



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



In the matter of:)	
)	
)	ISCR Case No. 19-02490
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Department Counsel
For Applicant: *Pro se*

03/17/2021

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 February 10, 2017. On September 27, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). The DOD 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 on June 8, 2017.

Applicant responded to the SOR on October 8, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2020. Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 12, 2020, scheduling the hearing in Applicant’s metropolitan area for March 26, 2020. The

hearing was canceled due to COVID-19 related cessation of travel and courtroom availability.

DOHA issued a notice of video teleconference on November 5, 2020, and the hearing was convened on November 17, 2020. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant testified but had no exhibits to submit. The record was held open until November 27, 2020, to permit Applicant to submit documentary evidence. Applicant did not submit additional documents. DOHA received the hearing transcript on December 14, 2020.

Findings of Fact

Applicant is a 30-year-old warehouse technician for a defense contractor, employed since November 2016, but he has been on furlough since September 30, 2020, pending resolution of his security eligibility. Applicant refereed high school basketball games part time from November 2019 to February 2020. He also worked as a full-time security guard from 2013 to 2016, when his five-year-old niece accessed his unsecured firearm and discharged a round into his leg. He missed work as a result and incurred some of the medical debts listed in the SOR. Applicant graduated from high school in 2009, and earned an associate's degree in 2013. He is not married and has no children. This is Applicant's first application for security eligibility.

The SOR alleges under Guideline F that Applicant owes approximately \$51,709 in 12 delinquent debts. His debts include a charged-off car loan (SOR ¶ 1.a), a delinquent education loan (SOR ¶ 1.b), nine delinquent medical debts (SOR ¶¶ 1.c – 1.k), and a student apartment debt (SOR ¶ 1.l). Applicant admitted SOR ¶¶ 1.a, 1.h, 1.k, and 1.l. The remaining debts were denied with the explanations that the student loan was in good standing, the denied medical debts were removed from his credit report, or he could not locate records for the accounts.

Applicant testified at the hearing that he purchased a vehicle in 2015, and it was voluntarily repossessed in 2016. (SOR ¶ 1.a) Applicant's mother assisted him with the payments, but she was unable to continue when she became ill and retired. He believes he owes about \$27,000, and has not taken any action to resolve the debt.

Applicant has a student-loan debt (SOR ¶ 1.b) that was rehabilitated in January 2019. He owes approximately \$44,000. He testified that he made payments under the rehabilitation program until February 2020. He stopped payments on his student loans because he claimed that he was not obligated to continue paying due to a Federal COVID-19 student-loan-payment deferral. A Federal student-loan-aid website (<https://studentaid.gov/announcements-events/coronavirus>) advises that as of March 2020, certain Federal education loan debtors may suspend payments through September 2021. It is unclear whether Applicant's loans are included in this advisory. He did not submit clarifying documentation after the hearing despite discussing it at the hearing.

Applicant suffered injuries as a result of a vehicle accident in 2017 and his 2016 gunshot. He incurred medical debts as a result of these accidents. In 2018, he received a \$30,000 settlement for the vehicle accident. He paid \$9,000 in expenses, and used most of the rest to pay living expenses. He has \$3,000 remaining from the settlement. He admitted at the hearing that he has not made any efforts to resolve the medical debts listed in the SOR. (SOR ¶¶ 1.c – 1.k)

Applicant lived in an apartment while attending college. He left the apartment with a debt that was placed into collection for approximately \$3,589. (SOR ¶ 1.l) He has not resolved this debt.

Applicant did not submit documentation to show attempts at resolving, rehabilitating, or paying on any SOR debts. He also claimed in his answer that he no longer owed on debts that were removed from or unlisted in his credit report. He did not provide any credit reports to show that the debts were removed, unlisted, or otherwise resolved. He has not sought financial counseling.

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, testimony, and the documentary evidence in the record are sufficient to establish the 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's history of debt accumulation with no efforts to resolve them shows financial irresponsibility. His financial problems have been longstanding and remain a recent concern. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). Applicant suffered injuries in two accidents, and job losses that likely resulted in an inability to satisfy debts. However, he has not shown a willingness or ability to address them during periods of employment. I am not convinced he has acted responsibly to address his debts except for rehabilitating his student loan debt. The remaining debts have been ignored, apparently hoping that they will be dropped from his credit report.

Applicant has not taken action to address his remaining debts, and he has not sought help from a financial counselor. I am not persuaded that his financial condition is under control or that it will not recur. Clearly, with his furlough status since September 2020, and no other clear income prospects during the COVID economic crisis, it is unlikely that he will be able to resolve his debts any time soon. No mitigating condition fully applies.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), 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. 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 status and past financial difficulties. However, I remain unconvinced of his overall financial responsibility and ability, intent, and desire to meet his financial obligations in the future.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interest of the United States to grant him 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.c – 1.l:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Applicant's application for a security clearance is denied.

Gregg A. Cervi
Administrative Judge