



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



In the matter of:)	
)	
)	ISCR Case No. 20-02098
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Kenneth M. Roberts, Esq.

07/18/2022

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 27, 2018. On November 21, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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 on June 8, 2017.

Applicant responded to the SOR on December 10, 2020, and requested a hearing before an administrative judge. The case was assigned to me on October 26, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2022, scheduling the hearing for February 2, 2022. The hearing was held via video

teleconference, as scheduled. Government Exhibits (GE) 1 through 7 were admitted into evidence without objection. Applicant testified and he submitted Exhibits (AE) A through U, which were admitted into evidence without objection. DOHA received the hearing transcript on February 11, 2022.

Findings of Fact

Applicant is a 40-year-old heavy equipment mechanic foreman for a defense contractor, employed since 2012. Applicant attended high school, but did not graduate. He married in 2005 and divorced in 2006. He remarried in 2007 and has two children and a stepchild. One child, 13 years old, lives with him, while the other two are adults.

The SOR alleges under Guideline F that Applicant has 14 delinquent debts, including five medical debts, totaling about \$43,798. Applicant admitted all of the allegations with explanations, and submitted documentary evidence with his Answer to the SOR.

Applicant explained in testimony that he fell behind on debts when his spouse fell ill in late 2017 and was unable to work. Due to her condition, she lost her job in late 2017 or early 2018. She started working again part-time in mid-2019, and full-time in early 2020. During that time, Applicant was unable to cover the family's expenses. He met with his facility security officer (FSO) in 2018 and offered to resign because he knew his debts would affect his security eligibility. His FSO instead advised him on ways to mitigate financial concerns. He consulted an attorney with the intent to file bankruptcy, but he was advised to contact his creditors first in an effort to negotiate settlements. His creditors generally cooperated in facilitating settlement of the accounts.

SOR 1.a - Phone creditor collection account for \$3,566 was settled and paid in full in 2021. (AE E)

SOR 1.b - Quick cash collection account for \$2,732 was settled and paid in 2021. (AE F)

SOR 1.c – Credit-card charged-off account for \$777 was paid in August 2020. (AE G)

SOR 1.d - Phone creditor collection account for \$1,018 was settled and paid in full. (AE H)

SOR 1.e - Credit union credit-card account was charged off for \$9,731, and was settled and paid in full in January 2022. (AE I)

SOR 1.f - Credit union credit-card account was charged-off for \$1,286, and was settled and paid in full in January 2022. (AE J)

SOR 1.g - Furniture account was charged off for \$4,839, and was settled and paid in September 2021. (AE K)

SOR 1.h - Vehicle lease account was charged off for \$16,615. Applicant contacted the creditor and negotiated a settlement of \$11,000 to be paid in \$250 monthly installments; however, the company refused to provide the settlement terms in writing or submit a change to his credit report. His attorney spoke with the creditor and relayed Applicant's desire to settle and pay the account. The creditor agreed to refer the matter to their collection agent to work with Applicant. (AE L)

SOR 1.i – Credit-card collection account for \$2,319 was settled and paid in full in March 2020. (AE M)

SOR 1.j – 1.n – Five medical accounts totaling \$915 were settled and paid in full by August 2021. (AE N, O-R)

Some of Applicant's debts predated 2012 because his work hours and income fluctuated while working in union positions. His pay has increased since 2012 from \$40 to \$56 per hour. He was also involved in his father's trucking business that was dissolved in 2014 or 2015. Applicant's spouse handled financial matters for the family and Applicant became aware of the extent of his financial problems when he received a call from a collection agent in 2018. He confronted his spouse and learned that she was juggling finances to try to make ends meet, and was afraid he would divorce her if he found out.

Applicant has rented his home since 2013 and currently has about \$1,500 in checking/savings accounts. He is using three credit monitoring services and purchased short and long-term disability insurance to cover them in case of future job losses. He borrowed money from his parents to help him satisfy some of the debts and owes them \$3,000. He received financial counseling in January 2022 as part of his pre-bankruptcy filing. He submitted a personal financial statement showing he has about \$400 in net monthly remainder. (AE B)

Applicant provided three supporting character letters. (AE S-U) One was from a retired military veteran and military contractor with a top secret clearance, who advised Applicant on how to settle debts. He said Applicant took his advice and he described Applicant as honest and hard working. Applicant's coworker described him as hardworking and trustworthy, and a former neighbor described him as moral person with integrity.

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

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 the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 has a history of incurring delinquent debts that were exacerbated by inconsistent employment, and his spouse's medical problems, and the resulting loss of income. Once he became aware of collection efforts against him in 2018, he confronted his spouse and learned of the extent of their financial problems. He immediately informed his FSO and sought help from more experienced coworkers and an attorney. He has

taken substantial action to resolve most of his debts, and the one remaining debt is in the process of settlement should the creditor honor their agreement to work with him. He has regained control of his finances and resolved most of his debts through diligent work and tenacious efforts. Applicant has used the resources available to him to resolve accounts, has obtained financial counseling, and has a current budget with a positive net monthly remainder. I find that Appellant's financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. He has overcome his financial problems and additional delinquencies are unlikely to recur. AG ¶¶ 20(b), (c), and (d) apply.

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 education, employment history, spouse's medical condition, and efforts to resolve debts. Applicant has shown a recent history of ability, intent, and desire to meet his financial obligations in the future.

Accordingly, I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a – 1.n:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

Gregg A. Cervi
Administrative Judge