



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



In the matter of: )  
)  
) ISCR Case No. 17-03081  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Bill Ekiss, Esq.

04/08/2019

---

**Decision**

---

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on May 5, 2015. On September 21, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered the SOR on December 28, 2017, and requested a decision on the record without a hearing.

On February 12, 2018, a complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant. He received the FORM on April 12, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant was given an extension, and responded to the FORM on June 15, 2018 with a letter (Response) and seven Applicant Exhibits (AE 1-7). The case was assigned to me on September 14, 2018.

I sent emails to Applicant and Department Counsel on December 3, 2018 and asked for clarification regarding the status of the alleged debts, because the most recent credit bureau reports (CBR) did not support the conclusion that the alleged debts had been resolved. I held the record open until December 11, 2018 for either party to submit updated documentation.

On December 11, 2018, Applicant's counsel sent me an email regarding Applicant's student loans' status, but did not provide supporting documentation. On December 12, 2018, I emailed both parties and asked if Applicant's counsel wished to submit supporting documentation regarding the student loans' status, because it was not clear from Applicant's Exhibits if the student loans were deferred or outstanding. Additionally, I noted that the submitted documents did not provide proof of resolution for the debts that no longer appeared in the CBRs. I set a new suspense date of December 18, 2018 for submission of documentation.

On December 18, 2018, Applicant's counsel sent an email and requested additional time to submit documentation regarding Applicant's student loan status. He also stated, "As you and I both know, absent the payment of an account it will not be removed by the credit bureau." On January 2, 2019, Applicant submitted a letter dated, December 31, 2018 from one of the companies servicing Applicant's student loans. This letter has been marked as AE 8. The email correspondence has been marked as FORM Exhibit (FE) I. Items 1 through 6 and AE 1 through 8 are admitted into evidence without objection.

### **Findings of Fact**

Applicant is 43 years old and has worked as an assembly-line mechanic for a defense contractor since February 2015. He was married from 2000 until he divorced in 2002, and he has two adult sons from that relationship. Applicant also has full custody of his minor daughter from another relationship. Applicant has attended some college. (Item 3; Item 6; Response)

Applicant experienced problems related to custody issues. Until approximately 2003 or 2004, Applicant and his ex-wife shared joint custody of their two sons, and he paid her \$640 a month in child support. At that time, she abandoned their children with Applicant. As a result of the ensuing custody battle, Applicant received full custody of their children, and his ex-wife was ordered to pay \$264 in monthly support. Applicant's arrears were forgiven, because his ex-wife did not make her child-support payments. (Item 6 at 6-8; AE 1; AE 3)

Applicant's daughter was born in 2004. He was unaware that he had a daughter until 2006 when his daughter's mother notified him. At that time, he was approximately \$6,000 in arrears for child support, and he was required to pay \$406 a month, plus \$204 for arrears. In 2008, he obtained full custody of his daughter, and the court held that any arrears that existed at that time were waived. (Item 6 at 8-9; AE 2)

Applicant also experienced medical issues that negatively affected his finances. In 2007, Applicant was in an automobile accident and broke both of his legs. He was unemployed from January 2010 to February 2015. During this period, he took classes and cared for ill family members and his children. He was supported by his parents and state aid. In June 2016, Applicant started to experience seizures and took a 22-month medical leave of absence from his employer. He was paid approximately 50% of his salary for six months and was unpaid for the next sixteen months. He returned to work in April 2018. (Item 3 at 11; Item 6 at 2, 3, 12-14; Response; AE 6; AE 7)

The SOR alleged that Applicant has twenty delinquent debts, totaling almost \$25,000. The debts became delinquent between approximately 2010 and 2016 when he was unemployed. (Item 4; Item 5; Item 6) Applicant admitted to all of the alleged debts in his Answer, with no explanation. In his Response, he claimed most of the debts were resolved. To support his claim that many of the non-student loan debts were resolved, he provided three credit bureau reports (CBR). Many of the older debts no longer appear in the 2018 CBRs. (AE 4)

SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.h are five government student loan accounts totaling \$13,158. They were opened between 2010 and 2012, and they were assigned for government collection in 2016. In his May 2015 SCA, Applicant indicated that he was working to resolve his student loans, and they were all deferred until June 2017. During his October 2016 personal subject interview (PSI), Applicant told the investigator that his loans were still deferred and might be forgiven. (Item 4 at 1-2; Item 6 at 14-16)

The alleged delinquent student loan debts appear in a CBR dated August 30, 2017. (Item 4) Applicant submitted credit bureau reports (CBR) from each of the credit bureaus, all of which were dated June 12, 2018. (AE 4) In these CBRs, Applicant appears to have more than five student loans, and the student loans alleged in the SOR remain delinquent. There are several additional student loans that appear as deferred by two companies that service both private and federal student loans. Applicant submitted a letter dated December 2018, from one of these companies. The letter indicated that all of Applicant's loans in "Group G" are in forbearance status until March 2019. It is unclear from the letter which of his alleged student loans are included in the forbearance program. The letter does not list the loans or the amounts placed in forbearance.<sup>1</sup> Additionally, the account numbers and balances listed in Item 4 are inconsistent with the account numbers and balances listed in AE 4. It is unclear from the record evidence how many student loans Applicant has and which are deferred or are in forbearance. (Item 4; AE 4; AE 8)

SOR ¶¶ 1.e, 1.f, 1.g, 1.i, 1.j, 1.k, 1.m, 1.n, 1.o, 1.p, 1.q, 1.r, 1.s, and 1.t are all delinquent medical debts totaling \$11,175. They became delinquent between 2011 and 2014. SOR ¶ 1.l is a \$117 delinquent phone account. (Item 4; Item 5)

---

<sup>1</sup> The December 2018 letter submitted by Applicant lists only one account. His counsel submitted an email claiming all of the delinquent student loans are included in forbearance, but did not provide detailed documentation to support his assertions. (AE 8; HE I)

In Applicant's Response, he claimed that only three of the alleged non-student loan debts remain unpaid (SOR ¶¶ 1.e, 1.f, and 1.i). The three debts appear as delinquent in AE 4, and their combined current outstanding balance is \$1,252. (Item 4; Item 5; Equifax at 32-33; Transunion at 13; Experian at 2) Applicant did not provide proof of payment or resolution of the other alleged non-student loan debts. His counsel stated that debts are removed by credit agencies when they are paid. However, debts may no longer appear on credit reports for a variety of reasons: the debt may be beyond the seven-year reporting period; the creditor has taken a loss on the debt; a new creditor may have purchased the debt; or the debt was paid.

Applicant submitted a pay stub and a budget worksheet. According to the documentation, his income exceeds his monthly expenses. (AE 5) He also submitted 11 letters of recommendation from family members and others who have worked with him and known him for many years. Several of these individuals hold or have held DOD security clearances. They describe Applicant as trustworthy, reliable, honest, responsible, dependable, and ambitious. (AE 7)

### **Policies**

"[N]o one has a 'right' to a security clearance."<sup>2</sup> 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."<sup>3</sup> 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."<sup>4</sup>

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (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 and 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

---

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>3</sup> *Egan* at 527.

<sup>4</sup> EO 10865 § 2.

extrapolation about potential, rather than actual, risk of compromise of classified information.

Adverse 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.”<sup>5</sup> Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing national security eligibility.

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.<sup>6</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>7</sup> The guidelines presume a nexus, or rational connection, between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>8</sup> Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>9</sup> An applicant has the burden of proving a potential mitigating condition, and the burden of disproving it never shifts to the Government.<sup>10</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>11</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>12</sup>

## Analysis

### Guideline F: Financial Considerations

The security concern under Guideline F 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

---

<sup>5</sup> EO 10865 § 7.

<sup>6</sup> Directive ¶ E3.1.14.

<sup>7</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>8</sup> ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

<sup>9</sup> Directive ¶ E3.1.15.

<sup>10</sup> ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>11</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.

<sup>12</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

Applicant's admissions and his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

AG ¶ 20 describes conditions that could mitigate those security concerns. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

Over the years, Applicant has experienced several personal and professional setbacks that were beyond his control. His medical debt and student loans are not examples of reckless or irresponsible spending, or poor financial habits. However, he still has a responsibility to pay debts that he incurred, and he failed to meet his burden of production and persuasion to show he paid the debts as he claimed. There is no record evidence that he has made payments toward the alleged debts. Applicant argued that the information in the CBRs should be interpreted in a manner most favorable to him. However, it is unclear if the student loans alleged in the SOR are currently deferred or if they are in default.

Applicant was given ample time and opportunities to provide documentation to support his claims that he has paid many of the alleged non-student loan debts, but the only documentation he provided was in the form of CBRs. Many of his debts no longer appear in the most recent CBRs. However, the absence of a debt from a CBR does not prove that the debt has been paid or resolved. As discussed above, debts are removed from CBRs for a variety of reasons. Because the record lacks of evidence to support

Applicant's claims, he has not demonstrated that he has made a good-faith effort to repay his overdue creditors or resolve his debts.<sup>13</sup>

There is insufficient evidence to show that his finances are in good standing and he acted responsibly to address numerous delinquent debts. Applicant provided no evidence of credit counseling. Mitigation under AG ¶¶ 20(a), 20(b), and 20(d) was not established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person.

An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, including his many glowing letters of recommendation, I conclude that Applicant has not mitigated the security concerns at issue. The record lacks sufficient evidence to demonstrate that he has resolved the alleged delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

---

<sup>13</sup> The absence of documentation to corroborate claims of satisfying debts is relevant in deciding whether such claims should be accepted. ISCR Case No. 98-0419 at 4 (April 30, 1999) In concluding Administrative Judge failed to take into account an applicant's failure to provide documentation to support his general statements about his financial interests, the Board noted an applicant reasonably can be expected to have or be able to get documentation concerning his financial interests such as income, checking and savings accounts, business assets, and accrued retirement funds. ISCR Case No. 00-0104 (App. Bd., March 21, 2001.)

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                   AGAINST APPLICANT

Subparagraphs 1.a – 1.t:               Against Applicant

### **Conclusion**

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

---

CAROLINE E. HEINTZELMAN  
Administrative Judge