



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



In the matter of:)	
)	
)	ISCR Case No. 20-03021
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2022

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 March 11, 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 April 23, 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 14, 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 8, 2021, and submitted a reply with documents within the time allotted. The case was assigned to me on September 20, 2021. Government Exhibits (GE) 1 through 9 and Applicant's Exhibits (AE) A through D are admitted into evidence without objection.

Findings of Fact

Applicant is 32 years old. He has been employed by a defense contractor as a cyber-intelligence analyst since September 2019. He reported being unemployed from July 2018 to October 2018 when funding for a new job was delayed. He averred in his Answer that he was unemployed for an unknown period between 2008 and 2010, causing him to lose a home to foreclosure, but did not provide details. He was married in 2008, separated in 2016 and divorced in June 2021. He reported having a cohabitant since 2019, which appears to be his current partner. He has three children with whom he shares custody with his former spouse. He completed an associate's degree in 2012, and took additional college courses from 2014 to 2015. He has never held a security clearance.

The SOR alleges 20 delinquent debts that have been either placed for collection or have been charged off, totaling about \$50,000, and a home foreclosure judgment in 2010. In his Answer to the SOR, Applicant admitted SOR ¶¶ 1.c-1.e, 1.k-1.m, and 1.u. He denied SOR ¶¶ 1.a-1.b, 1.f-1.j, and 1.n-1.t, with explanations. The evidence provided in the FORM is reliable and sufficient to support the SOR allegations.

SOR ¶¶ 1.a and 1.b are creditor accounts totaling about \$1,891. Applicant claimed in his Answer that he is in the process of paying off these debts, but he noted that they are no longer active accounts on his credit report. However, both accounts appear on Applicant's January 5, 2021 credit report as accounts in collection. There has been insufficient evidence presented to show that these accounts have been or are likely to be resolved.

SOR ¶¶ 1.c, 1.d, and 1.e are creditor accounts totaling about \$8,841. Applicant noted in his Answer that he is in the process of paying the debts in full. All three accounts appear on Applicant's January 5, 2021 credit report as past-due accounts that have been charged off. There has been insufficient evidence presented to show that these accounts have been or are likely to be resolved.

SOR ¶¶ 1.f-1.j are collection agency accounts totaling about \$5,539. Applicant submitted sufficient documentation to show that these accounts have been resolved.

SOR ¶¶ 1.k and 1.l are bank credit accounts totaling about \$2,738. Applicant claimed in his Answer that he is in the process of paying off these debts, however insufficient documentary evidence of action taken to resolve these debts has been submitted. There has been insufficient evidence presented to show that these accounts have been or are likely to be resolved.

SOR ¶ 1.m is an auto loan totaling about \$27,237. Applicant has shown that he has budgeted to pay the auto loan in monthly installments under an agreement with the creditor. His agreement shows the loan went to a final judgment on February 16, 2021, and he owes \$31,904. Installments were to begin on June 1, 2021, and he was to pay \$500 per month. He claims that he has begun those monthly payments, but did not provide sufficient documentary evidence of payments made. Although Applicant may in fact be paying this debt as he stated, there is insufficient evidence that it is being satisfactorily resolved through a record of regular and consistent monthly payments over a sufficient period of time to show a willingness and intent to complete the plan.

SOR ¶¶ 1.n-1.p, and 1.s are credit accounts and a collection account totaling about \$2,714. Applicant has provided sufficient evidence that these debts have been satisfactorily resolved.

SOR ¶¶ 1.q, 1.r, and 1.t are credit accounts totaling \$1,334. Applicant claimed in his Answer that he is in the process of paying off these debts, however he noted that they are no longer active accounts on his credit report. There has been insufficient evidence presented to show that these accounts have been or are likely to be resolved.

SOR ¶ 1.u is a home foreclosure and final judgment in 2010. Applicant stated that he purchased the home in 2008 just before the recession. He claims he lost his job and was unable to make payments on the mortgage. He has not provided sufficient evidence to show the circumstances of this mortgage default and foreclosure, to include records related to payments and deficiencies on the mortgage, the extent of his unemployment, his financial situation at the time, attempt to resolve the debt under mortgage recovery plans being offered at the time, attempts to sell the home before defaulting, or other measures to avoid foreclosure and judgment.

The record suggests that he generally had not made significant efforts to address his debts until 2020 and 2021, apparently after being interviewed by a government investigator in May 2020. In his personal subject interview from May 2020, Applicant stated that his financial problems began between 2015 and 2018. He separated from his spouse and lost a job. He went from a dual income earning \$80,000 to earning \$48,000 per year. He applied for a loan consolidation in 2017 or 2018, but it was disapproved. Applicant now earns about \$160,000 per year, and has been fully employed since 2010 except for a few months of unemployment from a company job offer not being fulfilled. He stated that he is “attacking his debts.”

Applicant stated that he is following the rules of a nationally recognized money management advisor and accounting for “every cent of each paycheck,” but he provided no indication of formal financial counseling or completion of a program that addresses his unique situation. Additionally, his budget documents do not fully indicate assets, debts, and payments besides recurring expenses and his \$500 allocation apparently toward the auto debt mentioned above. He provided a final judgment of dissolution of marriage, but not the marriage settlement agreement or the family law financial affidavit mentioned in the agreement. He also stated that he fell on hard times while separating from his former

spouse He noted in his SCA that his former spouse refused to continue to pay credit card accounts and they were allowed to fall into a collection status. Of note, Applicant is currently paying on a Mercedes automobile and vacationed in Mexico in 2019.

No recent documentary evidence of Applicant's current financial status, debt disputes, or credit counseling was provided for the record. He noted in his Answer that he and his current partner have used stimulus checks and tax refunds to pay off debts using the "snowball" system from a nationally known financial advisor. They no longer use credit cards and have an emergency fund. He noted that they paid his partner's debts first.

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. His unresolved debts are numerous, long-standing, recent, and continuing financial concerns. Additionally, his overall financial responsibility has been significantly impugned, and his current financial status has not satisfactory accounted for his past behavior.

Although his financial condition may have been compromised by his former spouse's actions, he has not shown sufficient evidence to support improper or unauthorized financial activity, or efforts to resolve his debts over the years. Applicant did not take significant actions to resolve his delinquent debts until after he was interviewed by a government investigator. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) Applicant also has promised to resolve his auto debt through an installment plan, but this debt was reduced to a judgment before he agreed to make payments, and he has not presented a sufficient track record of consistent and reliable payments to persuade me that it will be resolved. Applicant also stated that he would resolve other debts in the future. However, a promise to resolve delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

Applicant stated that he is working on debt resolution by following a well-know financial advisor's plans. This is laudable and may be acceptable in certain situations, however, Applicant has not shown sufficient evidence of his plan of action to address his remaining debts, except for a budget, or that he sought personal financial counseling to address his unique circumstances.

Based on the record presented, I am not persuaded that Applicant's remaining debts will be satisfactorily resolved. I also have not been presented with sufficient evidence showing Applicant's current financial status, ability to pay debts and expenses in a timely manner, and any formal or personal financial counseling to assist him in avoiding future financial mistakes. He may be on the way to turning his financial life around; and he made significant efforts to address some of his debts, 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 to the unresolved debts and his overall financial responsibility.

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 considered Applicant's difficulties with his marital relationship, and financial hardships that resulted. I also evaluated this case under the conditions in which a conditional clearance may be granted.

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor, or to further inquire about financial matters. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

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; 1.k-1.m; 1.q-1.r; 1.t-1.u:	Against Applicant
Subparagraphs 1.f-1.j; 1.n-1.p; 1.s:	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