



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



In the matter of:)	
)	
)	ISCR Case No. 21-00715
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric C. Price, 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 28, 2020. On April 26, 2021, 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 May 27, 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 July 8, 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 15, 2021, but did not submit a reply. The case was assigned to me on October 6, 2021. Government Exhibits (GE) 1 through 7 are admitted into evidence without objection.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor since May 2019. Applicant attended high school from 1998 to 2000, but did not graduate. He was laid off from his previous employer in November 2018 and remained unemployed until May 2019. Applicant is unmarried and has no children. He has never held a security clearance.

The SOR alleges under Guideline F that Applicant is delinquent on debts totaling about \$23,688 (SOR ¶¶ 1.a - 1.g). The debts alleged are supported by the Government's credit reports and Applicant's Answer, SCA, and 2020 interview summary. He admitted all of the SOR allegations with explanations. He avers that his current debts are a result of his unemployment, and his past debts that were paid via a consolidation loan resulted from underemployment.

Applicant stated in his Answer that all of the debts alleged except SOR ¶¶ 1.b and 1.c were paid or otherwise resolved. He stated that SOR ¶ 1.b was consolidated under the consolidation loan alleged as SOR ¶ 1.c. With his Answer to the SOR, Applicant provided documentation showing he resolved a payday-loan-collection-account alleged in SOR ¶ 1.a. Department Counsel acknowledged in the FORM that Applicant's credit report shows SOR ¶¶ 1.d and 1.e have been resolved.

Applicant submitted a partial credit report that shows a series of "closed" accounts, with little other relevant information. In addition, he provided a debt relief negotiation agreement from May 2021. In the agreement, Applicant provided authorization for the debt relief company to negotiate resolution of two debts alleged in SOR ¶¶ 1.b and 1.c, comprising a retail credit-card account that was charged off in the approximate amount of \$570; and a consolidation loan that was charged off in the approximate amount of \$12,628. Of note, the debt relief company charged \$2,903 in "negotiation fees," and requires Applicant to submit \$300 monthly payments for 30 months, beginning in May 2021. No evidence of compliance with these terms was submitted.

Applicant has a history of financial delinquencies. In 2017, he applied for and received a debt consolidation loan, totaling \$12,927 at 29.7% interest rate, to be applied toward seven delinquent debts totaling \$13,163. Applicant defaulted on repaying this loan in 2018, and it has since been charged off. The defaulted loan is alleged in SOR ¶ 1.c and remains unresolved. The record reflects that delinquent debts listed in SOR ¶¶ 1.b, 1.c, 1.f, and 1.g remain unresolved, contrary to Applicant's assertions in his Answer. No recent evidence of Applicant's financial status, credit counseling history, or employment performance was provided.

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 unemployment and underemployment. While his income was likely a significant contributing factor, he has not shown sufficient effort and dedication to resolving the debts. He obtained a

consolidation loan in 2017 to pay off seven delinquent debts, but defaulted on the loan. He now has signed an agreement with a debt relief company, but has not shown sufficient evidence of compliance with the terms of the agreement, or substantial progress toward resolution of the two debts covered by the agreement. Three of the seven SOR debts have been resolved, however four remain unresolved, with the most significant debt for \$12,628, remaining.

Applicant has a long history of financial delinquencies. I am not persuaded that he has 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 off debts since being employed in May 2019, 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, 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 problems 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 good-faith efforts to repay the remaining creditors or otherwise resolve the remaining debts. 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.d, and 1.e:	For Applicant
Subparagraphs 1.b, 1.c, 1.f, and 1.g:	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