



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



In the matter of:)	
)	
)	ISCR Case No. 21-00826
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/22/2021

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 security clearance applications (SCAs) on August 29, 2014, and April 3, 2020. On May 3, 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 19, 2021 (Applicant misdated the Answer as May 19, 1983) (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 10, 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 28, 2021, but did not submit a reply. The case was assigned to me on September 20, 2021. Government Exhibits (GE) 1 through 8 are admitted into evidence without objection.

The Government asked me to consider allegations of criminal misconduct while Applicant was on active duty in the U.S. Marine Corps, in my whole-person analysis. According to GE 9, an FBI rap sheet, two military criminal charges were dismissed in 2013. GE 10 contains various criminal investigative reports and statements. The Exhibits contain information about certain incidents that were not included in the SOR, and Applicant did not have an opportunity to comment on them in his Answer to the SOR (although he could have provided comments had he responded to the FORM). Department Counsel did not present a persuasive case in the FORM for their consideration. Despite Applicant's military disciplinary record, he received honorable discharges from the Army National Guard in 2004 and from the Marine Corps in 2014. I find GEs 9 and 10 discussing alleged criminal misconduct to be irrelevant to this financial case, significantly outdated, and insufficient to prejudice Applicant's propensity for truthfulness and reliability. Therefore, GEs 9 and 10 are not admitted.

Findings of Fact

Applicant is a 38-year-old solutions engineer for a government contractor since November 2019. Applicant attended college but did not attain a degree. He received a correctional officer certification in 2003. He served in the active Army National Guard from 2001 to 2004, and on active duty in the U.S. Marine Corps from 2004 to 2014. He was honorably discharged from both. He married his current spouse in 2018. He was previously married from 2001 to 2004, 2005 to 2010, and from 2010 to 2013. He divorced each time. He has three children. He was last granted a secret security clearance in approximately 2010.

The SOR alleges Applicant has four delinquent debts that are in collections or charged off, totaling about \$34,000. Applicant admitted debts alleged in SOR ¶¶ 1.a and 1.b, and denied ¶¶ 1.c and 1.d. He noted that while he was in the Marine Corps, he went through a difficult divorce where his spouse obtained several loans allegedly with a power of attorney before his divorce, in which he was responsible. He said he disputed the loans, but they have not been removed from his credit report.

SOR ¶ 1.a alleges a credit union auto loan that has been charged off for approximately \$21,661. The delinquent loan is reflected in Applicant's April and October 2020 credit reports as an individual account in his name for \$27,843, assigned in 2011, with the last account activity occurring on September 2020, and a charged-off balance of \$21,661. No account dispute is noted in the credit reports. Applicant claimed in his Answer that the loan was for a vehicle that he was "required by my Marine Corps command to give to my wife while we were going through the divorce and she decided to call the bank and had it repossessed since she had possession of it." He stated that he disputed the

repossession and refused to pay the loan balance since the credit union took the car against his wishes. He did not present documentary evidence to support his claim of dispute or improper financial practices by his ex-spouse or the credit union.

SOR ¶ 1.b is a credit card account that has been charged off for approximately \$200. Applicant stated in his Answer that the card was for military uniform expenses, but was paid off. He said he contacted the creditor, who cannot find information on the account, and he was unsuccessful in having it removed from his credit report. The account appears on his April 2020 credit report as a charged-off account with a zero balance, but his October 2020 credit report reflects a \$200 balance with the last activity in June 2014. The account is an individual debt in his name. Applicant did not present documentary evidence to support his claim of dispute or payment of the debt.

SOR ¶ 1.c is a loan account that has been transferred to a collection agent for approximately \$2,146. Applicant claimed that his ex-spouse obtained the loan in his name before the divorce, and he disputed the account. He refuses to pay the debt because he did not receive the loan proceeds, and expects it to be removed from his credit report. The debt is not reflected on his October 2020 credit report, but is present on his April 2020 credit report as a debt that was placed for collection with the last activity date of April 2020 and a balance of \$2,146. Applicant did not present documentary evidence to support his claim of dispute or financial irregularities.

SOR ¶ 1.d is charged-off loan for approximately \$10,420. Applicant stated that his ex-spouse obtained the loan in his name before the divorce. He stated it was sent to collections as a result of his dispute of the account, and had not been removed from his credit report. He refuses to pay the debt because he did not receive the loan proceeds. The debt is not reflected on his October 2020 credit report, but is present on his April 2020 credit report as a debt that was charged off with the last activity date of March 2020 and a balance of \$10,420. Applicant did not present documentary evidence to support his claim of dispute or financial irregularities.

No recent evidence of Applicant's current financial status, debt disputes, or credit counseling was provided for the record. He noted in his Answer that he recently purchased a home, and resolved credit matters to do so. His spouse is an employed professional, and he said they live within their means and have not missed a credit card payment in years.

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 most of his debts as a result of his contentious relationship with his ex-spouse. The debts are long-standing, remain continued concerns, and impugn his financial status. Although his financial condition may have been compromised by her actions, he has not shown sufficient evidence to support improper or unauthorized financial activity, or efforts to resolve the debts. He may have disputed them, but the record does not reflect that or other actions to resolve the financial allegations or contest them. Based on the record presented, I am not persuaded that these debts have been resolved or do not continue to present financial security concerns. I also have not been presented with evidence showing Applicant's current financial status, ability to pay debts and expenses in a timely manner, and any financial counseling to

assist him in not repeating past financial mistakes. He may have turned his financial life around; but insufficient evidence of financial responsibility was presented. As a result, and without more documentary evidence, I remain doubtful about Applicant's current reliability, trustworthiness, and good judgment. 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 and difficulties with his marital relationships. However, he has not provided sufficient evidence to show the resolution of the 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:	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