



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



In the matter of:)	
)	
)	ISCR Case No. 14-02579
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephane C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on February 8, 2013. On July 22, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.¹ The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

¹ Item 1.

Applicant responded to the SOR on September 5, 2014,² and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on May 5, 2015.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 28, 2015. He did not submit a response to the FORM, nor did he assert any objections to the Government's evidence.

The case was assigned to me on February 23, 2016. The Government's exhibits included in the FORM (Items 1 to 7) are admitted into evidence.

Findings of Fact

The SOR alleges five delinquent debts totaling approximately \$56,771, including delinquencies for unpaid child support (SOR ¶ 1.a - \$674 and ¶ 1.e - \$22) and credit cards (SOR ¶ 1.b - 1.d totaling approximately \$56,075). Applicant admitted all the allegations in the SOR,³ and provided an explanation for his financial difficulties. The evidence submitted with the FORM substantiates the SOR allegations.⁴

Applicant is 50 years old and is employed by a defense contractor in the information technology industry since 1986. He has not served in the military but has held security clearances in the past. He earned an associate's degree in 1988. He is currently married since 2008, and was previously married in 1988 and divorced in 2001. On his February 2013 security clearance application (SCA), Applicant reported that he has two children (22 and 19) and two stepchildren (30 and 23).⁵

Applicant stated in his Answer to the SOR that financial delinquencies resulted from his divorce in 2001, where he incurred additional expenses for attorney fees and child support, which were largely paid through the use of credit cards. When he was unable to meet debts and expenses, he took out loans against his 401k retirement plan. When repayment of the loans became burdensome, he again resorted to credit cards. Applicant became overwhelmed with financial obligations but was afraid to declare bankruptcy for fear of losing his security clearance. He made every effort to prolong his financial issues and admitted he was irresponsible for failing to address his debts in a timely manner. He asserted that he lives a modest lifestyle and does not own

² Item 2.

³ Items 1, 2.

⁴ Items 2 – 7.

⁵ Item 4.

substantial assets. He plans to contact an attorney to explore options for filing bankruptcy.⁶

Applicant admitted all of the SOR allegations, but noted that his child-support obligations in SOR ¶ 1.a and 1.e, which appear to be the same account, were satisfied through a payment in September 2014.⁷ His credit bureau report from May 2015 shows his child-support account is currently “paid as agreed” and in good standing.⁸

In his SCA, Applicant disclosed that he was offered settlements for the credit card debts alleged in SOR ¶ 1.b and 1.c, but was unable to pay the required installments because of insufficient funds.⁹

No documentary evidence was submitted with Applicant’s Answer or in response to this FORM to show substantial efforts to address the SOR debts. Additionally, he did not submit evidence of credit counseling or budget education. I was unable to evaluate his credibility and demeanor since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The

⁶ Item 2.

⁷ Items 2 and 5.

⁸ Item 5.

⁹ Item 4.

applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.¹⁰ In *Department of Navy v. Egan*¹¹, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹²

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹³

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive and classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive or classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially

¹⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

¹¹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹² *Egan*, 484 U.S. at 531.

¹³ *Egan*, 484 U.S. at 531.

overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and,
- (b) a history of not meeting financial obligations.

Applicant has long-standing delinquent debts that he is unable or unwilling to resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been working full time with his current employer since 1986. After sustaining increased expenses and debts from his divorce in 2001, he progressively fell behind on financial obligations because of an inability to pay. He resorted to use of loans against his retirement account to pay credit cards, but eventually was unable to make all required payments on his debts, resulting in delinquencies. He avoided addressing his financial problems through bankruptcy because of fear of losing his security clearance. Applicant has made payments to correct arrearages in his child-support obligations, which are confirmed by his most recent credit report. All other debts alleged in the SOR remain unresolved. Applicant intends to explore the resolution of his debts through filing bankruptcy, but has not submitted evidence of such action. Finally, he has not offered evidence of credit counseling or budget education.

Based on the evidence presented, I find that the child-support debts alleged in SOR ¶ 1.a and 1.e have been mitigated. The remaining debts, which comprise the largest delinquencies, have not been sufficiently addressed to warrant application of full mitigation credit. The remaining unresolved debts leave me with doubts about Applicant's overall ability or willingness to face his financial responsibilities.

There is insufficient evidence for a determination that Applicant's remaining financial obligations will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to resolve his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable except with respect to SOR ¶ 1.a. and 1.e as previously discussed.

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(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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 and 1.e:	For Applicant
Subparagraphs 1.b – 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge