



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



In the matter of:)	
)	
)	ISCR Case No. 19-02360
)	
Applicant for Security Clearance)	

Appearances

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

04/06/2020

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 November 27, 2018. On August 29, 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 October 14, 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 4 were admitted into evidence without objection. Applicant testified. DOHA received the hearing transcript on January 29, 2020.

Findings of Fact

Applicant is a 29-year-old range operations specialist for a defense contractor, employed since September 2016. He received a general education development (GED) diploma in 2008, and completed an associate's degree in 2019. He served on active duty in the United States Army from 2009 until he was honorably discharged in 2015. He deployed to Kuwait in 2011 for one year and Israel for six months in 2013. He also served in Germany. He was unemployed from December 2015 to September 2016. He married in 2014, and has one child. He has held a security clearance since 2009.

The SOR alleges Applicant owes approximately \$47,760 in delinquent debt. He admitted all of the SOR allegations, with explanations. Applicant testified that he incurred the debts while he was on active duty due to inattention. He noted in his SCA that the debts were due to circumstances and irresponsibility, but that he was working with scheduling credit-repair and debt-management classes to help him fix his financial condition. He also stated that he would contact creditors and arrange payment plans. He said he was aware of the bad decisions he made in his life, and was willing to take any steps necessary to correct them.

SOR ¶ 1.a is a personal loan in which Applicant could not negotiate a settlement or payment plan. The debt remains unresolved. SOR ¶ 1.b is a loan on a vehicle that was repossessed in 2016 for late payments. He has not made contact with the creditor and the debt remains unresolved.

SOR ¶¶ 1.c, 1.d, 1.e, 1.h, and 1.f and are loans and credit-card debts in which Applicant was unable to settle or pay. The debts remain unresolved. SOR 1.i is a medical account. Applicant admitted the debt but said he was never contacted by the provider. It remains unpaid.

SOR ¶ 1.j and ¶ 1.l are duplicate entries. SOR ¶¶ 1.j through 1.m are utility and phone charges that Applicant was unable to settle and remain unresolved. SOR ¶ 1.g is a credit-card debt on which Applicant stated he has been making payments of \$60 per month since September 2019.

Applicant testified that now that he is married, his spouse works and helps with their finances. He attended financial counseling in October 2019 on post, and he is looking for ways to eliminate unnecessary expenses, reduce spending, and to arrange payment plans. He has about \$1,000 in savings and about \$200 per month remaining after paying expenses.

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 remain unresolved. The debts appear to have resulted from a period of unemployment after he left active duty, and from irresponsible financial practices. Except for SOR ¶ 1.g, Applicant has not shown sufficient efforts to resolve delinquent debts. Despite receiving financial counseling, he has not shown that he is willing or able to resolve debts he incurred before he married.

Overall, Applicant's financial status raises significant doubts about his financial management decisions, personal responsibility, and ability to address 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 mitigation conditions fully 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 military service and employment history. However, I remain unconvinced of his financial responsibility and ability 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 - 1.f, 1h - 1.k; and 1.m:

Against Applicant

Subparagraphs 1.g and 1.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.

Gregg A. Cervi
Administrative Judge