



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00300

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

11/07/2016

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 August 13, 2012. On August 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.¹

Applicant answered the SOR on September 23, 2015, and included letters of explanation for two allegations. He elected to have the case decided on the written

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.

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 January 29, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections to the proposed evidence, and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 3, 2016, but did not submit a response or object to the Government's evidence. The case was assigned to me on September 1, 2016. The Government's exhibits included in the FORM (Items 1 to 5) are admitted into evidence.

Findings of Fact

The SOR alleges three delinquent debts, totaling approximately \$385,816. The allegations include a collections account, a past-due home equity line of credit, and a home foreclosure. Applicant denied the SOR allegations and provided explanations for his mortgage and line of credit debts. The evidence submitted with the FORM substantiates the SOR allegations.

Applicant is 56 years old and employed as a mechanic by a defense contractor since 2006. He currently holds a DOD security clearance. He married in 1979, and separated in March 2012 when his spouse filed for divorce.² He has four adult children.

SOR ¶ 1.a alleges Applicant owes \$1,419 on a collection account. Applicant was notified of the debt during his personal subject interview (PSI) by an Office of Personnel Management investigator in October 2012. He indicated then that he would investigate the debt. To date, Applicant has not provided information to clarify to status of the debt.

SOR ¶ 1.b alleges Applicant owes on a charged-off credit union home equity line of credit for \$36,774. SOR ¶ 1.c alleges a foreclosed mortgage debt for \$347,623. Applicant claimed in his Answer that after his spouse filed for divorce, he became responsible for paying the mortgage and the home equity line of credit, but he was unable to afford the payments. He negotiated a short sale of his home, and claimed that the mortgage lender and line of credit lender approved, but his spouse did not cooperate and the deal was lost. The home was foreclosed³ and he defaulted on the home equity line of credit. He also claimed in his Answer that the line of credit lender called him to inquire why he was making payments since the account was charged off. He did not submit further explanation or documentary support for this contention.

Applicant's credit bureau report (CBR) from December 2013 (GE 5) shows the date of last activity on the mortgage was August 2011, which predated his marital separation by seven months. Of note, his CBR of October 2012 also shows a mortgage account by another lender or loan-servicing agent as 150 days delinquent as of July

² The record does not indicate if and when the divorce was finalized. GE 2.

³ GE 5 shows the mortgage foreclosure occurred in about March 2013.

2012. The most current CBR shows a zero balance owed on the foreclosed mortgage account, and \$36,774 balance owed on the charged-off home equity line of credit account.⁴

No additional information was provided to show the status of his divorce, the financial obligations that ensued, his efforts to resolve his debts, current financial status, or ability to meet future financial obligations. Additionally, there is no evidence of credit counseling or budgeting assistance.

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 In *Department of Navy v. Egan*,⁶ the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁷

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

⁴ GE 5.

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

⁶ *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).

⁷ *Egan*, 484 U.S. at 531.

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.⁸

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 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,
- (c) a history of not meeting financial obligations.

Applicant has long-standing, unresolved delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

⁸ *Egan*, 484 U.S. at 531.

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.

None of the mitigating conditions are fully applicable. Applicant has been working full time with his current employer since 2006. Although his separation and divorce proceedings may raise a condition largely beyond his control, he did not provide evidence that he acted responsibly under the circumstances. He did not provide documentary evidence to show what portion of the household income was attributable to his spouse before the separation, and the status of his final financial responsibilities after the separation. There is no documentary evidence showing what efforts were taken to address his debts including payment history, evidence of renegotiation of terms, short sale, forgiveness of debt, or other responsible efforts at resolution. Additionally, there is no evidence of financial counseling or a showing of his current financial condition so that I can evaluate the likelihood of financial responsibility going forward.

There is insufficient evidence to determine that Applicant's financial obligations have been or will be resolved. His financial issues are recent and ongoing. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to resolve his debts. The foreclosure appears to have extinguished any collection efforts on the mortgage in his state, since his CBR shows a zero balance. However, the totality of the remaining unresolved delinquent debts leaves me with doubts about Applicant's overall financial condition, and his ability or willingness to address his

financial responsibilities. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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).

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 Applicant's Answer and 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.b:	Against Applicant
Subparagraph 1.c:	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