



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



In the matter of:)	
)	
)	ISCR Case No. 20-00058
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2021

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 September 19, 2018. On May 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 March 3, 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 June 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 July 16, 2021, but did not submit a response to the FORM or object to any of the Government's exhibits. The case was assigned to me on October 6, 2021. Government Exhibits (GE) 1 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant is a 33-year-old material handler for a government contractor since August 2017. Applicant graduated from high school in 2007. Applicant married in 2013, and has three children and one stepchild. He has never held a security clearance.

The SOR alleges under Guideline F that Applicant is delinquent on debts totaling about \$23,337 (SOR ¶¶ 1.a - 1.l). The debts alleged are supported by the Government's credit reports and Applicant's Answer, SCA, and 2018 subject interview summary. Most of the debts date back to 2018. Applicant admitted all but two of the SOR allegations with explanations. He denied SOR ¶¶ 1.e and 1.f, including two similar credit union accounts that Applicant states were "paid off." Applicant did not submit supporting documentation for the record, but only one credit union debt is listed in his most recent credit report as charged off. (GE 5)

Applicant reported that he was suspended from his last job in September 2017, and quit the job in October 2017 after being told he would be fired. He was also fired from a job in November 2011, but was immediately hired by another employer. He did not report any period of unemployment on his SCA, but stated in his subject interview that he experienced financial problems due to unemployment. In his SCA, he attributed a past child-support and a credit card debt (not included in the SOR) to having "two jobs end up losing one and got behind." (GE 2, pp. 42 and 44) He also reported a \$8,984 delinquent auto loan debt (SOR ¶ 1.l) that is being repaid through the payroll garnishment of a co-signer. (GE 2, p. 43)

In his Answer to the SOR, Applicant acknowledged the delinquent debts to which he admitted, attributing them to "[t]hings happen in life that causes you to sometimes get behind a little and sometimes a lot. In my case it's a lot. Yes, things are getting paid off slowly but surely." (Ans.) No evidence of Applicant's current financial status or credit counseling history was submitted.

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 unemployment or underemployment. While his income was likely a significant contributing factor, he has not shown sufficient effort and dedication to resolving debts. The evidence does not sufficiently support SOR ¶¶ 1.e and 1.f as two debts for the same amount, but suggests one may be a duplicate or was paid off.

Applicant has a long history of financial delinquencies. I am not persuaded that he has control of his finances, has showed financial responsibility, or is diligent about addressing his debts while he has the means to do so. In addition, I am unclear as to why

Applicant failed to pay off debts since being employed in 2017, and substantially ignored his debts until his security eligibility was questioned.

Applicant chose 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 his inability or unwillingness 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, I remain doubtful about Applicant's current reliability, trustworthiness, and good judgment.

Applicant is credited for resolving one account, but he failed to show progress on the others and that continued delinquencies are unlikely to recur. 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 employment history. However, he 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.e, and 1.g – 1.i:	Against Applicant
Subparagraph 1.f:	For 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