



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00377  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Price, Esq., Department Counsel  
For Applicant: *Pro se*

12/17/2019

**Decision**

CERVI, Gregg A., 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 February 20, 2018. On March 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on April 19, 2019, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on August 19, 2019, and the hearing was convened on September 10, 2019. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection.

The Department Counsel discovery letter, marked as HE 1, and exhibit list, marked as HE 2, were appended to the record. Applicant testified at the hearing and submitted Applicant Exhibits (AE) A through C, which were admitted into evidence. The record was held open for Applicant to submit any documentary evidence in mitigation by September 20, 2019. He submitted several financial documents marked as AE D that were admitted into evidence without objection. DOHA received the hearing transcript on September 19, 2019.

### **Findings of Fact**

Applicant is a 38-year-old aircraft electronics technician for a defense contractor, employed since January 2018. Applicant graduated from high school in 1998 and completed some college credits. He was previously married in February 2001 and divorced in May 2014. He has two children from that marriage. He remarried in October 2014, and his spouse has eight children from her previous marriage. One of his children lives with him, and one child lives with his former spouse to which he pays child support. He served on active duty in the United States Marine Corps from 2001 until 2014. He was discharged in April 2016 with a general discharge under honorable conditions. He remained unemployed from April to August 2016 after being discharged from active duty.

The SOR alleges Applicant has over \$35,000 in delinquent debts, and that he failed to file his 2016 federal income tax return when due. Applicant admitted the allegations with the exception of a small medical debt (SOR ¶ 1.f). He provided explanations in his Answer to the SOR.

Applicant failed to file his 2016 federal income tax return because he claimed that he was unable to access his W-2 form from his military employer. (SOR ¶ 1.m) He claimed he could not access his online pay account after he was discharged from the Marine Corps in 2016, and so was unable to file his tax return. Applicant submitted into evidence, an unsigned 2016 Form 1040A federal income tax return after obtaining his W-2 from the Defense Finance and Accounting Service (DFAS) in 2019, and he claimed that he submitted the return two weeks before his hearing in this case. Department Counsel objected to admission of the tax return because it was undated and unsigned, and there was no documentary evidence showing that it was filed with the IRS. At the hearing, I discussed with Applicant the importance of providing documentary evidence that the tax return was actually filed, however no such evidence was submitted in his post-hearing submission.

Three of the largest SOR debts are collection or charged-off accounts owed on various credit cards and a car loan, totaling over \$33,000. (SOR ¶¶ 1.a, b, c, and g) Applicant testified that he stopped payments on a car loan identified in SOR ¶ 1.a, in June 2016, although his credit report shows it was June 2017. The account was charged off in January 2018 for \$18,147. The car was not repossessed, and Applicant still has the vehicle. He stated that he tried to make payment arrangements in 2018, and paid \$3,269 as the first of four installments toward the debt, but he did not have the money to continue payments under the plan. In a post-hearing submission, Applicant stated that he

contacted the creditor but he could not settle the account but he could continue to make payments. No evidence of a payment plan or continued payments under the old plan was submitted. This debt remains unresolved.

SOR ¶ 1.b is a delinquent military retail store credit card account totaling \$10,089. The account became delinquent in March 2016, and transferred to collections. The creditor garnished Applicant's wages and intercepted his 2018 tax refund. Applicant's September 2019 credit report shows the account remains past-due for \$8,813. In his post-hearing submission, Applicant stated that he agreed to make additional \$250 monthly payments and provided a preauthorized schedule for \$250 monthly payments beginning in October 2019 and ending in July 2022. Of note, the account numbers on the payment plan do not correspond to the delinquent account reported on his credit report. This debt remains unresolved.

SOR ¶ 1.c is a credit card account for \$4,307 that became delinquent in October 2013, transferred to collections, and charged off. He testified that he made no further payments since then, and has had no further contact with the creditor. In his post-hearing submission, Applicant stated that he contacted the creditor and intends to make monthly payments of \$216 going forward. He provided a debit receipt showing a \$216 payment to the creditor on September 17, 2019. No repayment agreement or plan with the creditor was submitted. This debt remains unresolved.

SOR ¶ 1.d is a military base housing account that became delinquent for \$1,286 in April 2016. The account remained unresolved until Applicant contacted the creditor after the hearing. In his post-hearing submission, Applicant stated that he contacted the creditor and agreed to pay \$150 per month. He provided a debit receipt showing a payment for \$150 on September 17, 2019. No repayment agreement or plan with the creditor was submitted. This debt remains unresolved.

SOR ¶ 1.e is a delinquent cable service provider account from 2016, referred to collection in 2018, for \$197. Applicant testified that he paid the debt, and provided a document showing a payment of \$99 in August 2018. The account no longer appears on his credit report. This debt is resolved.

Four small medical debts were alleged in the SOR, totaling \$390. SOR ¶ 1.f is an account with an unknown medical creditor. Applicant denied knowledge of the account, and there is insufficient evidence in the record to confirm the debt. SOR ¶ 1.j is a \$134 medical collection by a known collection agent. Applicant is unaware of the account, but has not contacted the creditor or attempted to resolve it. SOR ¶¶ 1.k and 1.l are medical collection accounts that Applicant paid in July 2018, and are resolved.

SOR ¶ 1.g is a bank credit card account that became delinquent in 2013, for \$3,746. Applicant has not made a payment since 2013 on the account, and it remains unresolved. SOR ¶ 1.h is a delinquent cable service provider account for \$857. Applicant made a \$263 payment toward this debt in April 2019, but continues to owe about \$602. He has not provided a plan to resolve this debt. SOR ¶ 1.i is an insurance company debt

for \$140 that was referred to collections. Applicant paid \$145 to resolve this debt in April 2019.

Applicant's supervisor and coworker attested to his good work performance and reliability. They believe he is an honest and respectful leader in the workplace. Applicant acknowledges the mistakes he has made in the past, and noted his efforts to resolve his debts. He attributes his financial difficulties to his 2014 divorce and his 2016 unemployment, and extra costs he incurs when his child or stepchildren visit. He also testified that he falls behind on paying expenses in the summer because of high utility costs. He did not provide evidence of financial counseling or professional assistance with his finances.

### **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**

### **Guideline F: 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, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19 (a), (c), and (f).

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 has a history of financial delinquencies, partially due to his 2014 divorce and a relatively short period of unemployment in 2016, however, he has not shown that he was dedicated to good-faith efforts to resolve most of the delinquent debts until after his SOR was issued, and after his security clearance hearing. Applicant failed to file his 2016 federal income tax return when due, and finally prepared it within weeks of his hearing. His reasons for not filing are unconvincing and display a lack of effort and attention. He has not shown sufficient evidence that his 2016 federal income tax return was filed with the IRS. Applicant has not submitted sufficient evidence to mitigate SOR ¶¶ 1.a, b, c, d, g, h, j, and m. Of note, the largest debts remain unresolved. He has not completed financial counseling, has not shown evidence of financial stability, and he has not shown that his financial problems are under control and will not recur.

Applicant admitted his own lack of financial responsibility. His income appears to be insufficient to meet his financial obligations, and he does not have a reasonable plan to pay delinquent debts or to prevent further indebtedness. Overall, Applicant's financial status raises significant doubts about his financial management decisions and personal financial responsibility. I am not convinced Applicant makes good financial decisions, and

his financial status continues to cast doubt on his current reliability, trustworthiness, and good judgment. No mitigation conditions fully apply with the exception of resolved debts in SOR ¶¶ 1.e, f, i, k, and l.

### **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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I also considered Applicant's military service, efforts to resolve debts, work performance, and character letters. However, due to Applicant's history of failing to address longstanding debts and failure to file his federal income tax return when due, I remain unconvinced of his trustworthiness, financial responsibility, and ability and willingness to meet his financial obligations.

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.a, b, c, d, g, h, j, and m:	Against Applicant
Subparagraphs 1. e, f, i, k, and l:	For Applicant

### **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge