



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 11-07676
)
 Applicant for Security Clearance)

Appearances

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

11/29/2012

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 (SCA) on January 5, 2011. On July 6, 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 Guidelines 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 13, 2012; answered it on August 21, 2012; and requested a hearing before an administrative judge. DOHA received the request on August 24, 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 and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on November 1, 2012.

Findings of Fact

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

Applicant is a 49-year-old senior help-desk technician employed by a defense contractor since September 2010. He served on active duty in the U.S. Navy from January 1989 to January 2010 and retired as a chief petty officer (pay grade E-7). He has held a security clearance for about 25 years. (GX 2 at 190; Tr. 25.¹)

Applicant received an associate's degree in electronics technology in June 1994, while on active duty. He is credentialed as a Microsoft Certified System Administrator, which is a requirement of his current job. (Tr. 27.) He is attending college part time, seeking a bachelor's degree. He receives educational benefits of about \$1,500 per month. (GX 2 at 185, 188, 212.)

Applicant was unemployed for about four months after he retired from the Navy, and he worked as a subcontractor from April 2010 until he began his current job. He was underemployed as a subcontractor, earning only about \$13 per hour. (Tr. 24.)

A co-worker for the past two years described Applicant as very knowledgeable, courteous, and dedicated. (AX B.) His area manager described him as a valuable employee who would not hesitate to work past his assigned hours to support a customer or an operational commitment. (AX A.)

Applicant married in July 1985. No children were born during the marriage. In 2006, while deployed overseas, he realized that he had been unhappy in his marriage for the past ten years, because his wife attempted to control every aspect of his life. He filed for divorce in October 2006, and the divorce was granted in October 2009. (GX 1 at 20; GX 2 at 187; Tr. 33.)

When Applicant divorced, he was ordered to pay alimony of \$1,500 per month and \$855 was deducted from his retired pay pursuant to the Former Spouse Protection

¹ The page numbers on GX 2 begin with page 169.)

Act. (GX 2 at 206-11.) After he retired, he fell behind on his alimony payments due to his unemployment and underemployment. (GX 2 at 187.)

After Applicant's divorce, he incurred expenses to establish a new home, but he admitted at the hearing that he "went too far" in enjoying his new-found freedom and spent too much on entertainment, a motorcycle, and other unnecessary expenses. (Tr. 33-34.)

Applicant began cohabiting with his fiancée, now his wife, in November 2006. They married in September 2011. (Tr. 38.) In late 2009, his fiancée became unable to work due to fibromyalgia, further reducing their household income. (GX 2 at 190; Tr. 24.)

Around March 2011, Applicant was ordered to begin paying an additional \$300, to be applied to the alimony arrearage. (GX 2 at 196; Tr. 32.) The alimony arrearage is not reflected on Applicant's credit reports. The only information regarding it was provided by Applicant in his SCA (GX 1 at 34), during personal subject interview in February 2011, and at the hearing. (GX 2 at 187-88, 196; Tr. 32.)

In response to DOHA interrogatories, Applicant submitted a personal financial statement (PFS) in May 2012. It reflected net income of \$6,649, expenses of \$5,537, debt payments of \$611, and a remainder of about \$500. He indicated that he had been making small payments of \$25 to \$50 on the debts alleged in the SOR to demonstrate his good faith, but he stopped making the payments when other bills fell behind. (GX 2 at 179-80.) He last made the small payments on his debts about six months before the hearing.

Applicant testified that his intention is to resolve his financial problems by increasing his income. He hopes to earn pay increases, and has been able in the past to generate additional income from self-employed entrepreneurial activities. (GX 2 at 188; Tr. 36, 41-42.) He has not sought financial counseling. He has no retirement accounts other than his military retirement, no savings accounts, and no emergency funds. His only tangible assets are his computer and a 13-year-old compact car. (Tr. 37.) He has not disputed any of the debts, except for disagreeing with the amount of the alimony arrearage alleged in the SOR. (Tr. 35-38.)

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 ten delinquent debts totaling about \$81,178. Applicant admitted owing about \$76,000. The debts are an alimony arrearage alleged to be about \$20,000 (SOR ¶ 1.a), an unpaid \$235 utility bill (SOR ¶ 1.b), and eight delinquent credit card accounts totaling about \$60,942 (SOR ¶¶ 1.c-1.j). 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).

The evidence establishes 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.

The following mitigating conditions under this guideline 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;
and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and did not occur under circumstances making them unlikely to recur. He admitted at the hearing that the credit card debts were due in part to irresponsible spending.

The first prong of AG ¶ 20(b) is established, because Applicant encountered several circumstances beyond his control, i.e., four months of unemployment after retiring from the Navy, five months of underemployment before finding his current job, and the expenses related to his divorce. However, the second prong of AG ¶ 20(b) is not fully established, because Applicant has not acted responsibly. He admitted that some of the credit card debt was due to irresponsible spending. He has been gainfully employed for more than two years, but he made only token payments on his credit card debts until about seven months ago, when he stopped them. He presented no evidence of efforts to compromise, settle, or otherwise resolve his debts. His PFS reflected that he had a net monthly remainder of at least \$500, even with his token credit-card payments. He has done nothing to resolve the delinquent utility bill or credit card accounts for at least six months.

AG ¶ 20(d) is established for Applicant's alimony arrearage, because the evidence reflects consistent effort to pay the court-ordered alimony and the arrearage. It is not established for the delinquent utility bill and credit card debts.

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 Guidelines 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 served honorably in the U.S. Navy for more than 20 years and held a security clearance for almost all his Navy service. He has a reputation for being a knowledgeable, courteous, conscientious employee. He was candid, sincere, and credible at the hearing.

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 no specific plan for resolving nine of the ten delinquent debts alleged in the SOR. He aspires to resolve them by increasing his income, but his aspirations have not evolved into a plan.

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.j:	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