



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



In the matter of:)
)
) ISCR Case No. 15-00019
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2017

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)¹ on July 1, 2014. On October 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.²

¹ Also known as a Security Clearance Application (SCA).

² 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 16, 2015, 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 February 22, 2016.

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 February 26, 2016, but did not submit a response. The case was assigned to me on December 12, 2016. The Government's exhibits included in the FORM (Items 1 to 5) are admitted into evidence.

Findings of Fact

The SOR alleges Applicant is indebted on 17 delinquent debts totaling approximately \$19,000. He is 30 years old and has been employed by a defense contractor since 2014. He also works as an aircraft technician in the Air National Guard. He was unemployed from December 2011 to December 2012.³ He served in the Army National Guard from 2012 to approximately 2015, where he noted in his Answer that he transferred into the Air National Guard.⁴ He has been married since 2012 and has four children. He completed high school with a GED diploma in 2011.

Applicant admitted SOR allegations ¶¶ 1.a – 1.e, and ¶¶ 1.h – 1.p. He denied ¶¶ 1.f – 1.g (duplicates), 1.h and 1.i (duplicates), and 1.q. He provided explanations with each of his answers. He generally noted that he intended to contact his creditors in the admitted allegations to arrange payment plans or to pay the debts in full. He noted that the child support and state tax debt allegations he denied (¶¶ 1.f, 1.g, and 1.q), were satisfied with his 2014 income tax refund and that he was going to dispute the collections for an apartment lease termination (¶¶ 1.h and 1.i). The resolved debts no longer appear on his credit report.

The record evidence and Applicant's Answer support the SOR allegations. There is sufficient evidence to support Applicant's contention that ¶¶ 1.g and 1.i are duplicates, and ¶¶ 1.f and 1.q have been paid. No evidence has been submitted showing any of the remaining debts have been satisfied.

In Applicant's 2015 Answer to the SOR, he requested additional time to resolve debts or arrange payment plans. He noted that he accumulated debts because of his previous debt-to-income ratio, but that has been rectified with his current employment. He previously worked largely minimum-wage jobs or had periods of unemployment, and could not generate sufficient income to meet the needs of his family. He had to choose between paying rent and utilities against paying other debts. He believes he is on a better

³ Applicant's dates of employment were inconsistent between his SF 86 and his Personal Subject Interview (PSI).

⁴ Item 1, SF 86 and Answer to the SOR.

financial path in his current position. However, he provided no documentation of his current financial status, budget, financial counseling, or other mitigation efforts.

Law and 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 applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.⁵ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁶

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*, EO 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.⁷

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity,

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁷ *Egan*, 484 U.S. at 531.

consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of 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 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 incurred long-standing delinquent debts that largely remain unresolved. The evidence is sufficient to raise the above disqualifying conditions. I find that SOR ¶¶ 1.g and 1.i are duplicate allegations and that SOR ¶¶ 1.f and 1.q have been resolved.

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;

(d) the individual initiated 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 allowed his debts to remain unresolved for many years before they became a security concern. Although he suffered from periods of unemployment or underemployment, he has been steadily employed since 2014 in a position that he claims is financially superior to his past jobs. He is also employed part-time in the Air National Guard.

Beside the duplicate allegations and paid debts already discussed, the remaining SOR debts remain unresolved and there is no evidence of substantial efforts made toward their resolution. His financial issues have been long-standing and remain recent and ongoing. No credit counseling or budget education has occurred. Applicant has not acted responsibly under the circumstances to resolve his debts. His overall financial solvency remains a concern, and his lack of financial responsibility casts doubt on his current reliability, trustworthiness, and good judgment. His efforts to date have been inadequate to demonstrate that his financial circumstances are under control or that he is willing and able to resolve his delinquent debts and meet his future financial obligations. No mitigation is appropriate.

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 evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Applicant has not provided evidence of resolution of the debts listed in the SOR despite the opportunities and time given to do so. Although he claims his overall financial condition has improved, he did not follow through with documentary evidence in support of his claim or evidence of resolution of any of the SOR debts. Overall, the record leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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.h, and 1.j – 1.p:	Against Applicant
Subparagraphs 1.f, 1.g, 1.i, and 1.q:	For 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