



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



In the matter of:)	
)	
)	ISCR Case No. 18-01441
)	
Applicant for Security Clearance)	

Appearances

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

05/31/2019

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 September 13, 2016. On June 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 on September 25, 2018, and requested a 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.

The case was assigned to me on November 14, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 12, 2018, scheduling the hearing for January 23, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified. The record was held open to permit Applicant to submit documentary evidence in mitigation, but no evidence was submitted. DOHA received the hearing transcript (Tr.) on January 31, 2019.

Findings of Fact

Applicant is a 53-year-old information technology support technician, employed by a defense contractor since 2009. He graduated from high school in 1984. He married in 2002 and has seven children, three of whom live with him. Applicant has never held a security clearance.

The SOR alleges Applicant is delinquent on 17 debts totaling over \$65,000; failed to pay Federal income taxes for tax years 1995-1997, 1999, and 2000-2012; owes the IRS for a tax lien totaling \$13,930; and filed Chapter 13 bankruptcies in 1992, 2008, 2010, 2011, and twice in 2012. All of the bankruptcy filings were dismissed except for 1992 that was discharged in 1995, and 2012 that was discharged in 2017. The SOR allegations are supported by substantial evidence. Applicant admitted the SOR allegations with explanations except he denied a debt in SOR ¶ 1.m that he did not recognize. For some debts he claimed to have included them in a credit repair agreement, and for others, he claimed to have a payment plan. No documentary evidence of payment plans or credit repair efforts was submitted.

Applicant attributes his poor financial status largely to caring for his parents in their latter years and helping with their financial needs. His father passed away in 2005 and his mother passed away in 2012. Both suffered from illnesses and did not have the financial means to fully support themselves. Applicant's spouse has had an erratic employment history due to medical conditions. Applicant also had a significant child-support obligation to satisfy. He used the Chapter 13 bankruptcy system to attempt to gain control of his finances, however three of the bankruptcies were dismissed due to Applicant's failure to make plan payments, or in one instance, failure to file required documentation. In his final bankruptcy discharged in 2017, he claimed \$81,106 in unsecured debts, and paid \$31,281 in disbursements to creditors.

Applicant testified that he could not pay his taxes when due, but he started a repayment plan with the IRS in November 2018. At the time of the hearing, he testified that he made two monthly payments toward the plan, and that \$418 per month will be automatically deducted from his checking account. He noted that he owes the IRS about \$28,000. Applicant stated he has made three monthly installments toward a utility company debt (SOR ¶ 1.j), and owes about \$500. No documentary evidence has been offered to show that SOR debts have been addressed.

Applicant spoke to a credit repair agency in 2018 and paid the initial fees, however he has not shown that the company has made any progress with his debts. He admitted during testimony that he is delinquent on payments on a credit card debt that he obtained to rebuild his credit because other financial needs arose. He also testified that he is behind on student loan payments. These debts are not reflected on the SOR. He also admitted that he has been irresponsible with debts and financially overextended over the years, and currently lives paycheck-to-paycheck. His spouse is not working and his children help pay utility bills because they do not want to see him in a poor financial situation.

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;
- (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 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 financial status was likely negatively impacted by his spouse's erratic employment and health issues, his significant child support obligations, and his support for his parents during their lives. However, he admitted to irresponsible financial practices and being financially overextended. Applicant has often availed himself of the bankruptcy court, and sought to discharge debts through the Chapter 13 process. Bankruptcy is a recognized method of addressing debts and he successfully completed two bankruptcies, however he continued to incur debts and has long-standing unpaid obligations to the IRS for delinquent taxes. Although he testified that his tax debts are being repaid in a payment plan, he has not shown documentary evidence of a plan or a reliable history of payments under such a plan to determine that he is responsibly repaying the debt. Although his bankruptcies are largely mitigated, he has not shown that his other SOR debts have been adequately addressed.

The Appeal Board has long held:

Security requirements include consideration of a person's judgment, reliability, and a sense of his or her legal obligations. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Failure to comply with Federal tax laws suggests

that an applicant has a problem with abiding by well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

Applicant's lack of financial responsibility with regard to tax obligations and other debts, as well as a series of bankruptcy filings, show a history of financial difficulties that have not been overcome to date. He has incurred additional debt despite his 2017 Chapter 13 discharge, and has only begun to make payments on his substantial tax obligations. Applicant has retained a credit repair agency and presumably completed court-ordered financial counseling, but he has not shown an improved financial status. Overall, based on the record presented, I am unable to conclude that Applicant's financial problems are under control or are unlikely to recur. No conditions fully apply to mitigate his delinquent tax obligations and other debts.

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 personal difficulties 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 - 1.f:	For Applicant
Subparagraphs 1.g – 1.p:	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