



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



In the matter of:)	
)	
)	ISCR Case No. 11-03175
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: *Pro se*

January 11, 2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant acquired a significant delinquent debt because of his immaturity and financial irresponsibility. Notwithstanding, he recently made efforts to resolve his debt, established a level of financial responsibility, and demonstrated that his financial problems are being resolved. He now understands what is required of him to be eligible for a security clearance. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 24, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On July 27, 2011, DOHA issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).² Applicant answered the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me on October 13, 2011. DOHA issued a notice of hearing on October 25, 2011, convening a hearing on November 22, 2011. At the hearing, the Government offered exhibits (GE) 1 through 3. Applicant testified, and offered exhibit (AE) 1. I allowed Applicant the opportunity to supplement the record post-hearing, and he submitted AE 2. DOHA received the hearing transcript (Tr.) on November 30, 2011.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.c through 1.f. He denied the allegations in SOR ¶¶ 1.a, 1.b, and 1.g. His admissions are incorporated as findings of fact. After a thorough review of the evidence of record, and having considered his demeanor and testimony, I make the following additional findings of fact.

Applicant is a 29-year-old information technology (IT) help desk and systems integration specialist employed by a defense contractor. He graduated from high school in May 1999, and attended computer trade schools in 2002-2003 and 2009. Applicant never married, and he has no children.

Between August 2000 and April 2008, Applicant worked for several private companies, earning less than \$40,000 a year. From April 2008 until August 2010, he worked for a government contractor and occupied a public trust position. He was hired by his current employer in August 2010, and was subsequently granted an interim secret clearance. His clearance was withdrawn when he was issued the SOR. There is no evidence to show that Applicant has compromised or caused others to compromise classified information while he was assigned to a public trust position, or while he held an interim security clearance.

In his answers to the financial questions in his September 2010 SCA, Applicant disclosed that during the last seven years he had financial problems. Applicant's background investigation addressed his financial problems. The investigation revealed the seven debts alleged in the SOR, totaling approximately \$40,000.

Applicant readily accepted responsibility for his financial problems. He acknowledged that his financial problems were the result of spending beyond his financial means and his lack of financial responsibility. He explained that he moved from his parent's home after high school. Because of his immaturity, he acquired financial obligations (as alleged in the SOR), lived beyond his financial means, and later was unable to repay his creditors. At the time, he was earning less than \$40,000 a year.

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

In 2008, Applicant started to work with a government contractor earning approximately \$50,000 a year. He realized that to keep his job, and to qualify for access to classified information, he needed to establish financial responsibility. In 2008, Applicant sought the assistance of a debt consolidation company to help him resolve the delinquent debts alleged in the SOR. He claimed that he paid \$300 a month for approximately one year to the debt consolidation company. He expected the company to negotiate payment agreements with his creditors and to make payments on his behalf. Applicant claimed the debt consolidation company took his money and then went out of business without making any payments on his behalf.

After the debt consolidation company failed, Applicant contacted his creditors to negotiate and establish payment agreements. At his hearing, Applicant testified he had paid the debts alleged in SOR ¶¶ 1.a and 1.b. He was not able to find evidence of payment, but he made arrangements with the creditors to pay them around December 10, 2011. He presented documentary evidence showing that he paid both debts around December 2011, as promised. (AE 2)

Applicant also presented documentary evidence showing that in September 2010, he negotiated a payment plan with the creditor alleged in SOR ¶ 1.c. As of December 2011, he had paid \$1,400, in consecutive payments. In early 2011, Applicant negotiated a payment plan with the creditor alleged in SOR ¶ 1.d. He made several payments pursuant to his agreement; however, in November 2011, the creditor obtained a garnishment against Applicant. In December 2011, the debt was paid in full via the garnishment. (AE 2)

Concerning the debt alleged in SOR ¶ 1.e, Applicant explained that in October 2010, he attempted to settle the debt and establish a payment plan. The creditor demanded full payment and refused to establish a payment plan. Applicant intends to pay his other debts first and then pay this debt. Applicant also testified that he contacted the creditor of the debt alleged in SOR ¶ 1.f in 2010. Because the debt was charged off, the creditor refused to establish a payment plan. Applicant's documentary evidence shows that in May 2011, he settled and established a payment plan with the creditor of the debt alleged in SOR ¶ 1.g. He made three consecutive \$100 payments (September 2010 through November 2010), and paid the debt in November 2011. (AE 2)

Applicant made lifestyle changes to better manage his financial situation and pay his debts promptly. He is currently living with a relative and borrows his relative's car to lower his day-to-day living expenses. Since 2008, he has not acquired any new loans or financial obligations. He does not possess or use any credit cards. Except for his failed attempt to consolidate his debts in 2008, Applicant has not participated in financial counseling.

Applicant's monthly net pay is approximately \$3,000. His monthly expenses are approximately \$1,350. He intends to pay first the debt alleged SOR ¶ 1.c, and then he promised to address the two unresolved remaining debts SOR ¶¶ 1.e and 1.f. Applicant

expressed remorse for his negligence in handling his financial obligations. He believes he has matured and now understands his legal responsibilities. He also is aware of the security clearance consequences of his actions, and what is expected of him to be eligible for a security clearance.

Policies

The Secretary of Defense may 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. “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

Under Guideline F, the security concern is that 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. AG ¶ 18.

Because of his immaturity and spending beyond his financial means, Applicant acquired the seven delinquent debts alleged in the SOR, totaling approximately \$40,000. He was unable to pay the debts, and they were delinquent for several years. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

AG ¶ 20 provides four conditions that could mitigate the financial considerations security concerns:

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

Applicant's financial problems are ongoing as he has two unresolved debts. The number of debts, coupled with the years they have been delinquent, demonstrate his behavior was frequent. The evidence did not establish any circumstances beyond his control. Thus, financial considerations mitigating conditions AG ¶¶ 20(a) and (b) are not applicable.

Except for his failed attempt to consolidate his delinquent debts, Applicant presented no evidence of financial counseling. Notwithstanding, since 2008, Applicant has undertaken reasonable, measurable steps to resolve most of his delinquent financial obligations. As of his hearing date, he had resolved five of the seven alleged delinquent debts. He reduced his debt from approximately \$40,000 to \$14,000. Considering Applicant's recent progress resolving his delinquent debts, I find that there are clear indications that his financial problems are being resolved and are under control. Financial considerations mitigating conditions AG ¶¶ 20(c) and (d) apply. The two remaining mitigating conditions are not pertinent to the facts of this case.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments in the analysis of Guideline F. Applicant demonstrated immaturity, untrustworthiness, and lack of judgment when he acquired financial obligations beyond his financial means. He then failed to make any reasonable effort to pay those obligations for a number of years.

Notwithstanding, considering the record as a whole, I find that his actions since 2008 are sufficient to mitigate the financial considerations security concerns. He attempted to resolve his debts with the help of a debt consolidation company. When his attempt failed, he contacted his creditors and established payment plans with most of them. He has been consistently complying with his payment plans. He has established a track record of financial responsibility, and has demonstrated that his financial problems will be resolved in the foreseeable future, and that they are unlikely to recur.

Applicant has matured. He now has a stable position that provides him with a good income. He now has the financial means to resolve all of his delinquent obligations. He is remorseful about his past questionable behavior. Moreover, through his actions since 2008, he has demonstrated that he has learned his lesson. He now understands what is required of him to be eligible for a security clearance. He mitigated the security concerns raised under financial considerations.

Formal Findings

Formal findings for or against Applicant 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:

FOR APPLICANT

Subparagraphs 1.a – 1.g:

For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge