



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



In the matter of:)	
)	
)	ISCR Case No. 17-00283
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2019

Decision

Gregg A. Cervi, 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 June 9, 2015. On May 18, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a statement of reasons (SOR) alleging security concerns under Guideline F.¹ Applicant answered the SOR and requested a hearing.

The case was assigned to me on May 7, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 11, 2018, scheduling the hearing

¹ The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The Adjudicative Guidelines (AG) were revised effective June 8, 2017, and apply herein.

for July 10, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant and a witness testified, and Applicant Exhibits (AE) A through E were admitted without objection. The record was held open to July 27, 2018, for Applicant to submit additional documentation. He submitted AE F, consisting of an e-mail statement that was admitted without objection. DOHA received the hearing transcript (Tr.) on July 19, 2018.

Findings of Fact

Applicant is a 46-year-old warehouse material expeditor, employed by a defense contractor since 1998. He graduated from high school in 1991. He married in 1992 and divorced in 2008. He again married in 2014. He has two adult children and one adult stepson. He served on active duty in the U.S. Army from 1992 to 1997, and was honorably discharged. Applicant was previously granted a top secret security clearance with access to sensitive compartmented information in 2006, but it was revoked for financial concerns and denied by a DOHA Administrative Judge in 2013.

The SOR alleges Applicant is delinquent on nearly \$20,000 in debts, including unpaid Federal income taxes for tax year 2015, and child support obligations. The SOR also alleges that Applicant filed a Chapter 13 bankruptcy in September 2007 that was dismissed in November 2007, and that Applicant failed to file Federal and state tax returns when due for tax years 2009-2013. The SOR allegations are sufficiently supported by relevant evidence.

Applicant's financial problems began during his first marriage and 2008 divorce. Applicant and his spouse filed a Chapter 13 bankruptcy in 2007 to reorganize about \$30,000 in debts. (Tr. 31) The bankruptcy was dismissed because Applicant's debt to income ratio did not qualify for a Chapter 13 proceeding. (GE 3) He did not pursue a Chapter 7 discharge. By 2013, Applicant again had nearly \$30,000 in delinquent debts. (GE 10) He attributed these debts to medical expenses, his divorce in 2008, his former spouse's poor spending habits, and a decrease in work hours. After a 2013 DOHA hearing, Applicant was denied security eligibility based on his unmitigated delinquent debts.

Applicant failed to file his Federal and state income tax returns for tax years 2009 through 2013, when due. He later filed the delinquent returns, and owes the IRS approximately \$4,000 in unpaid taxes, penalties, and interest from the 2015 tax year. At his hearing in this case, Applicant admitted that his Federal and state income tax returns for 2016 and 2017 were also past due and unfiled. In his post-hearing submission, Applicant did not provide evidence that these returns have been filed. He attributed his failure to file tax returns on time to his inability to work with his former spouse regarding claiming the children as dependents, and their efforts to reconcile. He also admitted that he did not have sufficient money to pay taxes owed. He did not seek assistance from a tax preparer, and he has not arranged a payment plan with the IRS.

After their divorce, Applicant and his ex-spouse reconciled and lived together from late 2008 to 2011. They purchased a 2009 luxury vehicle together. His spouse kept the vehicle after they separated in 2011, and it was repossessed in 2012. Applicant is jointly responsible for the debt. He noted that he contacted a debt collection agency in 2012 or 2013, but was unable to renegotiate the debt which totals over \$8,000. (SOR ¶ 1.a) He claimed that subsequent contact with the agency showed they no longer held the debt. Applicant's 2017 credit report shows the debt became delinquent in 2011 and was charged off. No post-hearing documentation was provided to show the current status of the debt or Applicant's efforts to resolve it.

SOR ¶ 1.c is a \$6,816 timeshare property debt, placed in collection with an agency in about 2015. Applicant admitted the debt, and stated that he has been making automatic monthly payments from his bank account to resolve it. The debt no longer appears on his 2016 or 2017 credit reports.

Applicant is delinquent on a mortgage for rental property he owns. He stated that the property is occupied, but he has been unable to catch up on his mortgage payments that became delinquent in May 2017, when he used the funds to pay for maintenance of the property. The debt is reported on his 2017 credit report as a past-due Veterans Benefits Administration mortgage. (SOR ¶ 1.d) No post-hearing information was provided showing the current status of the mortgage or efforts to resolve the past-due debt.

Applicant became delinquent on child-support obligations because of a disagreement with his former spouse. (SOR ¶ 1.e) His pay was involuntarily garnished in 2016 or 2017, and released in July 2018 after the arrearage was paid. (AE F) This debt is resolved.

Applicant has not sought financial counseling nor does he have a budget. He noted that since his 2013 DOHA case, he controls his purchases and pays his debts. He has less than \$1,200 in savings. His current supervisor testified to Applicant's trustworthiness and work ethic. He noted that Applicant is a family man who would never put himself in a negative light in front of his children, and that his financial problems have not affected his work. Several other co-workers also attested to his trustworthiness, reliability, dedication, expertise and professionalism.

Law and 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 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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." 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 ¶ 1(d).

Analysis

Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's admissions and the documentary evidence in the record supporting the SOR allegations are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's tax delinquencies and other debts have been a long-standing, recurring problem. Although he has been working full-time with his current employer since 1998, he has not shown an ability to address delinquent debts, nor has he shown financial responsibility. Applicant's on-again off-again relationship with his former spouse does not excuse his failure to file income tax returns when due, and his failure to arrange payment of a 2015 past-due income-tax debt is inexcusable. The evidence shows that Applicant has not made diligent efforts to resolve his debts, and the only resolved matter, delinquent child support obligations, occurred through an involuntary garnishment order. Although he has now filed his 2009 through 2013 tax returns, he admitted that his 2016 and 2017 Federal and state returns were not filed when due, and he has not shown that they have been filed since his hearing. Additionally, he has not sought financial counseling or professional assistance with his debts and tax obligations.

Overall, I find that Applicant has continued his long-standing financial irresponsibility, and has not adequately addressed his delinquent debts. I find that his financial status is not under control and that similar problems are likely to recur. No mitigating conditions fully apply.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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(d).² Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

² (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 considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant's long history of financial irresponsibility despite a long-standing work history has not been mitigated. His military service and difficulties with personal relationships do not overcome his financial irresponsibility. Given his past efforts to keep and attain a security clearance, the Government's expectations for financial responsibility should have been clear. Whether Applicant's actions with regard to his finances amount to simple inattention or negligence, he has clearly not heeded that knowledge.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

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.b, 1.c, and 1.e:	For Applicant
Subparagraphs 1.a; 1.d, 1.f – 1.h:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge