



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 11-07502
)
 Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2012

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 2, 2011. On May 22, 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 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 June 12, 2012, and requested a hearing before an administrative judge. DOHA received the request on June 15, 2012. Department Counsel was ready to proceed on July 18, 2012, and the case was assigned to me on July 20, 2012. DOHA issued a notice of hearing on August 1, 2012, scheduling it for August 20, 2012. I convened the hearing as scheduled. Government's Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. I kept the record open until September 5, 2012, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. Department Counsel's comments regarding AX A are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on August 28, 2012.

Findings of Fact

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

Applicant is a 43-year-old electrician employed by a defense contractor. He received a security clearance in June 1988. He has worked for his current employer since May 2003.

Applicant graduated from high school in June 1987 and served on active duty in the U.S. Army from January 1988 to June 1997. He received an honorable discharge.

Appellant has been married three times. He has been married to his current spouse for about a year. He has a 22-year-old daughter from his first marriage.

Applicant testified that his financial problems began in 2005, when his second wife left him after an argument about money. Applicant was out of town when she left, and she took all the household furnishings and a car. Everything was titled in Applicant's name. He let his creditors repossess the household furnishings and two cars, and he sold his house. (Tr. 23.) He owed \$285 to the lender after selling his house. His credit report dated March 21, 2012, reflects that the debt was paid. (GX 2 at 8; GX 3 at 2.) He also obtained a loan of \$1,100 to help sell his house. After he failed to make any payments on this loan, the lender garnished his wages and collected the full amount due. (GX 2 at 8; GX 4 at 5.)

The SOR alleges four delinquent debts. The evidence concerning those debts is summarized below.

SOR ¶ 1.a: Federal Income Taxes (\$3,595). Applicant underpaid his federal income taxes for 2005, 2006, 2007, and 2008. He initially owed about \$5,000 in back taxes. He made a payment agreement, withdrew money from his 401k retirement account, and paid the delinquent taxes for 2005, 2006, and 2007 (GX 2 at 8.) His 2011 tax refund was applied to the amount due on his 2008 tax, leaving an unpaid balance of

\$1,751. Applicant paid the balance due on April 30, 2012. (Enclosures to Answer to SOR.) This debt is resolved.

SOR ¶ 1.b: Jewelry Store (\$3,188). This account was opened in 2004, before Applicant's marital breakup. He made no payments on the account until June 2012, when he accepted an offer to settle the debt for \$599. He paid the agreed amount on June 11, 2012. (GX 2 at 7-8; Enclosures to Answer to SOR.)

SOR ¶¶ 1.c and 1.d: Car Loans (\$8,104 and \$7,325). These debts were incurred when Applicant bought cars for his then wife and her daughter. (GX 2 at 8, 11.) He was solely responsible for the loans because his then wife had bad credit. After his then wife left him in 2005, she parked the cars in a public parking lot and told Applicant where they were. He surrendered both cars to the dealers, and the amounts due are the deficiencies after the cars were sold. Applicant has not contacted the creditors since 2005. He testified that he does not want to contact the creditors on the car loans until he has enough cash on hand to pay or settle the debts.

Applicant cannot borrow more money from his 401k retirement plan until he pays off his current loan, which he expects to pay off in September 2013. His loan balance is about \$1,900, which is being repaid by payroll deduction of about \$38 per week. He has not sought financial counseling or explored the possibility of credit consolidation. He has not explored or seriously considered a Chapter 13 bankruptcy. (Tr. 36-41, 53-54; GX 2 at 15-18; GX 3 at 1; GX 4 at 6.)

Applicant and his wife both drive modest cars. He has paid off his car loan, and his wife's car payments are \$375 per month. He is making minimum payments on his two credit card accounts. He has not incurred any additional delinquent debts. (Tr. 46-48.)

In April 2012, Applicant submitted a personal financial statement (PFS) in response to DOHA interrogatories. His PFS reflected net monthly income of \$5,017, expenses of \$1,445, and debt payments of \$3,232, leaving a net remainder of about \$1,785. The PFS did not reflect payments on the delinquent debts alleged in the SOR. (GX 2 at 13.) After the hearing, Applicant submitted an updated PFS reflecting net household income of \$4,158 per month, expenses of \$3,830, and a remainder of \$328. (AX A.)

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 appellant'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).

Appellant's credit reports, his admissions in response to the SOR, and his testimony at the hearing 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"). The following mitigating conditions are relevant:

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; and

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

AG ¶ 20(a) is not fully established. Applicant's delinquent debts originated around 2005, but the debts in SOR ¶¶ 1.a and 1.b were only recently resolved, and the debts in SOR ¶¶ 1.c and 1.d remain unresolved. Applicant receives some credit under

this mitigating condition, because the debts in SOR ¶¶ 1.b, 1.c, and 1.d occurred under circumstances unlikely to recur, *i.e.*, a financially irresponsible spouse who left unexpectedly, taking the household goods and a car with her. However, his dilatory response to the jewelry store debt and his lack of action regarding the two delinquent car loans are sufficient to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not established for the federal tax debt, because it was not caused by his marital breakup, but by mistakes in his tax returns. The first prong of this mitigating condition (conditions beyond his control) is established for the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d. However, the second prong (responsible conduct) is not established for the debts in SOR ¶¶ 1.b, 1.c, and 1.d, because of his dilatory response to the debt in SOR ¶ 1.b and his lack of action on the debts in SOR ¶¶ 1.c and 1.d.¶

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and the debts alleged in SOR ¶¶ 1.c and 1.d are not resolved.

AG ¶ 20(d) is established for the tax debt alleged in SOR ¶ 1.a. It is not established for the jewelry store debt in SOR ¶ 1.b, because Applicant incurred the debt in 2004 and made no payments until he received a settlement offer in June 2012. It is not established for the debts in SOR ¶¶ 1.c and 1.d because Applicant has made no effort to resolve them.

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). On the other hand, a factor in deciding whether there has been reasonable conduct under AG ¶ 20(b) and good faith under AG ¶ 20(c) is an applicant's degree of contact with creditors. In this case, Applicant had no contact with the creditor in SOR ¶ 1.b for about eight years, and he has not contacted the creditors in SOR ¶¶ 1.c and 1.d during the past seven years.

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 adult who served honorably in the U.S. Army for nine years, held a security clearance since 1988, and worked for a defense contractor for nine years. His trusting and generous nature contributed to the financial disaster that befell him in 2005. He appears to be financially inexperienced and could well benefit from financial counseling. He has made progress toward financial stability. However, his failure to address significant and long-standing debts leaves me with doubts about his reliability and good judgment.

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 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

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge