



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



In the matter of:)	
)	
)	ISCR Case No. 20-02999
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2022

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 February 28, 2018. On April 7, 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 22, 2021 (Ans.), and requested a decision based on the written record without a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government’s written brief with supporting documents, known as the file of relevant material (FORM), was submitted by

Department Counsel on August 25, 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 September 2, 2021. He did not respond to the FORM, object to the Government's exhibits, or submit additional documentary evidence for my consideration. The case was assigned to me on November 9, 2021. Government Exhibits (GE) 1 through 4 are admitted into evidence without objection.

Findings of Fact

Applicant is 41 years old. He has been employed by a defense contractor as a security technician since January 2010. He married in 2003, and separated in August 2017. He is currently in divorce proceedings. He has two children. He earned a bachelor's degree in 2015. He has held a security clearance since 2006.

The SOR alleges 15 delinquent consumer debts, including credit cards, loans, and a repossessed recreational vehicle, totaling about \$115,435. In his Answer to the SOR, Applicant admitted all of the SOR allegations with explanations, but he provided no documentation of their status at that point. The evidence provided in the FORM is reliable and sufficient to support the SOR allegations. His credit reports show many of his delinquent debts arose in 2017 and 2018.

SOR ¶¶ 1.a, 1.b, 1.d – 1.n, allege delinquent accounts charged off or in collections status. Applicant claimed the accounts are disputed with his spouse, and he is working with his attorney and spouse to resolve them. Applicant provided insufficient evidence to show that these accounts have been or are likely to be resolved.

SOR ¶ 1.c alleges a charged-off account for a recreational vehicle that was repossessed. Applicant claimed that he should have been permitted to make his account current before it was sold. He stated that he is working with his attorney and spouse to resolve the debt, but that the creditor has not answered his questions. Applicant provided insufficient evidence to show that these accounts have been or are likely to be resolved.

SOR ¶ 1.o is a small payday loan account in collections. Applicant admits that he owed money "at one point" to the lender, but is not sure about its current status. He intends to call the lender and inquire. Applicant provided insufficient evidence to show that these accounts have been or are likely to be resolved.

Applicant reported in his subject interview to a government investigator that he began to fall behind on his credit payments in June 2017. He had home maintenance issues to address at the time. He separated from his spouse in August 2017, but his spouse did not work full time. He moved out of the family home and lived in hotels using his credit cards for those expenses, which increased his debt. He intended to sell his home and attend financial counseling, but was searching for a reputable company.

Applicant stated that he is aware of his debts although some have been sold to collection companies. He monitors his credit reports and has made some inquiries, but has not received satisfactory replies. In some cases, he has made payments, but they have not been recorded. Although the delinquent accounts are in his name, they were accumulated during their marriage. Applicant expects his spouse to contribute to resolution of the debts, but she has not done so at this point. He hired an attorney to assist him with his divorce, and to attempt to negotiate a settlement agreement with his former spouse. Applicant provided no recent documentary evidence for the record of his current financial status, debt disputes or settlement agreements, or any credit 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 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant claims to have incurred most of his debts during his marriage with his spouse, and says that since his separation, she has been unwilling to contribute toward resolution of the debts. Applicant is unable to resolve them or he has been unable to make significant progress to their resolution.

Applicant's unresolved debts are numerous, long-standing, and a continuing financial concern. Additionally, his overall financial responsibility has been significantly impugned and he has done little to resolve his debts despite knowing of their security significance since he was interviewed in 2018 and despite having a reliable employment history in his current job since January 2020.

Although Applicant's financial condition as a result of the separation may have been compromised by his spouse's current inability or unwillingness to contribute to debt payments, he remains responsible for the debts and has not made significant progress toward resolving them. 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). A promise to resolve debts in the future is not a substitute for a track record of making payments in a timely manner or otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019). Applicant has not shown sufficient evidence of his plan of action to address his debts, despite being over four years since separating from his spouse. Also, there is no evidence that he sought personal financial counseling to address his unique circumstances except for his divorce attorney trying to negotiate a settlement with his spouse.

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 personal financial counseling to assist him in avoiding future financial mistakes. 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 SOR 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.o:	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