



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



In the matter of:)	
)	
)	ISCR Case No. 21-00922
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, 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) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 19, 2019. On June 8, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 July 20, 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 13, 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 August 31, 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 11 are admitted into evidence without objection.

Findings of Fact

Applicant is 45 years old. He has been employed by a defense contractor as an engineering technician since January 2019, and previously worked for the same contractor from 2012 to October 2018. He married in 1996 and divorced in 2010. He has three children. He earned an associate's degree in 2009. He has held a security clearance since 2012.

The SOR alleges 25 delinquent debts, including consumer debts, student loans, credit cards, medical, housing and utility debts, unemployment insurance and traffic court debts, totaling about \$93,000. Under Guideline E, the SOR alleges that Applicant's employer-provided travel credit card was confiscated in 2016 for misuse to pay personal expenses unrelated to employee travel; and that in January 2020, Applicant was charged with robbery, and pleaded guilty to lesser offenses of petty theft and unlawful restraint. In his Answer to the SOR, Applicant admitted all of the SOR allegations with some explanations, but he provided no additional documentary evidence. The evidence provided in the FORM is reliable and sufficient to support the SOR allegations.

In his Answer to the SOR, Applicant stated that a \$330 debt owed for unemployment insurance overpayment was "paid in full" (SOR ¶ 1.o); and that seven traffic court delinquencies (parking tickets) totaling \$810 were also "paid in full" (SOR ¶¶ 1.r – 1.x). No documentary evidence in support of these assertions was provided. He admitted all of the remaining SOR debts without explanations as to their status.

Applicant was interviewed by government investigators in 2012 and 2020. His financial problems predate 2012. In his most recent interview of August 2020, he noted that he was not making any monthly payments on his delinquent debts, although at times he stated his belief that some of his debts may have been satisfied or were too old to collect.

Applicant said his student loan debts were turned over to collections in 2005 due to nonpayment. He did not have a plan to address them. He stated that he neglected to pay on his loans after accruing too much debt in the past 12 years, and that he was "overwhelmed." He has not made payments on other debts, largely due to his divorce, child support obligations, and periods of underemployment and unemployment. Applicant received unemployment insurance benefits in late 2018 or 2019, but was overpaid. He also resorted to several payday loans that became delinquent, and he had not reimbursed

the state employment office because he was too overwhelmed with other finances. He was also unemployed in 2016 for two months. He was evicted from apartments in 2009, 2016, and 2018 after he “had a breakdown and decided to quit employment.” He was unemployed for two months until his employer rehired him. During this time, his car was repossessed.

The 2016 eviction resulted in a judgment and wage garnishment for \$5,500. He used his company travel credit card to pay for his personal expenses, including for a storage unit, car insurance, and other emergency expenses. He claimed there was no company policy on the use of the travel card, and that “many people were doing it, including his supervisor.” He believes he paid the full balance off in 2017.

In January 2020, he reported that he had a dispute with his girlfriend over her alleged infidelity. He forcibly took her cell phone out of her hand and ran away with it. He was arrested and charged with robbery. He pleaded guilty to petty theft and unlawful restraint. He was ordered to attend a domestic violence offender course.

Applicant provided no recent documentary evidence of his current financial status, debt resolutions, or of any credit counseling. He noted in his recent interview that he incurred most of his debts as a result of his divorce and periods of underemployment or unemployment. He stated that he has \$3,000 in a checking account, and a net monthly remainder of \$858 after paying monthly expenses. He supplements his income by selling his plasma.

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 as a result of his divorce and periods of underemployment or unemployment. His 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 show that he is responsible and trustworthy.

Applicant has not shown sufficient evidence of his plan of action to address his debts, despite being divorced since 2010, and employed full time in his current position since 2019. Although he claimed that he satisfied some of the debts, he did not provide evidence in support of his assertions.

Based on the record presented, I am not persuaded that Applicant's debts have been or 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.

Guideline E: Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

The relevant disqualifying conditions under AG ¶16 are:

(c) credible adverse information in several adjudicative issues areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant's admissions and the evidence support a finding of questionable judgment and dishonesty in the misuse of his employer's travel card and the criminal convictions. AG ¶¶ 16(c) and (d) apply.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's conduct, taken as a whole, shows signs of questionable judgment, however his actions appear to be isolated events. The misuse of his employer's travel card is dated, being about six years old and may have arisen from an uncertain company policy or lax enforcement. Applicant claims to have paid the card off, and he no longer has one. AG ¶ 17(c) applies. The dispute with his girlfriend was apparently serious enough for her to call the police, however it did not result in serious consequences, rather Applicant attended a domestic violence course. There is no evidence of a pattern of misconduct related to domestic violence or abuse, and no similar criminal complaints have followed. It appears to have been a unique incident involving a relational dispute that got out of hand, and no evidence was presented to show he has abusive or criminal tendencies. AG ¶ 17(c) and (d) are marginally applicable.

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 Guidelines F and E in my whole-person analysis. I considered Applicant's divorce and history of financial hardships. 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. The Guideline E allegations are mitigated.

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 through 1.y:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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