



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



In the matter of:

ISCR Case No. 15-02753

Applicant for Security Clearance

Appearances

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

09/12/2016

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 July 2, 2014. On November 19, 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 December 1, 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 12, 2016, scheduling the hearing for June 9, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 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 17, 2016. The record was held open for Applicant to submit additional information. He submitted AE D through F, which were admitted without objection.

Findings of Fact

The SOR alleges Applicant is indebted on 12 delinquent debts totaling approximately \$33,773. Applicant admitted all but one SOR allegation regarding arrears owed for child support, and provided explanations with his answers. The evidence supports the SOR allegations.

Applicant is 42 years old and is employed as an engineering technician and quality control inspector for a defense contractor since 2013. He suffered a period of unemployment between 2004 and 2008 while he was on long-term disability for a back injury. He returned to his profession in 2008. He has had two previous divorces, 2002 and 2012, which impacted his financial situation. He has lived with his girlfriend since 2013. He has four children between the ages of 18 and 24. He has held a security clearance since 2002.

The SOR alleges 12 delinquent debts, some of which date back to 2009. Applicant's actions with respect to the SOR allegations and the current status are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Judgment \$2,795	Testified that account paid. No documentary evidence of payment.	Not resolved
1.b Judgment \$7,280	Judgment satisfied. AE A and B.	Resolved
1.c Collection \$120	Paid. AE C.	Resolved

1.d Cable service collection \$836	Testified that account paid. Checked with provider who could not find an open account. No evidence of payment provided.	Not resolved
1.e Medical \$132	No resolution.	Not resolved
1.f Collection agency account \$1,786	Auto payment plan arranged for July – November 2016. AE E.	Resolved with payment plan.
1.g Child support arrears \$517	Unpaid medical bill. Paid via wage garnishment. AE D.	Resolved
1.h Charged-off bank debt \$4,995	No resolution.	Not resolved
1.i Charged-off bank debt \$11,508	Testified that personal loan that Applicant could not pay. Claims rec'd IRS Form 1099 (Cancellation of debt). No documentary evidence provided.	Not resolved
1.j Past-due credit card debt \$1,704	Testified that he paid via installment agreement. Provided AE F but shows as of June 2016, agreement to settle account – no proof of payment.	Not resolved
1.k Charged-off credit card debt \$1,100	Submitted inconclusive payment email that does not correspond with the account number or amount owed.	Not resolved
1.l Charged-off credit card debt \$1,000	Submitted inconclusive payment email that does not correspond with the account number or amount owed.	Not resolved

Applicant has approximately \$1,900 in savings; \$11,000 in a 401k retirement plan; and \$850 to \$1,300 per month in discretionary funds remaining after paying monthly expenses. In 2012, he borrowed money from his 401k account to take his family on a cruise. In 2014, Applicant consulted with a bankruptcy attorney, but decided

not to file. Applicant has not sought financial counseling or assistance with debt reduction.

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

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.

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 Exec. Or. (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 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 and divorce that contributed to his financial problems, he has been steadily employed since 2008 and he has resolved only four delinquent debts. He has not shown evidence of a good-faith effort to resolve the remaining debts. He has not established a financial track record to show similar issues are unlikely to recur. His financial issues have been long standing and remain recent and ongoing and there is no evidence of financial counseling or use of a professional to resolve debts. Mitigating condition ¶ 20(d) is applicable to SOR ¶¶ 1.b, c, f and g. Any other efforts to resolve debts have not been proven through documentary evidence. His overall financial responsibility and willingness to comply with rules and regulations remain a concern, and his financial condition casts doubt on his current reliability, trustworthiness, and good judgment. 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 past financial obligations.

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 four debts have been resolved. Although he claims to have made progress on some others, he did not follow through with evidence of payments or successful resolution. 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, d, e, h - l:	Against Applicant
Subparagraphs 1.b, c, f and g:	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