



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



In the matter of:)	
)	
)	ISCR Case No. 20-01530
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro Se*
05/10/2021

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application on September 28, 2018. On September 30, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. The CAF acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant submitted an undated answer to the SOR and requested a decision on the written record without a hearing. On December 11, 2020, the Government sent Applicant a complete copy of its written case, a File of Relevant Material (FORM), including pleadings and evidentiary documents identified as Items 1 through 6. He received the FORM on January 7, 2021. The FORM notified Applicant that he had an

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM, and the case was assigned to me on March 12, 2021. Items 1 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant is 57 years old. He was married to his first wife from 1988 until they divorced in 2011. They have a 30-year-old son and 21-year-old daughter. In 2013, Applicant married his second wife, and she has two sons. He has worked for defense contractors for almost forty years, including his current employer since November 2000. He is currently a design engineer principle. This is his second security clearance application; he previously applied for and received a clearance in May 2001. (Item 2; Item 3)

Applicant admitted all the debts alleged in the SOR, except for SOR ¶¶ 1.b (paid and removed from credit bureau report (CBR); 1.i and 1.j (disputes); and 1.m and 1.n (resolved). The alleged debts total \$114,000 and became delinquent between 2016 and 2018. (Items 1 – 6)

According to Applicant, his financial issues started in approximately 2011, during his divorce. He was ordered to pay his ex-wife monthly alimony of \$1,500 and \$686 for his daughter's child support. As of the date of the SOR, Applicant was being garnished for an alimony arrearage of \$11,400, as alleged in SOR ¶ 1.q. The record does not indicate how or when he fell behind on his alimony payments. (Item 1; Item 2 at 35; Item 3 at 4)

Applicant also attributes his financial issues to additional garnishments that were the result of judgments filed against him for failing to pay other debts. He opened two separate consolidation loans in an attempt to resolve his issues, but they resulted in further financial hardship. His current wife quit her job to care for her father, which also contributed to their financial problems. The record does not reflect when this occurred. Additionally, Applicant was diagnosed with bladder cancer in 2017, which resulted in a costly operation and treatment, and his wife was in a serious car accident in 2019, which required three surgeries. Finally, Applicant blames his financial predicament on a lack of communication with his current wife; her failure to properly manage their finances after she started a crafting business in 2016; and her excessive use of credit and opening of accounts in his name. (Item 1; Item 2; Item 3)

Applicant admitted to the following debts: SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.g, and 1.h. They remain unpaid and outstanding. (Items 1 – 6)

Applicant asserted in his answer to the SOR that he paid and resolved the credit card debt alleged in SOR ¶ 1.b, and it no longer appeared on his Transunion CBR. He failed to provide proof of resolution as well as a copy of the Transunion CBR. This debt appeared in his November 2018 CBR as a \$16,373 account placed for collection in

approximately June 2016. The debt had increased to \$17,931 in his September 2019 CBR. The debt does not appear in his most recent CBR of December 9, 2020.

According to Applicant's answer to the SOR, he disputed SOR ¶¶ 1.i and 1.j. He did not provide proof of his efforts to dispute these debts with the creditors or credit reporting agencies. SOR ¶ 1.i does not appear in his December 9, 2020 CBR; however, SOR ¶ 1.j, a cable provider, continues to appear as a delinquent debt. (Item 6)

Applicant co-signed two student loans for his son alleged in SOR ¶¶ 1.n and 1.o. The accounts were opened in February and September 2011 respectively. Applicant claims he made payments for an unspecified period, but both debts were charged off in July 2017.

Applicant provided no proof of payments toward any of the alleged debts in his answer to the SOR, but he provided what appear to be two pages of an undated and incomplete credit bureau report. These documents that reflect that SOR ¶ 1.m was resolved in July 2019, after Applicant settled the charged off account for less than the full balance of \$4,166. The record does not reflect the amount paid by Applicant. (Item 1; Item 3 at 3; Item 6)

The SOR alleged that Applicant had a \$13,164 charged-off debt that was satisfied through a wage garnishment in 2019. Although the language within the allegation indicates that the debt was resolved prior to the issuance of the SOR, Applicant provided proof that SOR ¶ 1.r was resolved in January 2019. (Item 1)

The SOR alleged that Applicant has three delinquent medical debts totaling \$197 (SOR ¶¶ 1.k, 1.l, and 1.p). There is no indication in the record that Applicant had additional medical bills that he consolidated or he used his credit cards to pay medical bills. Rather, he attributes his credit card debt to his wife's excessive spending. (Items 1-6)

There is no evidence in the record that Applicant has received financial counseling or follows a written budget. Nor is there evidence of his income and ability to live within his means. His December 9, 2020 CBR indicates he has a new unalleged medical debt of \$57. According to Appellant, his intent is to resolve his delinquent debts through garnishments. He also indicated in his answer to the SOR that he intended to pay several of the allegations within a month or in the near future; however, he did not submit a response to the FORM with proof of any payments or resolution. (Item 1; Item 6)

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." (*Egan* 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.” (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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.” (EO 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. (ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993)). 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. (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)). “Security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b)).

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

AG ¶ 19 describes conditions that are disqualifying. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the record evidence establish AG ¶¶ 19(a) and 19(c).

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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.

There is evidence in the record that Applicant's financial issues were, in part, the result of his 2011 divorce, his 2017 cancer diagnosis, his wife's 2019 car accident, and her decision to care for her father, all of which were beyond his control. However, Applicant admitted that his wife's excessive spending and their lack of communication regarding their finances significantly contributed to his financial situation, which was

controllable. Additionally, the record lacks evidence that Applicant acted responsibly under the circumstances to resolve his delinquencies.

Applicant resolved the debts alleged in SOR ¶¶ 1.m and 1.r in 2019. He settled SOR ¶ 1.m for an unknown amount of money, and he resolved SOR ¶ 1.r through a garnishment of his wages. He claims he resolved SOR ¶ 1.b, but failed to provide proof of payments. This debt does not appear on his most recent CBR, but the Appeal Board has held that a debt falling off a credit report is not proof of resolution or payment.

Since 2019, there is no evidence in the record that Applicant has paid or resolved any of the debts alleged in the SOR. He indicated in his Answer to the SOR that he intended to resolve several of the smaller SOR allegations in the near future. However, he failed to respond to the FORM and provide proof of any resolutions or payments.

Applicant failed to demonstrate that he initiated or made consistent good-faith efforts to repay his creditors or resolve his alleged debts. The vast majority of the alleged debts are still outstanding, large and small, and Applicant did not provide a plan of how he intends to resolve any the debts. Nor did he provide evidence that he is currently living within his means; therefore, these debts reflect an ongoing concern as to Applicant's reliability, judgement, and trustworthiness. Mitigation under AG ¶¶ 20(a), 20(b), and 20(d) was not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG

¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the financial considerations security concerns raised by his delinquent debts. The record lacks sufficient evidence to demonstrate that he is reliable, trustworthy, and exercises good judgment. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n – 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. National security eligibility is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge