



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 11-01286  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Caroline Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

November 30, 2011

**Decision**

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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 August 18, 2010. On July 7, 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 July 15, 2011; answered it on July 29, 2011; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 23, 2011, and the case was assigned to me on August 26, 2011.

DOHA issued a notice of hearing on September 27, 2011, scheduling it for October 20, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until November 14, 2011, to enable Applicant to submit additional documentary evidence. He timely submitted AX D through O, which were admitted without objection. Department Counsel's comments regarding AX D through O are attached to the record as Hearing Exhibits I and II. DOHA received the transcript (Tr.) on October 28, 2011.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d, with explanations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 44-year-old security manager for a defense contractor. He has worked for his current employer since April 1990. He has held a security clearance since October 2000. He has been trained to use handguns, semi-automatic weapons, and a shotgun. (AX A; AX B.) He is licensed to carry a concealed weapon. (AX C.)

Applicant graduated from college with a bachelor's degree in June 1989. He married in October 1992 and divorced in November 1999. He has three children, ages 21, 18, and 14. He and his ex-wife have joint custody of the children. He pays about \$400 per month in child support, which is automatically deducted from his pay. (Tr. 48; GX 2 at 9.)

After Applicant's divorce, he retained the marital home and all the marital debt. His home was built by his uncle, and it has been in the family since it was built. He resolved the marital debt, but he fell behind on his mortgage payments on the home after he refinanced it to pay for renovations. (Tr. 31.)

Applicant's credit report for August 2010 reflected that he was 60 days delinquent on his home mortgage and had been 120 days delinquent. (GX 4 at 6.) He applied for a loan modification in April 2011. (Tr. 34; GX 2 at 17-22.) His August 2011 credit report reflected that his home mortgage loan had been modified. (GX 3 at 2.) He is enrolled in a federal "Home Affordable Modification Program" (AX F.) In May through July 2010, he made 14 payments for the months he was past due. He made regular payments on time in February 2011, April 2011, and June through August 2011. (AX G at 6-11.)

When Applicant submitted his security clearance application in August 2010, he disclosed that he owed the Internal Revenue Service (IRS) \$15,000 and was making payments on the debt. (GX 1 at 35.) Applicant took a second job to generate extra income to help his 18-year-old pregnant daughter. He was paying his daughter's car payment, car insurance, and other living expenses. The IRS debt arose after he lost his second job in 2008 and decided to reduce his income tax withholding to generate extra

take-home income. In late 2009, he learned that he owed the IRS \$15,000, which he was unable to pay. (GX 2 at 7; Tr. 35.) He contacted the IRS in April 2011 and reached a payment agreement in May 2011, providing for payments of \$250 per month. As of the date of the hearing, he had made every payment on time. (GX 2 at 23-29; AX H; AX I.) He is also making monthly payments of \$178 for delinquent state income taxes, which were not alleged in the SOR. (AX D, E, and J through O.)

Applicant's August 2011 credit report reflected that a \$270 debt for cable service and a \$159 debt for satellite television service had been referred for collection. (GX 3 at 1-2.) He testified that both debts were resolved. (Tr. 39.) His most recent credit report reflects a zero balance on the satellite television debt. (Tr. 53; GX 3 at 1.) He was unable to provide documentation that the cable bill was resolved.

In June 2011, Applicant submitted a personal financial statement reflecting net monthly income of about \$4,192, expenses of \$1,150, debt payments of \$2,091, and a remainder of about \$951. His debt payments include his mortgage payments and his state and federal tax payments. (GX 2 at 6.)

### **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**

The SOR alleges four delinquent debts: a home mortgage past due for \$14,387, with a balance of \$175,288 (SOR ¶ 1.a); a delinquent cable bill for \$270 (SOR ¶ 1.b); a delinquent satellite television bill for \$159 (SOR ¶ 1.c); and a delinquent federal income tax debt for \$15,000 (SOR ¶ 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.

Three disqualifying conditions under this guideline are established by Applicant’s admissions, his statement to a security investigator, and his credit reports: 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”). AG ¶ 19(g) (“failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same”) is not established, because the evidence indicates that he filed all state and federal tax returns, but was unable to pay the taxes due because of underwithholding.

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 were numerous and the two largest are not fully resolved. Both debts occurred, however, under circumstances making them unlikely to recur. Applicant was faced with a pregnant teenage daughter, and he overreacted by not only supporting her but also by indulging her with a new car and paying all the expenses related to it. His diligent efforts to resolve his delinquent debts and his remorse about his poor financial judgment demonstrate his current reliability, trustworthiness, and good judgment. 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). The unexpected pregnancy of Applicant’s teenage daughter and his loss of his second job, on which he relied to help his daughter, were circumstances beyond his control. However, he did not act responsibly, because he went beyond providing for her basic needs by indulging her with a new car and related expenses without regard for his ability to pay for them.

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). The first prong of this mitigating condition is not established because there is no evidence that Applicant sought or received counseling. However, the second prong is established because his financial problems are under control.

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). 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 on his way to resolving his delinquent mortgage and his delinquent state and federal taxes. The delinquent satellite television bill has been resolved. Even though he was unable to provide documentary evidence regarding the cable bill, I found his testimony credible in light of his track record of resolving his other debts and providing documentation of their resolution. If there are any remaining issues about his cable bill, I am confident that he has the means and the sense of duty to resolve them. Thus, 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 not disputed any of the delinquent debts alleged in the SOR.

### **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 has a long record of service, and he has held a security clearance for more than 10 years, apparently without incident. He is an intelligent, well-educated adult. He is devoted to his children. He has learned from his lapse in financial judgment three years ago. He was remorseful, candid, sincere, and credible at the hearing.

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 continue his 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.d:

For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge