



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



In the matter of:

ISCR Case No. 15-00706

Applicant for Security Clearance

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

09/09/2016

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)¹ on February 10, 2014. On August 28, 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 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 September 22, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2016, scheduling the hearing for June 8, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Exhibits (AE) A through C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 16, 2016. The record was held open for Applicant to submit additional information. He submitted AE D through G, which were admitted without objection.

Findings of Fact

The SOR alleges Applicant is indebted on 21 delinquent debts totaling approximately \$15,000. Applicant admitted all but six SOR allegations, and provided some explanations with his answers.

Applicant is 38 years old and is employed as a computer technician for a defense contractor since 2014. He suffered a period of unemployment between September 2013 and March 2014. He is not married and has one child of whom he took custody in August 2014 while she was in high school. She recently graduated and he has taken on the responsibility to assist her and his grandchild who resides with him. He was awarded a bachelor's degree in 2000, and has held a security clearance since 2001.

The SOR alleges 21 delinquent debts, which range in date to 2008. Applicant's actions with respect to the SOR allegations and the current status are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Child Support	Paid (AE A and B)	Resolved
1.b Phone Utility	Claims disputed by debt resolution co.	No documented resolution provided
1.c Cable Utility	Claims payoff plan arranged	No documented resolution provided
1.d Phone Utility	Claims disputed with creditor and credit bureaus	No documented resolution provided
1.e Medical	Not paid	No resolution

1.f Medical	Not paid	No resolution
1.g Collection for phone utility	Claims disputed by debt resolution co.	No documented resolution provided
1.h Medical	Claims should have been settled via victim restitution fund/disputed by debt resolution co.	No documented resolution provided
1.i Collection for insurance debt	Not paid	No resolution
1.j Collection for insurance debt	Not paid	No resolution
1.k Collection account	Claims disputed by debt resolution co.	No documented resolution provided
1.l State motor vehicle collection account	Claims paid – no record of current debt owed	No documented resolution provided
1.m Medical	Not paid	No resolution
1.n City collection	Claims paid	No documented resolution provided
1.o City collection	Claims paid	No documented resolution provided
1.p City collection	Claims paid	No documented resolution provided
1.q Medical	Claims paid	No documented resolution provided
1.r Renters insurance	Not paid – intend to pay by July 15, 2016.	No documented resolution provided

1.s Medical	Claims should have been settled via victim restitution fund/disputed by debt resolution co.	No documented resolution provided
1.t County judgment	Claims should have been settled via victim restitution fund/disputed by debt resolution co. App claims debt belongs to co-offender and App relieved of responsibility	(AE G shows joint default judgment against App) No final documented resolution provided to show App relieved of responsibility
1.u Judgment account	Paid (AE C)	Resolved

Applicant testified that he was not current on his federal and state tax returns because his accountant files them every two years, however in post-hearing submissions, Applicant asserted that 2013 and 2014 tax returns have since been filed. Additionally, he provided documentation from a credit repair company, from December 2015, showing they disputed three accounts and requested account validations on three accounts; however no evidence was submitted showing responses or final resolution of the accounts.

Applicant has approximately \$200 in savings, \$11,000 in a 401k retirement plan on which he is repaying a loan, and approximately \$200 to \$400 per month in discretionary funds remaining after paying monthly expenses.

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.³ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴

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.⁵

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

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ *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).

⁵ *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 incurred long-standing delinquent debts which have largely gone unresolved. 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 allowed his debts to remain unresolved for many years before they became a security concern. Although he suffered a period of unemployment from September 2013 to March 2014, he has been steadily employed since and his delinquent debts date to 2008. He has taken some action toward challenging some collection accounts and paid two others. He has not shown a good faith effort to resolve the remaining debts or to establish that he is not responsible for certain debts. He has not established a financial track record to show similar issues are unlikely to recur. His financial issues have been longstanding and remain recent and ongoing. Although he has shown that he used a debt resolution company in 2015, no evidence of specific financial counseling or continued use of the company to resolve debts has been provided. Mitigating conditions ¶¶ 20(c) and (d) partially apply, but Applicant's efforts have not been proven through documentary evidence of follow-up action. His overall

financial irresponsibility and unwillingness to comply with rules and regulations remain a concern, and his actions cast doubt on his current reliability, trustworthiness, and good judgment. He has exhibited a long-term *laissez faire* attitude toward his financial responsibilities and showed little effort to resolve the debts until they became a security clearance issue. His efforts so far have been inadequate to demonstrate that his financial circumstances are under control or that he is willing and able to meet his financial obligations, past and future.

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 proven that two debts have been resolved. Although he claims to have made progress on others or asserted disputes, he did not follow through with evidence of payments or successful disputes. 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
Subparagraph 1.a:	For Applicant

Subparagraph 1.b – t:

Against Applicant

Subparagraph 1.u:

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