



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 10-07419
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

August 29, 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 April 21, 2010. On March 1, 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 received the SOR on March 4, 2011; answered it on March 23, 2011; and requested a hearing before an administrative judge. DOHA received the request on March 28, 2011. Department Counsel was ready to proceed on May 28, 2011, and the

case was assigned to me on June 3, 2011. DOHA issued a notice of hearing on June 15, 2011, scheduling the hearing for July 19, 2011.

On June 22, 2011, Applicant requested a continuance, stating that he needed more time to contact one or more of the character witnesses he intended to call and to obtain all the documentary evidence he intended to present. On July 11, 2011, I denied his request for a continuance, but I informed him that I would keep the record open after the hearing to enable him to submit statements from character witnesses and additional documentary evidence pertaining to the delinquent debts alleged in the SOR.

I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. Department Counsel submitted a demonstrative exhibit summarizing the evidence, which is attached to the record as Hearing Exhibit (HX) I.

I kept the record open until August 5, 2011, to enable Applicant to submit additional documentary evidence. He timely submitted AX N through Y. After I extended the deadline until August 24, 2011, he timely submitted AX Z and AA. Department Counsel's comments regarding AX N through AA are attached to the record as HX II. DOHA received the transcript (Tr.) on July 28, 2011.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.e, but he denied the allegation in SOR ¶ 1.f. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 66-year-old technical writer employed by a federal contractor. He has worked for his current employer since April 2010. He has not previously worked for a federal contractor, and he has never held a security clearance.

Applicant graduated from college in May 1975 with a bachelor's degree in electrical engineering. He worked for three employers as an electrical engineer. He earned his highest annual income in 1989, when he earned about \$85,000. He then worked as a district sales manager for an agricultural products company, earning about \$45,000 per year. After he was laid off in 2001, he worked for four years as a self-employed courier with virtually no net income after expenses. He worked as a dispatcher for a courier service from March 2005 to March 2006, earning about \$35,000 per year. He left this job by mutual agreement after he was accused of conducting personal business at work. He worked as a self-employed merchandiser for several companies from May 2006 to October 2007 and as an hourly employee at a home improvement store from October 2007 to April 2008. (Tr. 32-38.)

Applicant's income started to increase in April 2008, when he began working as a technical writer. During the next two years, he worked for eight months, was

unemployed for two months, worked for another employer for about ten months, was unemployed for a month, and worked for about four months before he began working for his current employer. His starting salary with his current employer was about \$71,000, and he recently received a raise to \$73,250. He started receiving Social Security benefits of \$1,949 per month in April 2011. He is now putting 28 percent of his income into a 401(k) account, which has a balance of about \$8,270. (Tr. 31, 38-39; AX H-K.)

Applicant has a 10-year-old car, a 12-year-old car, and no car payments. His home mortgage is current. He has not taken an out-of-state vacation for the last two years. He estimates that his net monthly remainder, including his Social Security benefits, is about \$3,000. In addition to his 401(k) account, he has about \$1,000 in a savings account and \$3,000 in his checking account. (Tr. 59-60.)

Applicant married in February 1966. His spouse was working as a respite care worker until the spring of 2002, when she was diagnosed with cancer. She was unable to work for about a year. In 2003, she began working part time, but she stopped working in April 2010 because of severe arthritis. (Tr. 62-63.)

When Applicant's spouse was diagnosed with cancer, they did not have medical insurance, and they incurred about \$90,000 in medical expenses. They used credit cards and loans to pay the medical bills and living expenses, but they were unable to make the payments on Applicant's reduced income. (Tr. 47-49.)

At the time of the hearing, Applicant had already paid about \$29,000 to resolve five delinquent debts that were not alleged in the SOR. (Tr. 31; AX O-T.) The evidence concerning the six debts alleged in the SOR is summarized below.

SOR ¶ 1.a (computer purchase for \$975). On August 1, 2011, the creditor offered to settle the debt for \$490. Applicant accepted the offer and paid the agreed amount on August 15, 2011. (AX Z, AA.)

SOR ¶¶ 1.b and 1.c (consumer loan and credit card account for \$7,199 and \$9,174). Both of these accounts were turned over to an attorney for collection. Applicant has been making \$300 monthly payments to the attorney by an automatic debit from his checking account. (AX A-G; GX 2 at 3-4, 6-8.)

SOR ¶ 1.d (credit card account for \$31,077). Applicant has made no payments and has not contacted the creditor on this account. (Tr. 44-45.) He intends to use the additional Social Security income to make \$2,000 monthly deposits in his 401(k) plan, and to negotiate a lump-sum settlement of this debt as soon as he can. (Tr. 61.) He expects to be able to settle this debt within a year. (Tr. 64-65.)

SOR ¶ 1.e (consumer loan \$4,990). This loan was used to pay medical bills. The account was settled for \$2,150. (Tr. 45; AX V-Z.)

SOR ¶ 1.f (state tax lien for \$4,872). This lien was filed in 1998 for taxes on the capital gain realized from the sale of a house in 1993. Applicant paid the taxes, and the lien was released in February 2003. (GX 2 at 12; Answer to SOR.)

Applicant's site manager testified that, based on daily contact, he regards him as a "great employee," a team player who works efficiently and well, and a person of good character. He has no hesitation in recommending that Applicant receive a security clearance. (Tr. 70-74.) Applicant's annual performance appraisal for the period ending in February 2011 rated him as "proficient" in 12 categories, and as exceeding expectations in 7 categories, including teamwork, dependability, initiative, and the quality of his work. (AX N.) Two of Applicant's friends and neighbors describe him as deeply religious, dependable, involved in his community, and highly respected. (AX L and M.)

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 six delinquent debts totaling about \$58,287. Applicant admitted the delinquent debts and produced evidence that all but one had been settled or was being paid in accordance with a negotiated payment agreement.

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 admissions, corroborated by his credit reports, establish 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 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 are ongoing and numerous. They occurred during a time when his income was declining and he incurred uninsured medical expenses to treat his wife's cancer. I have noted that Applicant submitted no documentary evidence of his actual income from 2001 to 2008, and he submitted no medical records or receipts for his wife's treatment. However, I recognize the difficulty of documenting ten-year-old events. I note that he has consistently given the same explanation for his debts, that he voluntarily disclosed a large quantity of derogatory information on his security clearance application, and that he enjoys a reputation for high integrity. The jobs that he listed on his security clearance application are consistent with the low-paying jobs he described. He was candid, sincere, and credible at the hearing. After hearing his testimony, observing his demeanor, and comparing his testimony to the other evidence in the record, I have found his testimony regarding the circumstances that caused his financial problems plausible and credible. I conclude that AG ¶ 20(a) is 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. For the reasons set out in the above discussion of AG ¶ 20(a), I conclude that the first prong of this mitigating condition is established. Regarding the second prong, the record reflects that Applicant continuously sought employment, even in jobs well below his professional qualifications. He began repaying his debts as soon as he was able. He has a modest lifestyle and a sound plan for regaining financial stability. Thus, I conclude that AG ¶ 20(a) 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). This mitigating condition is not established, because Applicant submitted no evidence that he has sought or received financial 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). 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 proceeding aimed at collecting an applicant's personal debts. Rather, a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness in order to make a decision about an applicant's security eligibility." 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 has resolved numerous debts not alleged in the SOR. He has settled three of the debts alleged and is making payments on two debts. He has a realistic and specific plan to resolve the one remaining debt alleged in SOR ¶ 1.d. I conclude that AG ¶ 20(d) 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 applicable because Applicant has admitted all the debts.

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 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 mature, intelligent, well-educated adult. He was sincere, candid, and credible at the hearing. He enjoys a reputation for integrity and dependability. He plans to continue working and paying off his delinquent debts, even though he is at an age when retirement would ordinarily be an option.

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, and mindful of my

obligation to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a-1.f:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge