



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03166
)
Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2021

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 April 21, 2020. On December 10, 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 January 4, 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 March 26, 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 May 25, 2021, but did not submit a reply. The case was assigned to me on August 17, 2021. Government Exhibits (GE) 1 through 5 are admitted into evidence without objection.

Findings of Fact

Applicant is a 57-year-old operations manager, employed by a government contractor since November 2016. He was unemployed from July to September 2009, and from August to November 2016. He graduated from high school in 1982 and joined the U.S. Army Reserve while in high school, and remained until he was discharged in November 1982 to join the U.S. Marine Corps. He served on active duty in the Marine Corps from December 1982 to December 1986, when he was honorably discharged. He has been married since 1987 and has one child and one stepchild. Applicant's security clearance was previously suspended in 1984 due to a court-martial proceeding while he was on active duty. He was last granted a security clearance by the Department of Homeland Security in 2015.

The SOR alleges under Guideline F that Applicant has 13 delinquent debts totaling approximately \$61,225. One account is a medical collection, while the remaining delinquencies are consumer debts in collection or charged off. Applicant admitted all of the SOR allegations, with explanations.

In his Answer to the SOR, Applicant stated that he had health problems over the past few years, including receiving a pacemaker in April 2020 that caused him to fall behind on his debts. He noted in his SCA that he was out of work due to major surgery and rehabilitation for 90 days, and his work hours were reduced. He is also providing financial support to his daughter and granddaughter. In his SCA, Applicant listed a 2011 judgment and wage garnishment for a vehicle loan debt after a repossession, and other unresolved debts that arose due to "medical issues [that] have led to my poor financial status." (GE 3) Applicant's personal subject interview (PSI) indicates three other judgments from 2019 on accounts listed as SOR ¶¶ 1.c – 1.e, and 1.g – 1.h. (GE 4) His 2020 credit bureau report shows his SOR debts date between 2014 and 2020. (GE 5)

Applicant planned to file a petition in bankruptcy, but was unable to do so in 2020 due to pandemic-related court access restrictions. He noted in his January 2021 Answer that the bankruptcy court reopened to the public "a few weeks ago." To date, Applicant has not provided any evidence that he filed bankruptcy, or that he has taken any other action to resolve his debts. He notes that he continues to perform his job "at a high level" and that his debts will not cause him to be compromised.

According to Applicant's June 2020 PSI, Applicant has a monthly net remainder of \$342 after paying his expenses. Applicant's spouse is disabled and receives a disability income that is separate from his finances. Applicant and his spouse do not discuss their finances with each other. No evidence of financial counseling or Applicant's current financial status was included in the 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 asserted that his debts resulted from financial losses due to health problems, but failed to provide persuasive evidence that these health issues significantly impacted his income or ability to resolve his debts over the years involved. He has been

employed by a Government contractor since 2016, but continued to allow his debts to remain unresolved. There is no evidence of action taken to resolve debts except for an intent to file a bankruptcy petition. Additionally, there is no evidence of financial counseling or satisfactory evidence of Applicant's current financial status.

Applicant's financial problems have been longstanding and remain a current concern. I am not persuaded that Applicant has a handle on his debts, has taken sufficient action to resolve delinquent debts, or that he has shown financial responsibility over the years. As a result, I remain doubtful about Applicant's current reliability, trustworthiness, good judgment. 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, health problems, and periods of unemployment. However, Applicant has not provided sufficient evidence to show the resolution of SOR debts and his overall financial responsibility. 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 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.m:	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 security clearance is denied.

Gregg A. Cervi
Administrative Judge