



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



In the matter of:)	
)	
)	ISCR Case No. 17-03642
)	
Applicant for Security Clearance)	

Appearances

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

01/10/2019

Decision

Gregg A. Cervi, Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 29, 2016. On January 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a statement of reasons (SOR) alleging security concerns under Guideline F.¹

The case was assigned to me on April 25, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 12, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The Adjudicative Guidelines were (AG) were revised effective on June 8, 2017, and apply herein.

for July 11, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and Applicant's Exhibits (AE) A and B were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE C, consisting of a statement, state tax returns, and budget documentation, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 24, 2018.

Findings of Fact

Applicant is a 58-year-old munitions inspector and logistics technician, employed by a defense contractor since 2016. He was unemployed from 2006 to 2007, and from January 2010 to January 2011. He graduated from high school in 1979 and attended some college. He married in 2011 and separated in 2012. He has three adult children. He served on active duty in the U.S. Army from 1979 to 1999, and retired. He has not held a security clearance since retiring from the Army.

The SOR alleges 17 allegations under Guideline F, including failure to file Federal tax returns from 2012 to 2015; Federal tax debts for tax years 2012, 2015, and 2016; and other delinquent debts totaling approximately \$21,000. Applicant admitted all of the allegations, except he denied two medical debts and a telephone collection account. During the hearing, Applicant also admitted to failing to file state tax returns from 2012 to 2015 that were not alleged in the SOR. Applicant's credit reports show the SOR debts were incurred between 2012 and 2016.

Applicant explained that he did not file tax returns as required, because he believed he did not earn enough to require him to file and did not believe he owed any taxes. In response to Government inquiries, he filed all Federal tax returns by July 2017. After receiving refunds for some years, he owed about \$3,500. In October 2017, he arranged an IRS payment schedule beginning February 2018. He pays \$98 per month that is automatically deducted from his bank account, and will continue for 35 months. He has made consistent payments as required, and his balance as of July 2018 was \$1,842. He also filed all delinquent state tax returns, and received a net refund.

SOR ¶ 1.e is a \$7,595 debt for a loan on a vehicle transferred to another person who did not make payments as required. Applicant contacted the lender and negotiated a settlement that was paid in full in February 2017. This debt is resolved and does not appear on his most recent credit report.

SOR ¶ 1.f is a charged-off credit-card debt in the amount of \$2,818. Applicant contacted the creditor in October 2017 and was offered a lump-sum settlement, however he was unable to pay the full amount. He intends to make monthly payments to resolve the debt once his other debts have been resolved and he has the available funds. As of now, this debt remains unresolved and is the only debt remaining on his most recent credit report.

SOR ¶ 1.g is a collection agency account for a phone carrier that Applicant disputed. He contacted the agency in November 2017 and was told that no account existed. This allegation is resolved and it does not appear on his most recent credit report.

SOR ¶¶ 1.h and 1.i are collection accounts from cable television providers. Applicant spoke with one agency in March 2018 and agreed to make a payment on July 15, 2018, however he disputed the debt. When he called again to make the payment, he was told there was no record of the account. (SOR ¶ 1.h) Applicant attempted to contact the collection agency holding the other debt, but received no answer on the phone after repeated attempts in November 2017, and in January and February 2018. He believes the company is now out of business. (SOR ¶ 1.i) These debts are disputed and resolved.

SOR ¶ 1.j and 1.m are medical debts that Applicant denied and disputed with the credit reporting agencies. He only uses military treatment facilities and veterans hospitals for medical care and did not incur any additional charges. There is insufficient evidence showing the origin of these debts, and one is disputed on Applicant's most recent credit report, while the other has been removed.

SOR ¶ 1.k is a \$290 debt related to a defective apartment cooling unit that was alleged in a lawsuit. The debt was paid and the complaint was dismissed in 2017. The debt is resolved and does not appear on his most current credit reports.

SOR ¶ 1.l is a small collection account for a utility provider. Applicant paid the debt in full in January 2018. It is resolved and does not appear on his most current credit reports.

SOR ¶ 1.n is a collection account for a utility provider. Applicant contacted the agency and was told there is no record of the account. He was advised to contact the credit bureaus to have the account removed. This debt is resolved and does not appear on his most recent credit reports.

SOR ¶ 1.o is an older collection account that is no longer active. Applicant also contacted the original creditor, a phone service provider, but they have no record of the account, and it does not appear on his most current credit reports.

SOR ¶¶ 1.p and 1.q are merged accounts with one collection agency. The collection agency did not accept payment over the phone, so Applicant drove to another city to pay the debts in person. They were paid in full in February 2018 and are resolved and do not appear on his most current credit reports.

Applicant has spent the past three years resolving his delinquent debts, and pays all new obligations when due. He earns about \$39,000 per year, and has a military retirement and VA disability income of about \$20,000 per year. He attended financial counseling classes and submitted a comprehensive budget as a result. All tax returns have been filed and he is current on his tax payment plan. At the hearing, Applicant was credible and contrite, and he showed a renewed understanding of his financial obligations

and understands the importance of paying debts when due, and filing tax returns when required. As a result of his financial counseling, he now ensures he lives within his means and controls his spending.

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;
- (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 recurring problem that began to be addressed in 2016 when Applicant started his current employment. Through periods of unemployment and separation from his spouse, he fell behind on debts. He also failed to file tax returns when due, under the mistaken belief that he did not earn enough money to require filing tax returns or that he did not owe any taxes. He was wrong. Upon notice of the incomplete filings, he filed all returns and made arrangements to repay any taxes owed. He received a net refund for state taxes. Applicant diligently contacted creditors and collection agencies to resolve his delinquent debts, and made substantial efforts toward their resolution. He has since attended financial counseling and has a comprehensive budget. He showed a renewed understanding of his financial obligations, including tax-filing requirements.

Overall, I find that Applicant has substantially addressed his financial and tax obligations, and has shown several years of financial responsibility. He has adequately addressed the SOR allegations and resolved most of the accounts. I find that his financial status is under control based on his diligence in addressing his debts, recent financial education, and his testimony at the hearing. I do not believe that similar problems are likely to recur. Mitigating conditions AG ¶ 20 (a) – (e), and (g) 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).

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 Federal and state tax delinquencies no longer remain a concern. His other debts have been substantially resolved through diligent efforts within his means. He has a renewed understanding of how to plan for financial responsibilities and has shown that he pays his current financial obligations when due.

Accordingly, I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a – 1.q:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Gregg A. Cervi
Administrative Judge

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.