



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01729

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel

For Applicant: *Pro se*

06/07/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on September 9, 2014. On September 15, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.¹ The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

¹ Item 1.

Applicant responded to the SOR on October 9, 2015,² and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on January 7, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections to the proposed evidence, and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 15, 2016. He did not submit a response to the FORM or assert any objections to the Government's evidence. The case was assigned to me on May 3, 2016. The Government's exhibits included in the FORM (Items 1 to 8) are admitted into evidence.

Findings of Fact

The SOR alleges four delinquent debts, totaling approximately \$55,516. Applicant admitted one allegation, denied the remaining three,³ and provided short explanations and a District Court docket sheet with his Answer. The evidence submitted with the FORM substantiates the SOR allegations.

Applicant is 36 years old and employed by a defense contractor as a test technician since 2007. He previously held a security clearance while on active duty. He served honorably in the United States Navy from 1997 to 2001, and again from 2003 to 2007. He is a high school graduate and has been married since 2004. He has one child and two step-children.

The SOR alleges a delinquent mobile home loan, unpaid local taxes, and collection accounts for a wireless phone and insurance provider. Applicant reported in his SF 86 and Office of Personnel Management (OPM) interview, that he had a mobile home repossessed in 2013, and that he owed approximately \$53,000.⁴ Applicant stated that he wanted to move from the trailer park for safety reasons. He claims he attempted to short-sell the property, but was not supported by the lender. Eventually, the home was repossessed. Applicant claimed in his interview that he had no intention of satisfying his mobile home debt because the company repossessed the home.⁵ In response to SOR ¶ 1.a, Applicant provided a record of the disposition of a civil action showing a 2013 judgment issued against him for unpaid lot rent and costs for \$1,121.67. The Court also granted possession of the property (lot) to the plaintiff. There is no evidence in the record to show the disposition of Applicant's mobile home loan after the repossession. Applicant did not provide evidence to show the judgment has been satisfied.

² Item 1.

³ Item 3.

⁴ Items 3 and 4.

⁵ Item 4.

SOR ¶ 1.b, was resolved in September 2015 through payments to the tax authority under an installment plan.⁶ SOR ¶ 1.c, is a cellular telephone collection account that Applicant admitted but claimed was disputed.⁷ He did not provide evidence of a dispute or resolution of the debt. SOR ¶ 1.d, is a collection account for insurance coverage. Applicant denied the debt in his Answer, claiming it was paid in 2013, however he did not provide evidence of payment.

There is no evidence in the record that Applicant sought or received credit counseling or budgeting education. I was unable to evaluate his credibility and demeanor, or to inquire further into the status of the SOR debts since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.⁸ In *Department of Navy v. Egan*⁹, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁰

⁶ Items 7 and 8.

⁷ Item 2.

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

⁹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁰ *Egan*, 484 U.S. at 531.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹¹

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive and classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive or classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations 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.

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

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

¹¹ *Egan*, 484 U.S. at 531.

Applicant has unresolved delinquent debts resulting in a mobile home repossession and consumer debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:¹²

- (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 has been working full time with his current employer since 2007. It is not clear from the record what his financial status was leading to the accumulation of unpaid debts. He claimed a desire to leave the trailer park because of safety concerns, but did not show a resolution of his debt on the repossessed home. He provided satisfactory evidence of resolution of SOR ¶ 1.b, through payment of the tax debt. He has not provided sufficient evidence of satisfaction of the remaining debts. Although Applicant claimed SOR ¶ 1.c is disputed, he provided no evidence of the basis of the dispute or submission of that dispute to the creditor or credit bureaus. Additionally, Applicant claimed SOR ¶ 1.d is paid, but provided no evidence to support his contention. Finally, there is no evidence that Applicant has sought credit counseling or otherwise proved financial responsibility.

¹² AG ¶ 20.f is inapplicable.

There is insufficient evidence to determine that Applicant's financial obligations have been or will be resolved, except for his tax debt. His financial issues are recent and ongoing. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to resolve his debts. The totality of the unresolved delinquent debts leaves me with doubts about Applicant's overall financial condition and ability or willingness to face his financial responsibilities. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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).

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 all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated Applicant's Answer and my findings of fact and comments under Guideline F in this whole-person analysis.

Applicant voluntarily provided a record of a judgment against him for unpaid rent and costs resulting from his mobile home pad rental. However, he failed to provide evidence of payment of the judgment, which together with his unresolved SOR debts, contributes to his overall financial irresponsibility and is an unfavorable trait under the whole person concept.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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:	Against Applicant
Subparagraphs 1.a, 1.c, and 1.d:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Gregg A. Cervi
Administrative Judge