



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 10-10391
)	
Applicant for Security Clearance)	

Appearances

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

03/08/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on April 9, 2010. On September 27, 2011, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it is 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 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 October 9, 2011; answered it on October 18, 2011; and requested a hearing before an administrative judge. DOHA received the request on October 21, 2011. Department Counsel was ready to proceed on December 8, 2011, and the case was assigned to me on December 15, 2011. DOHA issued a notice of hearing on January 23, 2012, scheduling it to be conducted by video teleconference on February 13, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Department Counsel submitted a demonstrative exhibit summarizing the evidence, which is attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibits (AX) A through N, which were admitted without objection. I kept the record open until February 29, 2012, to enable Applicant to submit additional documentary evidence. He timely submitted AX O and P. Department Counsel's comments regarding AX O and P are attached to the record as HX II. DOHA received the transcript (Tr.) on February 22, 2012.

Findings of Fact

In his answer to the SOR, Applicant admitted the debts alleged in SOR ¶¶ 1.a-1.e, but he denied that the debts alleged in SOR ¶¶ 1.a-1.d were unpaid, explaining that he was making payments on those four debts. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 44-year-old employee of a federal contractor. He received a security clearance in September 2000, but it was administratively terminated when he left federal employment in March 2004.

Applicant graduated from college in May 1989, and he received a master's degree in forensic sciences in September 1991. (AX A at 9-11.) He married in January 1994. He and his wife have five children, ages 16, 12, 10, 7, and 5.

Applicant was employed as a city police officer from 1991 to 1996. He was named Police Officer of the Year in 1993, received numerous accolades, and was featured in local newspapers. (AX E at 1-11.) He worked as a county police officer in 1996 and 1997 and again received numerous awards and accolades. (AX G at 1-13.) He was a federal law enforcement agent from December 1997 to March 2004. (AX F at 1-7.) He was employed as an asset protection executive for a large retail chain from March 2004 to November 2005. He worked as chief of security and probation for a state court from November 2005 to July 2007. He was the global security manager for a major computer manufacturer from July 2007 to February 2009, when he was laid off due to a reduction in force. (AX L.) He was unemployed until he began working as global security manager for his current employer in October 2009. (GX 1 at 16-26.)

About seven years ago, Applicant's wife began a pattern of excessive alcohol consumption and abuse of prescription drugs, triggered by the death of her mother. (Tr. 32.) She underwent detoxification and counseling several times without success. At about the time Applicant was laid off in February 2009, she had a major relapse,

requiring additional detoxification, treatment, and counseling. Applicant estimated that he had out-of-pocket expenses of between \$5,000 and \$10,000 for her multiple efforts at detoxification and treatment. (Tr. 52.) While she was undergoing extensive inpatient treatment, Applicant was solely responsible for the care of their five children, in addition to job-hunting and managing the family finances. The combination of unemployment, additional medical expenses for his wife's treatment, and the burden of being solely responsible for his family caused him to fall behind on the first and second mortgages on their home as well as several other debts.

Applicant's wife has been in recovery for about a year. She is trained as a registered nurse and is now seeking employment. (AX O; Tr. 49-50.)

All the debts alleged in the SOR are reflected in Applicant's April 2010 and June 2011 credit reports. (GX 3 and 4.) The evidence concerning the status of the five delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.a (credit card--\$1,724). Applicant made monthly \$238 payments on this debt from March 2010 to September 2011. He is now paying about \$64 per month. As of December 2011, this debt had been reduced to \$579. (AX J; Tr. 38-39.)

SOR ¶ 1.b (2nd mortgage--\$52,000). In February 2012, Applicant entered into a "temporary payment arrangement" providing for 24 biweekly payments of \$162.52, to be paid through February 2013. (AX M.) Applicant is making payments as agreed, and he intends to continue the payment arrangement for about four years, although he does not have a written payment agreement extending beyond February 2013. (Tr. 43.)

SOR ¶ 1.c (credit card--\$4,174). Applicant has been making monthly \$50 payments on this debt since October 2010. (AX I.) I granted Department Counsel's motion to withdraw this allegation on the ground that this debt was his wife's individual account and Applicant was only an authorized user of the account. (Tr. 66-67.)

SOR ¶ 1.d (credit card--\$7,099). Applicant has been making monthly \$100 payments on this debt since September 2011. (Answer to SOR at 12; AX H; AX N; Tr. 44-45.) I granted Department Counsel's motion to withdraw this allegation on the same ground as SOR ¶ 1.c. (Tr. 66-67.)

SOR ¶ 1.e (first mortgage--\$257,635). Applicant and his wife listed their home for sale in November 2009, asking \$339,900. (GX 2 at 45-46.) In January 2010, they reduced the asking price to \$329,900. (GX 2 at 34.) In May 2010, they decided to pursue a short sale, reducing the asking price to \$250,000. (GX 2 at 35-38.) They received an offer and sent the lender a request for approval of a short sale on July 16, 2010. However, on July 19, 2010, the property was sold at a foreclosure sale. (GX 2 at 33.) Appellant received an IRS Form 1099-A from the lender reflecting a fair market value of \$225,000.¹ (AX P.) He has not received an IRS Form 1099-C reflecting

¹ IRS Instructions for Forms 1099-A and 1099-C (2012) provide: "Generally, the gross foreclosure bid price is considered to be the FMV [fair market value of a foreclosed property]."

cancellation of the potential deficiency after foreclosure. As of the date of the hearing, the lender had not taken any action to collect a deficiency. Applicant has not yet made any arrangements to resolve the potential deficiency, because he has been triaging his debts and concentrating on the four debts alleged in SOR ¶¶ 1.a-1.d. He testified he intends to fulfill his obligations with the lender. He and his wife have considered the possibility of rolling any deficiency into a new loan from the same lender. (Tr. 48-49, 59-60.)

Applicant's gross annual salary is about \$111,600, and he earns an additional \$31,900 as an adjunct university professor. He estimates that his net monthly income is about \$6,800. His expenses, including a \$350 car payment, are about \$4,500. (Tr. 55.) His monthly payments on the delinquent debts alleged in SOR ¶¶ 1.a-1.d total about \$539, leaving a net monthly remainder of about \$1,761. He is living modestly, and none of his current financial obligations are delinquent.

When Applicant applied for graduate school, his application was supported by numerous friends and associates, all of whom described him as honest, highly motivated, with a strong sense of responsibility. (AX A at 1-8.) While in graduate school he co-authored a forensic science article on a scholarly publication. In February and June 2004, he authored two articles on industrial crisis response and workplace violence in a foreign publication directed toward chief executive officers of major corporations. (AX A at 13-27.) His applications for employment in law enforcement positions were supported by numerous friends and professional colleagues, who extolled his personal and intellectual qualities. (AX D.)

Applicant is deeply religious and devoted to his family. (AX B; AX C.) He is a swimming coach at his children's school, a volunteer at a homeless center, and involved in religious education of children for his church. (Tr. 70-71.)

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 three delinquent credit card accounts (SOR ¶¶ 1.a, 1.c, and 1.d) and delinquent first and second mortgages on a family home (SOR ¶¶ 1.b and 1.e). Department Counsel withdrew the allegations regarding the two credit card accounts alleged in SOR ¶¶ 1.c and 1.d.

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: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

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). This mitigating condition is not established because Applicant has three delinquent debts that are not yet resolved. They did not occur under circumstances making them unlikely to recur, because Applicant is not immune from being laid off again, and his wife's addictions may cause future relapses and uninsured medical expenses.

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.

Applicant's unemployment and his wife's addictions were circumstances beyond his control. He stayed in contact with his creditors and made payment arrangements, even before he received the SOR. He made reasonable efforts to resolve his delinquent mortgage but was unable to prevent foreclosure, even though he had a reasonable short-sale offer. He intends to resolve the deficiency remaining after the foreclosure. I conclude that AG ¶ 20(b) 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).

A security clearance adjudication is aimed at evaluating an applicant's judgment, reliability, and trustworthiness. It is not a debt collection procedure. 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 is methodically repaying his delinquent credit card debts and the delinquent second mortgage, which is his largest delinquent debt. He has a reputation for honesty, reliability, and a strong sense of personal responsibility. The amount of the potential deficiency on the first mortgage is affordable with his current income. I am confident that once he is relieved of the uncertainty about his security clearance and future employment, he will act responsibly to resolve any deficiency remaining from the foreclosed first mortgage.

A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008). However, I found Applicant's promise to resolve any potential foreclosure deficiency credible, because it is corroborated by his track record of responsibly resolving the other delinquent debts alleged in the SOR. I conclude that AG ¶ 20(d) is established.

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 mature, well-educated, talented adult. He has a long career in law enforcement and industrial asset protection. He has held a security clearance in the

past, apparently without incident. Although his wife suffered from alcohol and prescription drug addiction for many years, he was able to keep his family together and his finances under control until he was laid off in February 2009. Notwithstanding his wife's addictions and the loss of the family home, he has steadfastly worked to care for his children, help his wife obtain treatment and counseling to overcome her addictions, and restore his financial stability. He was candid, sincere, and credible at the hearing. The evidence leaves me convinced of his honesty, reliability, and trustworthiness.

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 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.b:	For Applicant
Subparagraphs 1.c-1.d:	Withdrawn
Subparagraph 1.e:	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