



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 11-04418
)
 Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2012

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 May 10, 2010. On June 21, 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 continue his eligibility for access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to continue or revoke his clearance. 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 answered the SOR on July 12, 2012, and requested a hearing before an administrative judge. DOHA received the request on July 16, 2012. Department Counsel was ready to proceed on September 18, 2012, and the case was assigned to me on September 21, 2012. DOHA issued a notice of hearing on September 28, 2012, scheduling it for October 23, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. DOHA received the transcript (Tr.) on November 5, 2012.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR except SOR ¶ 1.r, which he denied. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 44-year-old fleet systems engineer employed by a defense contractor since December 2007. He served on active duty in the U.S. Navy from July 1987 to August 2007, and retired as a first class petty officer (pay grade E-6). He held a security clearance during his Navy service. It was revoked in February 2003 for misconduct (a 15-day unauthorized absence) and reinstated in January 2005.

Applicant married in September 1995 and divorced in October 2004. He and his ex-wife have three children, a 17-year-old daughter and twin 15-year-old daughters. His ex-wife has custody of the children, and he pays child support of about \$1,500 per month.

After Applicant retired from the Navy, he rented an apartment near the area where his ex-wife and three daughters lived, and he bought a new truck. He could not afford the rent on the apartment, resulting in the judgments for unpaid rent alleged in SOR ¶¶ 1.a-1.e, the delinquent utility bill alleged in SOR ¶ 1.f, and the delinquent cable bill alleged in SOR ¶ 1.k. He also could not afford the payments on the new truck, and it was repossessed. He bought a second truck, which was repossessed after he missed one payment. The repossessions resulted in the debts alleged in SOR ¶¶ 1.o and 1.p. He did not pay the medical bills alleged in SOR ¶¶ 1.g-1.j, which appear to be copayments. He allowed his credit card accounts to become delinquent, resulting in the debts alleged in SOR ¶¶ 1.l, 1.n, 1.q, and 1.s-1.v. A check written to a military exchange was dishonored, resulting in the debt alleged in SOR ¶ 1.m.

Applicant testified that he paid the five judgments for unpaid rent in cash but that he had no documents reflecting his payments. (Tr. 33-34.) He thought he had redeemed the bad check alleged in SOR ¶ 1.m, but he was unsure and had no documentation of payment. (Tr. 34.) He testified that he paid the credit card debt alleged in SOR ¶ 1.t, but he had no documentation of payment. He denied the debt alleged in SOR ¶ 1.r, and it is not reflected on the two credit reports submitted by Department Counsel. (GX 4; GX 5.) He presented no testimonial or documentary evidence of efforts to contact the creditors or otherwise resolve the debts alleged in SOR ¶¶ 1.f-1.l, 1.n-1.s., 1.u, and 1.v.

Applicant testified that he currently has a net monthly remainder of about \$1,100 after he pays all his living expenses and his car payment. He also gives his daughters between \$300 and \$500 per month, because his ex-wife and her current husband are students and have no income. Twice a year, he gives them about \$1,500 for heating oil, and he recently gave his oldest daughter \$1,500 for a car. (Tr. 28-29.)

Applicant recently enrolled in college. He expects to receive an additional \$1,500 in GI Bill benefits in addition to his earnings as a contractor employee. (Tr. 30.)

Even with the additional money Applicant gives his daughters, he has a net monthly remainder of about \$600, but at the hearing he could not explain how that money is spent. He does not have a budget. He has no savings and no retirement funds. He has not sought or received financial counseling. He has not disputed any of the delinquent debts reflected on his credit reports. (Tr. 39-46.)

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 SOR alleges 22 delinquent debts totaling about \$55,673. 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 admissions in his answer to the SOR and at the hearing, corroborated by his credit reports, establish all the allegations in the SOR except ¶ 1.r, which is not established. The evidence of the delinquent debts alleged in SOR ¶¶ 1.a-1.q and 1.s-1.v is sufficient to 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;

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; or

AG ¶ 20(f): the affluence resulted from a legal source of income.

None of the mitigating conditions are established. Applicant's delinquent debts are numerous, recent, and not the result of circumstances making them unlikely to recur. His marital breakup, short period of unemployment after his retirement from the Navy, and his ex-wife's apparent failure to provide for their daughters were circumstances beyond his control, but he has not acted reasonably. He testified that he

had paid the debts alleged in SOR ¶¶ 1.a-1.e, 1.m, and 1.t, but he presented no documentation to support his testimony. He denied the debt alleged in SOR ¶ 1.r, but he has not disputed it with the creditor or the credit reporting agencies. Unusual affluence is not at issue in this case.

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, intelligent adult. He is talented and dedicated to serving the Navy as a contractor. He served honorably in the U.S. Navy for 20 years and held a security clearance for most of his Navy service. He is devoted to his daughters, often acting to his financial detriment to provide for them. He is financially unsophisticated and has not sought financial counseling.

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 has good intentions, but he has no financial plan and has taken no significant steps to regain financial stability.

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 that he has not carried 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): **AGAINST APPLICANT**

Subparagraphs 1.a-1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s-1.v:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge