



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



In the matter of:)	
)	
)	ISCR Case No. 19-01342
)	
Applicant for Security Clearance)	

Appearances

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

03/04/2020

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 27, 2018. On May 15, 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 June 26, 2019, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on December 12, 2019, and the hearing was convened on January 16, 2020. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection.

The Department Counsel's discovery letter, marked as HE 1, and exhibit list, marked as HE 2, were appended to the record. Applicant testified and submitted Applicant Exhibit (AE) A, which was admitted into evidence. The record was held open to allow Applicant to submit any documentary evidence in mitigation by January 31, 2020. He submitted two documents collectively marked as AE B that were admitted into evidence without objection. DOHA received the hearing transcript on January 24, 2020.

Findings of Fact

Applicant is a 29-year-old mechanical technician for a defense contractor, employed since September 2017. He graduated from high school in 2008 and completed some college credits. He served on active duty in the United States Air Force from 2008 until he was honorably discharged in 2014. Applicant was married in 2011 and divorced in 2015. He has no children. He also reported being fired from jobs in February 2017 and July 2017. He remained unemployed until September 2017.

The SOR alleges Applicant owes approximately \$22,581 in delinquent debts. Applicant admitted all but two allegations, and stated in his Answer to the SOR that he was working with a credit repair company on the unresolved debts, and the two debts he denied were resolved and removed from his credit bureau report (CBR). Applicant testified that his debts arose between 2015 and 2017 after he moved to another state to take a job with a car dealer. He ended up in debt after a year because he did not earn enough to live, and was nearly homeless. He moved from job to job and accumulated additional debts. In about November 2018, he hired a credit repair company and paid about \$2,000 for their service. He stopped using the company in about December 2019.

SOR ¶ 1.a is a delinquent vehicle lease account that has been charged off for approximately \$16,659 after the vehicle was voluntarily repossessed. Applicant stated the account became delinquent in about July 2017, while he was unemployed. Appellant's credit repair company contacted the lender in about November 2019, but they did not report a response. No other action has been taken on the debt, and it remains unresolved.

SOR ¶ 1.b is a telephone utility collection account for approximately \$1,569. The account was reported in Applicant's 2018 CBR as delinquent in September 2018. He contacted the creditor in July 2019 and the lender offered to accept a payment of 70% of the debt with the remainder due the following month. Applicant did not have the funds to pay, and the debt remains unresolved.

SOR ¶ 1.c is a \$609 collection account for a credit card company. Applicant stated in his SCA that he made a critical mistake in judgment when he obtained the credit card. He testified that he spoke to the collection agent and agreed to begin payments of \$134.96 the day after his hearing in this case, but he had no written plan. In his post-hearing submission, Applicant provided a receipt for a pending payment of \$470.

SOR ¶ 1.d is a \$315 collection for an electric utility account reported delinquent in October 2018. Applicant's 2018 CBR shows the account was disputed. Applicant testified

that he has not contacted the creditor, but the account may have been paid. He did not submit evidence of payment on the account or a reason for disputing it. The collection account remains on his 2019 CBR and the account remains unresolved.

SOR ¶ 1.e is a \$778 collection account for a veterinary center. Applicant testified that the account was deleted from his CBR because of a clerical error. However, in a post-hearing submission, he showed that he actually paid the account in January 16, 2020, the day of his hearing. The account is now resolved.

SOR ¶ 1.f is a \$1,471 collection account for a telephone utility, that Applicant claims belonged to his former spouse. Applicant testified that he disputed the account, and it was deleted from his CBR. The account is no longer reported on his CBR.

SOR ¶ 1.g is a \$841 medical account from 2016. Applicant claimed that after a car accident, his insurance company should have paid the debt. He testified that it is under review, but provided no documentary evidence of a dispute or inquiry filed with the insurance company or medical provider. This account remains unresolved.

SOR ¶ 1.h is a \$338 credit union debt that is reported as a charged-off debt on his 2019 CBR. Applicant stated the credit union debt resulted from a bad check from his employer. Applicant testified that he paid the account and it should have been removed from his CBR. Of note, Applicant's CBR shows two accounts from the same credit union; one of which was for an overdrawn account that was paid in 2015. The SOR account was reported as a major delinquency (also an overdrawn account) in February 2019. Applicant did not provide documentary evidence of resolution of the SOR account, and it remains unresolved.

Applicant paid other debts not included in the SOR, and several collection accounts were removed from his CBR as a result of work by the credit repair company. He testified that he has about \$1,600 in savings, \$1,000 in a retirement account, and a net monthly remainder of \$500 to \$600 per month after paying his monthly debts and expenses. He testified that he has never received professional financial counseling except for help repairing his credit, but he has a budget and recently purchased a home.

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; and
- (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 conditions AG ¶¶ 19(a) and (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;
- (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 financial delinquencies that he claimed date back to 2015 to 2017. The debts appear to have resulted from periods of underemployment and a short period of unemployment as a result of being fired from a job. Applicant has shown some efforts to resolve debts by hiring a credit repair company that disputed certain CBR entries, and was successful in removing several collection accounts, however the majority of the SOR debts remain unresolved. Applicant has not submitted sufficient documentary evidence to mitigate SOR ¶¶ 1.a, b, d, g, and h. Of note, the largest debts, a charged-off car lease and telephone utility, remain unresolved, and several small debts that could have been paid, were not. He has not completed financial counseling and has not shown evidence of good financial decisions, or that his financial problems are under control and will not recur. SOR ¶¶ 1.c, e, and f, are mitigated, but the remaining accounts are unresolved and there is insufficient evidence of good-faith efforts to resolve them.

Applicant has a history of irresponsible accumulation of debt, and failure to resolve debts when he could. Since September 2017, he has been employed in his current position and should have resolved debts before making other significant purchases. Although his income appears to be sufficient to meet his current financial obligations with a substantial net remainder and savings, he does not have a reasonable plan to pay delinquent debts nor has he shown that he will avoid further indebtedness. Overall, Applicant's financial status raises significant doubts about his financial management decisions and personal responsibility. I am not convinced Applicant makes good financial decisions, and his financial status continues to cast doubt on his reliability, trustworthiness, and good judgment. No mitigation conditions fully apply with the exception of the resolved debts in SOR ¶¶ 1.c, e, and f.

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 and efforts to remove debts with the help of a credit repair company. However, due to Applicant's history of failing to address longstanding debts, 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, d, g, and h:	Against Applicant
Subparagraphs 1.c, e, and f:	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.

Gregg A. Cervi
Administrative Judge