



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



In the matter of:)
)
) ISCR Case No. 11-13602
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

10/31/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F, Financial Considerations. Clearance is denied.

Statement of the Case

On April 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On May 9, 2012, Applicant answered the SOR. On May 17, 2012, Applicant elected to have his case decided on the written

record in lieu of a hearing. On June 27, 2012, Department Counsel compiled his File of Relevant Material (FORM) that contained documents identified as Items 1 through 8.

On June 29, 2012, DOHA forwarded to the Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of its receipt. Applicant received the FORM on August 9, 2012, and did not submit any objections or additional matters within the allotted time period. The case was assigned to me on October 2, 2012. Items 1 through 8 are entered into the record.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He graduated from high school in 1998. From May 1999 to May 2010, he served on active duty in the U.S. Army and was honorably discharged. He began working for a defense contractor in August 2010 and started working for his current employer in September 2011. He is divorced. He was married from January 2007 to August 2009. He has two children, ages six and nine. He has held a security clearance since 1999 without incident.¹

The SOR alleged that Applicant had 17 delinquent debts totaling \$20,912. In his Answer to the SOR, Applicant admitted eight of the allegations (SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, 1.h, 1.i, and 1.o) totaling \$7,843 and denied nine allegations (SOR ¶¶ 1.c, 1.f, 1.j, 1.k, 1.l, 1.m, 1.n, 1.p, and 1.q). His admissions are incorporated as findings of fact. The record contains substantial evidence of each of the alleged debts.²

In an interview with an Office of Personnel Management (OPM) investigator on September 11, 2011, Applicant indicated that he deployed to Iraq from March 2004 to March 2005. He later deployed to Qatar from September 2006 to December 2007 and again from January 2009 to January 2010. He stated that he did not have any financial problems before his deployment in 2009. Prior to that deployment, he was approaching his end of obligated service in the military, but was involuntarily retained on active duty under the stop-loss program. When he was subjected to stop-loss, he stated that his pay stopped temporarily (an unspecified period), which caused him to become delinquent on some debts. When his pay started again after his deployment began, his wife was supposed to pay the delinquent debts, but failed to do so. He also indicated that her failure to pay bills was one of the reasons for their divorce. His ex-wife served in the military, but was unemployed following her discharge. He also was unemployed for about three months (June-August 2010) following his discharge. He collected unemployment compensation during that period of unemployment. He stated that, after the divorce, he had not been able to pay some of the debts because he had been working on the road and did not have time to set up a budget for his finances.³

¹ Item 5.

² Items 1, 4, 7, and 8.

³ Item 6.

An examination of the record revealed that eight of Applicant's delinquent debts became delinquent before his deployment in 2009. The table below identifies those debts and lists the date of last activity on them.

SOR ¶ No.	Type of Debt	Date of Last Activity
1.d	Collection account for \$244	June 2008
1.f	Collection account for \$1,886	June 2006
1.g	Collection account for \$548	September 2007
1.j	Collection account for \$4,170	February 2008
1.m	Collection account for \$1,268	April 2008
1.n	Collection account for \$1,229	June 2006
1.p	Collection account for \$300	May 2004
1.q	Collection account for \$533	November 2004

Moreover, some of the debts apparently became delinquent after he obtained his job in August 2010. These debts include:

SOR ¶ No.	Type of Debt	Date of Action
1.a	Collection account for \$2,351	Assigned for collection December 2011
1.b	Collection account for \$277	Assigned for collection November 2011
1.h	Judgment for \$781	Judgment filed July 2011
1.o	Collection account for \$667	Date of last activity July 2011

During the OPM interview, Applicant stated that he intended to either pay or make payment arrangements for a number of the delinquent debts in October 2011. However, he provided no proof of payments, payment arrangements, or settlement agreements for any of the alleged debts. In the interview, he also stated that he disputed certain debts. Specifically, he claimed he had no knowledge of some debts. Nonetheless, he provided no documentation to substantiate the basis of the dispute or of his actions to resolve the issues.⁴

Applicant attended unit-level financial management classes in the military. He has not received individual financial counseling. In the OPM interview, he stated that he could have been more proactive with his finances; instead of letting his ex-wife handle them. He claimed that his current financial situation was stable. In March 2012, he submitted a Personnel Financial Statement (PFS) that indicated that his net monthly pay was \$3,273 and his total monthly expenses were \$1,095. His PFS did not list any monthly debt payments.⁵

⁴ Item 6.

⁵ Item 6.

Applicant presented no letters of reference. While in the military, he was awarded two Army Achievement Medals and three Good Conduct Medals. He was retained in the military for 541 days under the stop-loss program.⁶

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s 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, to reach his decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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.

⁶ Item 6.

“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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts over an extended period. He was unable or unwilling to pay these obligations. The evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

- (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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's financial problems are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant experienced conditions beyond his control that contributed to his financial problems. These include his divorce, his ex-wife's failure to pay debts even though he provided her money for them, and his unemployment. However, he has not established that he acted responsibly under the circumstances. Some of his debts predate the conditions listed above. He acknowledged he could have been more proactive in handling his finances. He has not provided proof that, since obtaining employment after his discharge from the Army, he either paid or made payment arrangements for any of the alleged debts. While he received unit-level financial counseling, he failed to establish that his financial problems are being resolved or are under control. AG ¶ 20(d) does not apply. AG ¶¶ 20(b) and 20(c) partially apply.

Applicant disputed a number of the debts. He claimed that he did not have knowledge of some of them. However, he provided no documentation supporting these disputes. AG 20(e) does not apply.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 served eleven years in the military. He deployed to Iraq and Qatar. He has been awarded two Army Achievement Medals and three Good Conduct Medals. Despite the presence of some mitigation, his financial problems remain a security concern. He failed to present proof of payments towards the delinquent debts or a realistic plan for resolving them. Overall, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.q:	Against Applicant

Decision

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge