



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



In the matter of:)	
)	
)	ISCR Case No. 18-00593
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2019

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 22, 2016. On March 14, 2018, 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 June 18, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 1, 2018, scheduling the

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.

hearing for August 30, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, and Applicant Exhibit (AE) A was admitted without objection. DOHA received the hearing transcript (Tr.) on September 10, 2018.

Findings of Fact

Applicant is a 41-year-old technician, employed full time by a defense contractor since September 2016, and part time as a student intern from August 2015 to September 2016. He was unemployed from 2008 to 2015. He received a bachelor's degree in 2016. He married in 1998 and divorced in 2000; again in 2004 and divorced in 2012; and finally remarried in 2017. He has four children and two stepchildren. He served on active duty in the U.S. Air Force from 1995 to 1999 and from 2000 to 2005. He was honorably discharged both times. Applicant held a security clearance while in the military.

The SOR alleges Applicant is delinquent on child support, education loans, and a medical account totaling approximately \$64,000. The SOR allegations are supported by substantial evidence. Applicant admitted the SOR allegations.

Applicant's financial problems began when his second spouse divorced him. He was a full-time student and was not working. From 2012 to 2016, Applicant made no payments for child support. He restarted payments in 2017 via a garnishment from his paycheck. He believes he still owes about \$39,000. (SOR ¶¶ 1.a and 1.b)

Applicant owes about \$17,000 plus interest in unpaid student loans. He believes they are now in default. Applicant has insufficient income to pay his student loans. He has not contacted the government creditor to arrange a repayment plan. (SOR ¶¶ 1.c to 1.e.)

Applicant owes approximately \$782 on a medical bill incurred while he was a student. He paid about half of the debt before stopping payments in 2014 because of insufficient income. (SOR ¶ 1.e)

Applicant admitted that he lives paycheck to paycheck, and has no net remainder after paying monthly expenses. He and his spouse owe on credit cards, rental agreements, and vehicle loans, one of which is a title loan. He describes himself as incredibly lazy when it comes to financial matters and paying bills. He has not sought financial counseling.

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; and
- (c) a history of not meeting financial obligations.

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; 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 a history of inability to pay debts owed. Although he has been working full-time with his current employer since 2016, he has not shown a willingness or financial ability to address delinquent debts, except for involuntary garnishment payments for his child support arrearage. He allowed his child support obligations to default over a number of years, and has only begun to address them through a garnishment. Although it is being resolved now, Applicant's lack of financial responsibility with regard to this debt in particular, is concerning. He showed an inability or unwillingness to engage his student loan and medical debt creditors, and described himself as incredibly lazy with financial matters. He has not sought financial counseling, and has not disputed his debts or the amounts owed.

Overall, I find that Applicant has continued his long-standing financial irresponsibility, and has not adequately addressed his delinquent debts and showed financial responsibility expected of security clearance applicants. 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).

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 military service and difficulties with personal relationships do not overcome his history of financial irresponsibility.

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.

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.

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 to 1.e:	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