.67 on a 4-point scale. A score of 3.00 is for employees meeting job requirements and a 4.00 is for employees exceeding job requirements. (AX B.) His supervisor, who has known him for five years, describes him as a person with high integrity, responsibility, and attention to detail. He considers Applicant a dependable person with good judgment and a mature outlook. (Attachment to Answer).

Applicant's wife described him as someone who "will never shut his door to a family member or someone in need." She testified that he is "a man of his word" and "a good guy." (Tr. 84-87.)

Applicant was involved in a car accident in February 2012, in which the other party was determined to be at fault. He expects to receive a settlement in a month or two, which he intends to use to resolve his debts. At the hearing, he testified that he does not know how much he will receive. (Tr. 32, 66.) However, in his post-hearing submission, he estimated that he will receive more than \$35,000 (AX D at 13.)

Applicant has no savings. At the time of the hearing, he had about \$700 in his checking account. He opened a retirement account in November 2011, but he did not testify regarding the amount he had accumulated in this account. (Tr. 71-72.)

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 that 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 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.

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money. It encompasses concerns about an applicant’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s credit reports, his admissions in response to the LOI, and his testimony at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Security concerns based on financial considerations may be mitigated by any of the following conditions:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; or

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are ongoing, numerous, and not the result of circumstances making them unlikely to recur.

The first prong of AG ¶ 20(b) is established, because Applicant encountered several conditions beyond his control: his unemployment and underemployment after being discharged from the Air Force, his wife's alcohol and drug abuse and the marital discord and breakup that resulted from it, the expense of maintaining two households while they were separated, and the numerous medical debts incurred by him and his family. However, the second prong of AG ¶ 20(b), requiring responsible conduct, is not established, because Applicant did not take meaningful steps to gain control of his financial situation until he received the SOR.

The first prong of AG ¶ 20(c) is established, because Applicant received counseling from the debt management program and advice from his attorney. However, the second prong is not established, because there are not yet "clear indications" that the problem is being resolved. Although Applicant has devised a plan for resolving his

debts, he has not shown that his creditors will agree to the plan and he had not made any payments under the plan as of the date the record closed.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.aa, 1.kk, and 1.ww, which were resolved before issuance of the SOR, but not for the remaining debts alleged in the SOR. 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). Evidence of past irresponsibility is not mitigated by payment of debts motivated primarily by the pressure of qualifying for a security clearance. Applicant did not contact the debt management company and consult with an attorney until after he received the SOR. The evidence indicates that his belated actions were not motivated by a sense of duty to his creditors, but by the realization that he could not obtain a security clearance until he resolved his financial problems.

AG ¶ 20(e) is established for the disputed debts alleged in SOR ¶¶ 1.d, 1.g, 1.l-1.m, 1.v, 1.x, 1.ee-1.ff, 1.ii-1.jj, 1.nn, 1.ss-1.vv, 1.zz, and 1.ccc. Applicant's reasons for disputing these debts are plausible, reasonable, and credible. The requirement for documentation of his actions to resolve the disputes is satisfied by copies of his letters sent to the three credit bureaus.

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 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a compassionate man who has taken family members into his home even though he was struggling financially. He served in the Air Force for almost five

years, where he held a security clearance, apparently without incident. He was candid, sincere, and credible at the hearing. On the other hand, he has a long track record of neglecting his financial responsibilities. Although he has been employed continuously since November 2006 and has worked for his current employer since May 2009, he took virtually no action to gain control of his financial situation until he received the SOR. He has devised a realistic payment plan, but his creditors have not yet agreed to it, and he has not established a track record of financial responsibility.

After weighing the disqualifying and mitigating conditions under Guideline F, 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. 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.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraphs 1.n-1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y-1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant
Subparagraphs 1.bb-1.dd:	Against Applicant
Subparagraphs 1.ee-1.ff:	For Applicant
Subparagraphs 1.gg-1.hh:	Against Applicant
Subparagraphs 1.ii-1.ll:	For Applicant
Subparagraph 1.mm:	Against Applicant
Subparagraph 1.nn:	For Applicant
Subparagraphs 1.oo-1.rr:	Against Applicant
Subparagraphs 1.ss-1.ww:	For Applicant
Subparagraphs 1.xx-1.yy:	Against Applicant
Subparagraph 1.zz:	For Applicant
Subparagraphs 1.aaa-1.bbb:	Against Applicant
Subparagraph 1.ccc:	For Applicant
Subparagraphs 1.ddd-1.eee:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge