



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02474  
)  
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 August 30, 2017. On September 9, 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 October 18, 2019, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a

notice of hearing on December 11, 2019, and the hearing was convened on January 15, 2020. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A and B. The record was held open to permit submission of additional documentary evidence, and Applicant submitted AE C. All of the Applicant's exhibits were admitted into evidence without objection. DOHA received the hearing transcript on January 24, 2020.

### **Findings of Fact**

Applicant is a 44-year-old quality assurance supervisor for a defense contractor, employed since September 2017. He honorably served on active duty in the United States Air Force from 1995 to 2015, when he retired. He was a full-time student from 2015 to 2017. He received two associate's degrees in 2012, and a bachelor's degree in 2018. He married and divorced three times; from 1995 to 1999; 2006 to 2010; and 2014 to 2018. He has three children, ages 24, 19, and 10, none of whom live with him. He held a security clearance while on active duty.

The SOR alleges Applicant owes approximately \$46,000 in delinquent debts, including a truck loan, child support arrearages, credit card, medical, store credit, and utility debts. He admitted the child support, credit card, and store credit allegations, and denied the car loan, medical, and phone service debts (SOR ¶¶ 1.a, 1.e, and 1.f). The Government's exhibits support the SOR allegations.

Applicant refinanced his home in January 2020, and paid debts, including delinquent debts noted on his current credit report. He distributed \$152,059 toward debts, including SOR debts for child support arrearages (SOR ¶¶ 1.b and 1.c), and a credit card (SOR ¶ 1.d). He used funds to pay other debts, including a portion of his mortgage, personal loan, student loan, and a credit card debt, none of which were alleged in the SOR. He received an additional \$81,000 in cash.

SOR ¶ 1.a alleges a delinquent car loan. Applicant co-signed a truck loan in 2011 with his girlfriend at the time, and shortly thereafter they parted ways. His girlfriend had the truck and was responsible to make the payments, but she defaulted after paying about \$21,000. The truck was repossessed and sold by the lender. The lender sent notifications to his girlfriend to collect a deficiency balance, but not him. Applicant learned of the defaulted loan during his security clearance interview, and tried to obtain information from the lender, but was unsuccessful. A collection company eventually attempted to recover the balance owed. Applicant disputed the debt amount because it should have been reduced by the value of the truck when sold. The account was eventually removed from his current credit report and no collection action continued.

SOR ¶ 1.e is a medical debt that was resolved in 2018. The medical company used the wrong information when they submitted the charges to Applicant's military retirement medical insurance. The account is now resolved. SOR ¶ 1.f is a telephone service debt. Applicant disputed the bill in 2013 or 2014 as incorrect after canceling the service. He again disputed the amount owed in 2017, and with a collection company in 2020. The

debt has been removed from his current credit report. SOR ¶ 1.g is a store credit account for furniture purchased in 2010 for a former girlfriend. She and Applicant parted ways, and she took the furniture. She eventually defaulted on the loan. Applicant contacted the lender in 2017 or 2018, but did not receive the requested information on the debt. The debt has been removed from his credit report, and there are no current collection efforts.

Applicant attributes his debts to overspending while on active duty where he earned less income than he does now. He ignored some of his debts and was unaware of others. Regardless, he did not have funds to pay them while he was a student. Once he was hired in his current position and applied for a security clearance, he began to address his debts, and with the help of his refinanced home, was able to pay delinquencies on his credit report. He has not received financial counseling. He testified that he has bank accounts valued at about \$4,000 (before receiving his refinancing cash distribution). He earns an annual salary of about \$88,000, and receives annual military retirement pay and VA disability pay of about \$35,000. He testified that he meets his expenses and debts with his current income, and applies any excess to increase his mortgage payments in an effort to pay off his home mortgage early.

### **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;
- (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 had financial delinquencies resulting from an overspending for his income while on active duty, making unsound financial decisions, and insufficient income after retiring and while attending school. Since finding new employment at greater pay, Applicant has shown sufficient efforts to resolve the delinquent debts that continued to appear on his credit report. He disputed debts for which he believed he was not responsible, and they have been removed from his current credit report. His most recent credit report reflects no delinquent accounts that have not been resolved in January with his mortgage refinance disbursements. Overall, Applicant's financial status no longer raises concerns about his debts, financial management decisions, and ability to address future obligations. His financial status no longer casts doubt on his reliability, trustworthiness, and good judgment. Mitigating conditions under ¶¶ 20(a), (b), (d) and (e) 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. I remain convinced of his newly acquired financial responsibility and his ability to 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
Subparagraphs 1.a – 1.g:	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.

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Gregg A. Cervi  
Administrative Judge