



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



In the matter of:)	
)	
)	ISCR Case No. 20-01473
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

06/23/2021

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 September 23, 2019. On May 26, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 June 8, 2017.

Applicant answered the SOR (undated) (Ans.), and requested a decision based on the written record without a hearing. The Government’s written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on November 23, 2020. A complete copy of the FORM was provided to

Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM and submitted a reply (undated), and supporting documents collectively marked as Applicant Exhibit (AE) A. The case was assigned to me on March 19, 2021. Neither Applicant nor Department Counsel objected to any documents submitted for the record. Government Exhibits (GE) 1 through 6 and Applicant Exhibit (AE) A are admitted into evidence without objection.

Findings of Fact

Applicant is a 43-year-old procurement analyst, employed by a government contractor since January 2012. He earned four master's degrees in 2011, 2012 (2), and 2013. He married in 2010 and has two children.

The SOR alleges under Guideline F that Applicant is delinquent on seven debts totaling about \$84,000. The largest debts are a mortgage judgment on a rental property and a home equity line of credit (HELOC), totaling about \$77,000. (SOR ¶¶ 1.a and 1.f). The remaining debts include a municipal government lien (SOR ¶ 1.b), and consumer collection accounts (SOR ¶¶ 1.c – 1.e, and 1.g). Applicant admitted to all of the SOR debts with explanations.

Applicant and his spouse purchased a home in 2013 while maintaining another home that they operated as a rental property. While under pressure to maintain two mortgages and family expenses, they began to accumulate debts. In 2018, Applicant's spouse lost income due to reduced work hours and they lost a tenant in their rental property. These events caused substantial financial difficulties. In 2019, several credit cards became delinquent and some judgments were entered against Applicant. During the COVID-19 pandemic, Applicant's spouse lost several months of work while her school was closed, resulting in a short-term loss of household income.

Applicant began addressing his debts through negotiations with his creditors in 2019. The largest debt, a mortgage judgment (SOR ¶ 1.a), was restructured with the new lender, and Applicant made regular monthly payments under the plan. By March 2021, Applicant had completed the modification plan and is now current on the mortgage with no late payments. This debt is resolved.

SOR debts ¶ 1.b is a judgment that was satisfied in November 2020; SOR ¶ 1.c was satisfied in August 2020; SOR ¶¶ 1.d and 1.f and 1.g are expected to be paid by April to June 2021. Applicant has been working with the creditors, but due to his spouse's short-term loss of income due to the COVID-19 pandemic, he has not completed resolving these debts. These debts are satisfied or are in proceeding toward a satisfactory resolution.

Applicant noted the lessons learned from being financially overextended and is now in a better financial position. He reduced his household spending and recognizes that if he is unable to maintain a tenant in his rental property, he will have to sell it.

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 and documentary evidence in the record are sufficient to establish 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good- faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” (internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant incurred financial delinquencies through stresses on household finances due to reduced household income from his spouse’s loss of work hours, and difficulties from the ownership of rental property while maintaining their home mortgage and expenses. Applicant made significant efforts to work with his creditors, pay off judgments, and renegotiate significant debts to bring his mortgage current. The remaining debts are on their way toward being satisfied this year.

Overall, Applicant made significant efforts to resolve his debts once he was financially secure. I am convinced Applicant now makes good financial decisions, and his financial status no longer casts doubt on his current reliability, trustworthiness, and good judgment. I do not believe that further financial problems are likely to recur as Applicant reduced spending and now diligently addresses financial problems when they arise. He better understands how to discuss financial difficulties with his creditors and has a long-standing employment record. AG ¶¶ 20(a), (b), and (d) apply.

Whole-Person Concept

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. AG ¶¶ 2(a), 2(c), and 2(d). 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 efforts to resolve his debts once he was financially secure. Applicant provided sufficient evidence to show reasonable resolutions of the SOR debts and overall financial responsibility.

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 or continue 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 or continue Applicant's eligibility for access to classified information. Applicant's security clearance is granted.

Gregg A. Cervi
Administrative Judge