



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



In the matter of:)	
)	
)	ISCR Case No. 20-01159
)	
Applicant for Security Clearance)	

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

09/14/2021

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 26, 2019. On August 18, 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 on April 12, 2021 (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 May 17, 2021. 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 on June 7, 2021, but did not submit a reply. The case was assigned to me on August 26, 2021. Government Exhibits (GE) 1 through 8 are admitted into evidence without objection.

Findings of Fact

Applicant is a 44-year-old consultant, employed by a government contractor since February 2019. He is also currently self-employed as a real estate sales person since April 2017. He was terminated from a job in April 2016. Applicant reported that he was unemployed from March 2016 to February 2017, despite his termination in April 2017. From 2006 to 2016, Applicant attended various universities and colleges, but did not attain a degree. He served in the U.S. Navy from 1995 to 2015, and was honorably discharged. He was previously married in June 1997 and divorced in October 2010; and again married in June 2011 and divorced in October 2011. He is currently married since December 2012, and has seven children. Applicant was granted a conditional secret security clearance in 2003 with a caution for financial concerns after financial delinquencies and a Chapter 13 bankruptcy. He again received a conditional security clearance in November 2007 with cautions for alcohol abuse and financial concerns (delinquent debts).

The SOR alleges under Guideline F that Applicant is delinquent on debts totaling about \$55,520 (SOR ¶¶ 1.a-1.i). In addition, the SOR alleges that Applicant filed Chapter 7 bankruptcy on or about July 2002, and the bankruptcy was discharged in February 2004 (SOR ¶ 1.j). Applicant admitted all of the allegations with explanations. He also provided mitigating evidence with his Answer. The record indicates that Applicant hired an attorney to negotiate settlements of his debts.

Applicant stated in his Answer to each SOR debt allegation, that he was laid off due to his Department of Veterans Affairs (VA) rated disability, which caused him to fall behind on debts. He has a 100% VA disability rating, with a 30% portion for anxiety disorder, insomnia, and other stressors and trauma-related disorder (also known as post-traumatic stress disorder (PTSD) combat and memory loss), and alcohol use disorder. Applicant was terminated from a job with a bank on April 11, 2016, due to his inability to return to work. His termination letter does not specify the reasons for his inability to return to work, but stated that he was not eligible for Family Medical Leave and was therefore terminated from his position. Applicant stated in his 2019 personal subject interview (PSI) by a Government investigator that he “put off” completing his VA disability application after being discharged from the Navy, and instead took time from his employment at the bank to work on his VA disability requirements. He acknowledges that he “knowingly participated in his termination” and rather than quit the job, he elected to be terminated.

In 2002, Applicant filed a joint Chapter 13 bankruptcy petition. He initially claimed about \$73,000 in secured and unsecured claims, but amended his petition in 2004 to add an additional \$12,033 in unsecured claims. It is unclear if the Chapter 13 bankruptcy was

converted to a Chapter 7 bankruptcy. (GE 8) According to his 2009 credit report, the bankruptcy debts were discharged in 2004 under a Chapter 7 bankruptcy. (GE 4)

SOR ¶ 1.a alleges a debt of \$8,613 owed to a finance company for a water softener system. Applicant stated in his Answer that the debt became delinquent as a result of his 2016 termination, and has been satisfied in full. Applicant stated in his PSI that the debt began in 2017 when the company would not remove the system that became too costly for him. According to his credit report, the debt appears to have been placed for collection in 2019. (GE 5) With his Answer, he provided a letter from the creditor noting that the account was settled on June 29, 2020, for \$5,400. The letter indicates the debt was reduced to a lien, and that the lien was settled after being charged off. This debt is resolved.

SOR ¶ 1.b is a credit union auto-loan debt that became delinquent in 2017. (GE 7) Applicant stated in his Answer that the debt became delinquent as a result of his 2016 termination, that he paid down the debt to \$19,000, and is “waiting on claims courts to decide on payment arrangements.” Applicant’s undated credit report excerpt provided with his Answer notes that \$25,257 was charged off, and a past-due balance of \$19,453 is owed as of March 2021. Applicant’s May 2021 credit report supports the charged-off amount and the past-due amount. (GE 6) There is insufficient evidence to show that this debt was partially paid or is being resolved.

SOR ¶ 1.c is a \$240 collection account from a satellite television provider. Applicant stated in his Answer that the debt became delinquent as a result of his 2016 termination, and that he has since satisfied the debt. No documentation of resolution of the debt was provided. Applicant’s 2019 credit report shows the debt went to collections in 2019, and is unpaid. (GE 5) The account is not listed on Applicant’s 2021 credit report. There is insufficient evidence to show that this debt was paid or otherwise resolved.

SOR ¶ 1.d is a \$7,370 collection account from a finance company; delinquent since 2019. In his PSI, Applicant denied knowing anything about the account. However, with his Answer, he provided a letter from a collections firm showing the furniture store account was paid in full as of March 30, 2020. This debt is resolved.

SOR ¶ 1.e is a medical collection account for \$44. Applicant stated in his Answer that the debt became delinquent as a result of his 2016 termination, and that he has since satisfied the debt. No documentation of resolution of the debt was provided. Applicant’s 2019 credit report shows the account was placed in collections in 2019, and is unpaid. (GE 5) The account is not listed on Applicant’s 2021 credit report. There is insufficient evidence to show that this debt was paid or otherwise resolved.

SOR ¶ 1.f is a credit-card account placed for collection for \$4,588. Applicant stated in his Answer that he paid the account, and provided a credit report excerpt that shows a similar account was paid and closed in September 2020. Applicant’s 2021 credit report supports the payment of the collection account. This debt is resolved.

SOR ¶ 1.g is a collection account for \$5,620. Applicant stated in his Answer that he paid the account if full. He provided a credit report excerpt that shows a total amount owed was \$5,744, a settlement was paid, and \$5,620 was written off in May 2020. This would indicate that \$124 was paid toward the debt. Applicant's 2021 credit report shows a reduced amount was paid and that the creditor charged off \$5,620. The debt is resolved.

SOR ¶ 1.h is a debt owed to a state utility company for \$2,002. Applicant stated in his Answer that he is negotiating a settlement with the creditor. Applicant's 2021 credit report shows the last payment was made in 2018, and the account remains delinquent. There is insufficient evidence to show that this debt was paid or otherwise resolved.

SOR ¶ 1.i is a telephone company collection account for \$1,794. Applicant stated in his Answer that the debt has been paid in full, however no documentation was provided to show resolution of the debt. The collection account appears in Applicant's 2019 credit report as delinquent in 2019 and unpaid. The account does not appear on Applicant's 2021 credit report. There is insufficient evidence to show that this debt was paid or otherwise resolved.

Since submitting his Answer to the SOR, no further evidence has been provided to update or clarify Applicant's answers to the SOR despite Department Counsel's FORM explanation of Applicant's burden of proof. In addition, Applicant did not provide evidence of financial counseling, his current financial status, character, or employment record to assist me in evaluating his financial status and the "whole person" record.

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.

Applicant claims to have incurred his debts as a result of his termination from the bank in 2016. The circumstances of the termination show that his voluntary actions caused his termination, not a condition beyond his control. Insufficient persuasive evidence was provided tying Applicant's 30% VA disability rating for PTSD to his employment termination. In addition, most of the debts were incurred well after Applicant's period of unemployment that lasted between approximately April 2016 and February 2017. Since that time, Applicant has made efforts to resolve debts with the help of an attorney after he learned in his 2019 PSI that the debts may impact his security clearance. However, the evidence in the record supports resolution of only four of nine debts, and two of the resolved debts included substantial creditor charge offs.

Applicant has a long history of incurring delinquent debts since a Chapter 13 bankruptcy discharge of debts in 2004. I am not persuaded that he ever regained control of his finances, has showed financial responsibility, or is diligent about meeting his financial responsibilities. In addition, I am unclear as to why Applicant failed to pay debts after his period of unemployment, and ignored the debts until his security eligibility was questioned.

Applicant choose to have a decision issued on the record, but has done little to provide persuasive mitigating information for my consideration, or to fully explain his financial history, current financial status, or how his disability impacted his ability to meet financial obligations.

I am not persuaded that Applicant has a handle on all of his debts, has taken sufficient action to resolve those that remain, or has shown financial responsibility over

the years. As a result and without more documentary evidence, I remain doubtful about Applicant's current reliability, trustworthiness, and good judgment.

Applicant is credited for resolving the accounts that I noted as resolved, but he failed to show that continued delinquencies are unlikely to recur. Additionally, I am not persuaded that the conditions that resulted in his financial problem were largely beyond his control, or that he acted responsibly under the circumstances. Finally, he has not shown that he initiated and is adhering to a good-faith efforts to repay the remaining creditors or otherwise resolving the remaining debts. Applicant's bankruptcy is not a financial concern, but is evidence of a history of financial problems. For these reasons, none of the mitigating conditions fully 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 military service, disability ratings, and period of unemployment. However, Applicant has not provided sufficient evidence to show the resolution of the remaining SOR debts and his overall financial responsibility.

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.d, 1.f, 1.g, and 1.j:	For Applicant
Subparagraphs 1.b, 1.c, 1.e, 1.h, and 1.i:	Against Applicant

Conclusion

I conclude that it is not 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 application for a security clearance is denied.

Gregg A. Cervi
Administrative Judge