



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



In the matter of:)	
)	
)	ISCR Case No. 19-01322
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2020

Decision

CERVI, Gregg A., 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 November 30, 2017. On May 21, 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Applicant responded to the SOR on July 11, 2019, with the assistance of an attorney. He requested a hearing before an administrative judge. The Defense Office of

Hearings and Appeals (DOHA) issued a notice of hearing on December 9, 2019, and the hearing was convened on January 14, 2020. Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. Applicant objected to GE 5, a summary of his personal subject interview. The objection was sustained, and the document was not admitted. Applicant testified and submitted Applicant Exhibits (AE) A through C, which were admitted without objection. Applicant's brother testified on his behalf. DOHA received the hearing transcript on January 24, 2020.

Findings of Fact

Applicant is a 62-year-old heavy equipment operator for a defense contractor, employed since December 2017. Applicant previously worked as a teacher and coach for 17 years, and a school principal for two years before retiring from education in 1999. He then started a business in farm and home construction. He received a bachelor's degree in 1981 and a master's degree in 1987. He married in 1976, but his spouse died in 2003. He remarried in 2005 and divorced in 2008. He again married in 2016. He has three adult children, none of whom live with him. He has never held a final security clearance.

The SOR alleges Applicant has a \$10,901 judgment, with a balance owed of \$21,058 including post-judgment penalties, fees, and interest. The Government's exhibits and Applicant's Answer and testimony support the SOR allegation.

Applicant purchased a truck in 2001, and financed it through an auto company creditor. Following the purchase, he began to have significant problems with the truck, including blown spark plugs, three brake replacements within 30,000 miles, and fuel system problems. He was unsuccessful in having the vehicle declared a lemon, and was unable to get support from the dealer. In 2003, he gave up the truck in a voluntarily repossession with 45,000 miles on it, and it was sold at auction. That was the same year his spouse passed away.

In 2005, the lender sent Applicant an invoice for about \$10,000. He contacted the lender in 2006, and offered to settle. The lender told Applicant that the loan had been forgiven, but offered new financing to purchase another vehicle. He accepted the new loan for \$28,000, and purchased another truck. Applicant believed the debt was resolved at that time. He paid off his second and a third loan, and did not hear from the lender again.

In 2017, Applicant was served with a writ of garnishment issued against him for \$19,802 that resulted from a 2011 judgment to collect \$11,040 from his original truck loan. The garnishment order included penalties, fees, and interest on the original judgment amount. He was never notified of the judgment proceedings, did not participate in a judicial proceeding, and was unaware of the garnishment proceeding until he was served with the writ of garnishment. By November 2018, the balance due became \$21,058 with interest accruing at 8.75% per year.

Applicant believes the account to be a resurrected “ghost” account, obtained by a collection agent and enforced by obtaining a judgment. In 2017, Applicant’s employer garnished his wages, and paid \$7,000 over five months. Applicant attempted to contact the collection agent, but was unable to talk to a person. He again tried in 2018, but a recording directs inquiries to an online site. An attorney for the collection agent contacted Applicant in November 2018, and offered to discuss a payment plan. Applicant spoke to an attorney in 2019, who suggested he obtain the district court documents. He obtained the documents and is awaiting the attorney’s review.

Applicant provided an article from a free online credit repair advice site that described the collection agent as a “junk buyer that buys up old debt from the banks, . . . for pennies on the dollar. They have a history of unscrupulous debt collection practices.” Another article noted that the collection agent was sued in a class action suit in 2014 claiming the agent engaged in several improper debt collection practices, including suing debtors without sufficient evidence, making false statements in court documents, and not providing notice to defendants while representing to the court that they had. Between 2005 and 2007, the agent filed 60,000 mass debt collections in New York City, and won 48,000 judgments. In one week, they sued 1,200 persons alone. However, only 6% of the defendants appeared in court. The agent settled the class action suit, paid nearly \$4 million into a fund for class members, and agreed to stop related collection actions.

The judgment and garnishment order do not appear on Applicant’s credit report. He has sufficient income and assets to pay the account, but believes it was fraudulently obtained and is awaiting his attorney’s advice. Applicant earns about \$56,000 net annually and receives a state retirement paying about \$10,000 annually. He has about \$1,700 net remainder per month. He has \$2,000 in savings, and owns outright a home, farm, two rental homes, motor home, four vehicles, and farm equipment. With Applicant’s background in construction, he volunteered to build low income houses for church and charitable organizations. Applicant provided several character letters from previous supervisors and coworkers, all attesting to his honesty, trustworthiness, and professionalism.

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:

(c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying condition AG ¶ 19(c).

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;

(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's has an aged debt on a truck that he thought was a lemon, was voluntarily relinquished for auction and believed to be resolved with the lender. The old debt was resurrected by a collection agent that has a history of unscrupulous debt collection practices. Applicant is in the process of disputing the debt and judgment, and has sought advice of counsel. The judgment and garnishment do not appear on his current credit report. Applicant has significant financial resources, so the likelihood of being a victim of financial blackmail is low. Overall, Applicant's financial status does not raise concerns about his debts, financial management decisions, and ability to address future obligations. I am not concerned that Applicant will ever compromise classified information because of this aged and questionable debt and judgment. His financial status does not cast doubt on his reliability, trustworthiness, and good judgment. Mitigating conditions under ¶¶ 20 (a) and (b) 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).

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 personal and employment history, and his current financial resources. I remain convinced that he is financially responsible and can meet future financial obligations.

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
Subparagraph 1.a:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Applicant's application for a security clearance is granted.

Gregg A. Cervi
Administrative Judge