



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



In the matter of: )  
)  
) ISCR Case No. 19-01560  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

04/29/2020

**Decision**

CERVI, Gregg A., Administrative Judge

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 15, 2018. On June 20, 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) and Guideline E (Personal Conduct). 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 September 6, 2019, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on December 6, 2019, and the hearing was convened on January 8, 2020. Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through H. The record was held open until January 21, 2020, to permit submission of additional documentary evidence. Applicant submitted additional documents collectively marked as AE I, and admitted into evidence without objections. DOHA received the hearing transcript on January 16, 2020.

### **Findings of Fact**

Applicant is a 50-year-old mobility services engineer for a defense contractor, employed since September 2018. His spouse works for another government agency, and they maintain separate finances. He received an associate's degree in 2004, and attended employment certification training programs. He served on active duty in the United States Navy from 1988 to 1995, and in the Navy Reserve from 1995 to 1997. He also served in the Navy Reserve from 2005 to 2018, but left with an administrative separation due to unsatisfactory performance. Applicant deployed to the Arabian Gulf for Operation Desert Shield/Desert Storm in 1990 to 1991, and was awarded the Combat Action Ribbon and Presidential Unit Citation after his ship struck a mine. He also deployed to Afghanistan from 2009 to 2010 for Operation Enduring Freedom. All periods of military service resulted in honorable discharges.

Applicant married in 1999, and has two children. He and his spouse were physically separated from 2015 to 2017 while his spouse was assigned overseas. He testified that he was unemployed from about June 2013 to March 2015 while helping his ill father. He claims self-employment from January to December 2017, which conflicts with his SCA report of being out of work for all of 2017. Applicant testified that he was homeless for three to four months in 2017, then lived with his father. Applicant's spouse was not aware of his homelessness, but he was supported by his rental income and help from his spouse, while working on investment properties he and his father own. He and his spouse reunited in September 2017. Applicant has had previous security clearances from DOD and another government agency.

The SOR alleges Applicant owes approximately \$64,000 in 13 delinquent debts. In addition, the SOR alleges Applicant falsified his 2018 SCA by deliberately failing to disclose his debts listed as SOR ¶¶ 1.a through 1.m. Applicant admitted all of the SOR debts with explanations, but denied the falsification allegation. The SOR debts include collections for two recreational vehicle loans, credit cards, medical collections, and two lines of credit.

Applicant testified that all of the SOR debts were incurred to pay expenses or were defaults during periods of unemployment or underemployment, or from medical expenses possibly from an accident and hernia operation. He stated he has some tentative payment plans, but is waiting to enter into agreements until he knows if his security clearance will

be granted and he will maintain his job. Applicant's employer, friend and coworker provided letters of support, stating that he is a valued member, trusted, honest, experienced, and loyal. His employer recommends him for a security clearance.

In Section 26 of Applicant's SCA, Applicant was asked about his financial record. He reported that he was out of work from June 2013 to March 2015, and that he was unemployed for the entire year of 2017, and helping his father transition to new housing. He noted in his SCA that he was currently utilizing financial assistance from a consumer credit counselor, beginning in 2013. He stated the counseling agency provided a confidential comprehensive personal money management interview, and they created a case action plan for himself. He noted several counseling sessions since 2013 to update the information, and that he was currently using the plan to stay on financial track and assist him with his financial difficulties. In an optional comment, he noted that the detailed summary of his financial difficulties are listed in the action plan, generated by the credit counselor.

In SCA Section 26, he was also asked to disclose delinquencies involving routine accounts; including whether in the past seven years he had a judgment; lien; repossession; defaulted loans; debts in collections; suspended, charged off, or canceled credit cards; or if he had been over 120 days' delinquent on any debt or currently over 120 days' delinquent on any debt. Applicant answered "no." Applicant claimed that when he completed his SCA, he attached an "action plan" detailing his debts and his intended plan to resolve them. Nowhere in the comments to the SCA did Applicant state that the action plan was separately attached to the SCA, or included with his electronic submission. Department Counsel stated that he did not have any attachments from the SCA, nor were any attachments mentioned or noted in the SCA. In Applicant's interview with a Government investigator, he noted that he did have debts turned over to collections, and that he attached a copy of his credit counseling report to his SCA, detailing his collection accounts. Applicant believes that by attaching the action plan to his SCA submission, he provided sufficient notice to the Government about his delinquent debts. Attached to his Answer to the SOR, Applicant provided a "case action plan" from the credit counseling company dated May 16, 2016.

Applicant submitted in evidence, information from another credit management company, dated November 27, 2018, and January 15, 2020 (AE E and I). He also submitted an enrollment letter from a financial education company, dated July 26, 2019 (AE H). Applicant's January 2020 personal financial statement shows a negative \$1,296 net remainder, but his proposed financial statement shows a positive \$533 net remainder. As of January 2020, his salary was substantially increased to \$80,000 per year, and he receives income from two investment properties.

### **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 history of financial delinquencies likely resulted from his periods of unemployment and underemployment, but the debts remain unresolved. Applicant intends to resolve the accounts if he is assured of a security clearance and a job, but is reluctant to obligate himself to payment plans if he is to lose his job for lack of a clearance. Promises or plans for future debt resolution are insufficient to apply mitigation credit for responsible actions or good-faith efforts. Applicant has not shown that he has undertaken reasonable efforts to resolve his delinquent debts, has not proffered settlement plans, and there is insufficient evidence to show that the debts will be resolved within a reasonable time.

Applicant's financial status has been poor for some time, and there is insufficient evidence that it will improve in the near future. He has provided evidence of attending financial counseling and showed an intent to continue with that, and he has worked on a budget to get back in fiscal health. However, he is reluctant to pursue recommended remedies until he is assured of security eligibility and continued employment, so he has not shown clear indications that his financial problems are being resolved or are under control. Overall, Applicant's financial status continues to raise significant doubts about his financial management decisions, personal responsibility, and ability to address his delinquent debts. 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 mitigating condition fully applies.

### **Guideline E: Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When falsification allegations are controverted, as here, the Government has the burden of proving the allegations. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)) An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. (ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010))

I find Applicant made a good-faith effort to report his delinquent debts on his SCA by discussing his financial counseling and later disclosing his debts in his interview. He reported that he attached an action plan to his SCA, despite none being included in the record. There is sufficient evidence that Applicant did not intentionally falsify his SCA by knowingly omitting financial delinquencies. I find that based on Applicant's answer and testimony, his failure to report the SOR debts on his SCA was not intentional. He provided plausible explanations for his omissions, and intentional falsification is not supported by the evidence. AG ¶ 16(a) is not applicable to SOR ¶ 2.a. The personal conduct security concern is concluded for Applicant.

### **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 Guidelines F and E in my whole-person analysis. I also considered Applicant's military service, employment history, financial difficulties, unemployment and underemployment. However, I remain unconvinced of his financial responsibility and ability, intent, and desire to resolve his financial obligations. The personal conduct allegation is resolved in favor of Applicant.

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 – 1.m:	Against Applicant
Paragraph 2, Personal Conduct	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## Conclusion

I conclude that it is not 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 denied.

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Gregg A. Cervi  
Administrative Judge