



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 11-08559
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/04/2012

**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 March 15, 2011. On July 23, 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 grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to grant or 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 July 27, 2012; answered it on August 15, 2012; and requested a hearing before an administrative judge. DOHA received the request on August 16, 2012. Department Counsel was ready to proceed on September 18, 2012, and the case was assigned to me on September 20, 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 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on November 1, 2012.

I kept the record open until November 9, 2012, to enable Applicant to submit additional documentary evidence. At his request, I extended the deadline to November 16, 2012. He timely submitted AX E through H, which were admitted without objection.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.e-1.h, and 1.j. He denied the allegations in SOR ¶¶ 1.d, 1.i, and 1.k. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 47-year-old structural inspector employed by a defense contractor since September 2009. He has never held a security clearance.

Applicant married in September 1995 and divorced in March 2011. He and his ex-wife have four adult children. (Tr. 44.)

Applicant graduated from high school in June 1983. (GX 1 at 11.) His work history after high school is not clear, but the record reflects that he had accumulated numerous debts by early 1995. He lost his full-time job with a cable company after his driver's license was suspended in August 1995 for failure to pay damages resulting from a traffic accident, but he found another job working in a warehouse. (GX 1 at 30; Tr. 44-45, 62-64.)

Applicant filed a Chapter 13 bankruptcy petition in August 1995. He made one or two payments to the bankruptcy trustee, after which he was laid off from his job. His bankruptcy was dismissed because he could not continue to make the required payments. (GX 2 at 89-90.<sup>1</sup>) This bankruptcy is alleged in SOR ¶ 1.a.

The economic impact of Applicant's loss of employment was compounded by fines imposed for traffic offenses. He was cited for driving on a suspended license in November 1995. He was cited in November 1996 for a seat belt violation and driving on a suspended license. He was cited in July 1997 for speeding. He was fined for each of these violations, but the record does not reflect the amounts of the fines. (GX 1 at 30.)

---

<sup>1</sup> The page numbers in GX 2 begin with page 80.

Applicant began working as a tile installer around 1998. (Tr. 46.) He was hired by a family friend who had known him since childhood and owned a tile and countertop business. This former employer testified at the hearing and described Applicant as honest, trustworthy, and a person of integrity. Applicant's former employer later became pastor of a church and he entrusted Applicant with several duties, including the handling of church funds. (Tr. 26-28.) As Applicant's pastor, he counseled him about his marriage and his financial problems. He told Applicant that he needed to establish a budget and take control of his finances. (Tr. 30.)

Applicant filed a Chapter 7 bankruptcy petition in October 2004 and received a discharge in January 2005. He attributed this bankruptcy to periods of unemployment and poor financial decisions such as purchasing luxury automobiles. (GX 2 at 90; GX 3 at 1.) This bankruptcy is alleged in SOR ¶ 1.b.

Applicant started his own tile and countertop business in June 2006. (GX 1 at 14; Tr. 46.) As a result of the downturn in the construction business in 2008-2009, his business failed and several business-related and personal debts became delinquent.

Applicant was cited for speeding, tailgating, making an illegal turn, and driving on a suspended license in January 2008; and driving with an expired inspection sticker in June 2009. He paid a fine between \$100 and \$300 for the January 2008 incident and a \$60 fine for the expired inspection sticker, further exacerbating his financial difficulties. (GX 1 at 29-30; GX 2 at 96-98.)

The judgment for \$6,150 alleged in SOR ¶ 1.c was the result of a car repossession. Applicant contacted the creditor one time, but the creditor was unwilling to accept a payment agreement. (Tr. 48-49.) The judgment is unsatisfied. (GX 3 at 1.)

The delinquent \$873 medical debt alleged in SOR ¶ 1.d was a copayment for a medical bill incurred by Appellant's ex-wife. It was referred for collection in September 2010, about six months before their divorce and while she was still included in Applicant's medical plan. It is unresolved. (Tr. 50-52; GX 3 at 1.)

In September 2012, Applicant received a settlement offer for the \$157 satellite television bill alleged in SOR ¶ 1.e, conditioned on making one payment of 52% of the amount due or paying the full amount due in three consecutive payments. (AX E.) In November 2012, he sent this creditor a money order for \$20. (AX G.)

Applicant testified that he believed the \$196 cell phone bill alleged in SOR ¶ 1.f was included in his Chapter 7 bankruptcy. (Tr. 53.) He did not provide documentary evidence supporting his belief. His March 2011 credit report reflected that the account was referred for collection in August 2010, after his Chapter 7 bankruptcy. (GX 4 at 8.)

Applicant testified that he believed he had settled the \$105 collection account alleged in SOR ¶ 1.g. (Tr. 54.) He did not provide documentation of a settlement, and his September 2012 credit report reflected that the debt was unpaid (GX 3 at 1.)

Applicant received a collection notice in October 2012 for the \$280 telephone bill alleged in SOR ¶ 1.h. (AX F.) In November 2012, he sent the collection agency a \$20 money order. (AX H.)

The \$10,445 car repossession deficiency alleged in SOR ¶ 1.i is being collected by garnishment of Applicant's pay. As of the date of the hearing, the garnishment had reduced the outstanding debt by \$5,635. (AX D.)

Applicant testified that the delinquent \$885 electric bill alleged in SOR ¶ 1.j was incurred by his ex-wife before they were divorced. (Tr. 56-58.) The March 2011 credit report indicates that the account was solely in Applicant's name and was referred for collection in December 2010. (GX 4 at 8.) Applicant has not contacted the creditor. The debt is unresolved. (Tr. 57-58.)

Applicant testified that the delinquent \$401 cell phone bill alleged in SOR ¶ 1.k was incurred by his ex-wife. The March 2011 credit report reflects that the account was solely in Applicant's name. (GX 4 at 10.) He has not contacted the creditor or disputed the debt. (Tr. 58-59.)

When Applicant was interviewed by a security investigator in April 2011, he had not yet filed his federal income tax return for 2007, but he expected to receive a refund when he filed. (GX 2 at 96.) He also failed to file his state income tax return, resulting in a state tax lien on his pay. The state tax lien has been satisfied. (AX D.) Applicant indicated in his hearing testimony that he had filed his federal return for 2007. (Tr. 36.)

Applicant has satisfied several debts not alleged in the SOR. A car loan referred for collection was paid in August 2006. (AX A.) A \$354 judgment obtained by a furniture store was satisfied in July 2008. (GX 4 at 5.) A \$4,021 judgment based on a car repossession was satisfied in March 2011. (GX 3 at 1.) He resolved a \$218 delinquent credit account in March 2012. (GX 2 at 88; GX 3 at 2.) He made a \$146 payment to a collection agency in July 2012 on a debt for \$290, but his documentary evidence does not identify the original creditor. (AX C.)

Applicant's pay vouchers for the past two years reflect that his gross weekly pay during 2011 was usually between \$655 and \$683, depending on overtime. His net pay usually was around \$471. During one week in March 2011 he received no pay because of a state tax lien. He received a pay raise in 2012, and for several weeks his gross pay was more than \$1,000. Weekly creditor garnishments ranged from \$145 to \$241, and his average net pay was between \$341 and \$591. (AX D.) He submitted a personal financial statement in July 2012, reflecting monthly income of \$1,456, expenses of \$1,350, and no debt payments. (GX 2 at 83.) He has no retirement accounts, savings accounts, or emergency funds. (Tr. 65.) He does not own a car, and he uses public transportation to get to work. (Tr. 61-62.)

## 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 that Applicant filed a petition for Chapter 13 bankruptcy in 1995, which was dismissed for failure to make the requirement payments (SOR ¶ 1.a). It also alleges that he filed for Chapter 7 bankruptcy in October 2004 and received a discharge in January 2005 (SOR ¶ 1.b). Finally, it alleges nine delinquent debts totaling about \$19,492.

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.

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.

AG ¶ 20(a) is not established. Applicant's history of delinquent debts spans 17 years, and he still has numerous unresolved debts. His debts were not incurred under circumstances making them unlikely to recur.

The first prong of AG ¶ 20(b) is established, because Applicant has encountered circumstances beyond his control, i.e., repeated periods of unemployment, a business failure caused by a downturn in the construction business, and a marital breakup. He was unable to make the required payments for his Chapter 13 bankruptcy because he was laid off shortly after his payment plan was approved. However, the second prong (responsible conduct) is not fully established. His repeated traffic violations resulted in fines that exacerbated his precarious financial situation. His Chapter 7 bankruptcy was due to poor financial decisions, such the purchase of a luxury car, as well as his periods of unemployment. He failed to timely file his tax returns, resulting in tax liens on his pay.

AG ¶ 20(c) is not fully established. Applicant received some general financial advice from his pastor, legal advice regarding his two bankruptcies, and likely has received mandatory financial counseling in connection with his bankruptcies. However, the record does not reflect "clear indications" that his financial situation is under control.

AG ¶ 20(d) is partially established, because Applicant has resolved several delinquent debts that were not alleged in the SOR. He maintained contact with the creditors alleged in SOR ¶¶ 1.e and 1.h and demonstrated good faith by making \$20 payments on each of them before the record closed. On the other hand, the payments on the \$10,445 judgment alleged in SOR ¶ 1.i were the results of garnishment actions initiated by his creditors rather than voluntary actions by Applicant.

AG ¶¶ 20(e) and (f) are not applicable because Applicant has not provided documentary proof of a basis to dispute any of the debts alleged in the SOR, and unexplained affluence is not involved 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 has experienced numerous financial setbacks and a recent marital breakup. He was candid and sincere at the hearing. He has worked for his current employer for more than three years and he has received pay raises. He resolved several delinquent debts that were not alleged in the SOR. He appears to have matured and is living frugally. On the other hand, he has a long record of irresponsible behavior, including poor financial decisions, multiple traffic offenses, and failure to timely file his tax returns.<sup>2</sup> He did not present any evidence of his reputation or duty performance in

---

<sup>2</sup> Applicant's traffic violations and tax delinquencies were not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).



his current job. He has no savings or emergency funds for unexpected expenses. He has not yet established a consistent track record of responsible behavior

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 living paycheck to paycheck. He credibly testified that he intends to resolve his debts, but his intentions have not yet evolved into a reasonable, coherent, and plausible financial 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 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): **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraph 1.b-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge