



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



In the matter of:)
)
) ISCR Case No. 15-03991
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

07/28/2017

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 22, 2014. On November 21, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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. The Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD 4) on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 AGs apply to all adjudicative decisions issued on or after June 8, 2017. My decision is based on the guidelines in SEAD 4, referred to in this decision as "AG." The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on January 29, 2016, 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 August 12, 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 September 8, 2016. He submitted a written response and a credit report in response to the FORM. The Government's exhibits included in the FORM (Items 1 to 5), and the Applicant's exhibits (AE) collectively marked as AE A, are admitted into evidence. The case was assigned to me on May 19, 2017.

Findings of Fact

Applicant is a 66-year-old truck driver employed by a defense contractor since 1981. He was married in 2005 and does not have children. He has held a security clearance since 2004. He reported several delinquent credit card accounts and a time-share in default.

The SOR alleges consumer credit and medical debts totaling about \$77,674. In his answer to the SOR, Applicant denied five medical accounts and a small consumer account. He admitted the large credit card accounts and one he claimed to be in a repayment status. No other documentation was provided with his answer. In response to the FORM, he claimed to have payment arrangements for a small collection account and one of the credit card accounts. He noted that he paid two vehicle loans, and a bank account, but did not provide evidence of such payments except for a credit report, dated September 8, 2016. He also claimed to be unable to resolve three large credit card accounts and a collection agency account because the creditors would not accept the amount he was offering to pay.

The credit report he provided shows four significant credit card accounts still in collection or charged off; one of the vehicle loans that Applicant claimed was resolved was actually transferred to collection (SOR ¶ 1.c) and remains unresolved; and the other vehicle loan appears to be paid (SOR ¶ 1.g). Applicant did not show that the medical debts have been resolved or that other debts that he claimed are in payment plans, have been or are being resolved.

Since Applicant elected to have this case decided on the written record in lieu of a hearing, I was unable to further inquire into these allegations, or evaluate his demeanor or credibility in response to questions about his claims of debt resolution and current financial status.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to

“control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-

20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” Egan, 484 U.S. at 531; see AG ¶ 1(d).

Analysis

Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant’s admissions and the documentary evidence in the case file are sufficient to establish the disqualifying conditions.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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's delinquent debts are recent, numerous, and there is insufficient evidence to determine that they were incurred under circumstances making them unlikely to recur. He asserts that he has resolved some of the debts through payments or installment plans, but he did not provide sufficient evidence to support his assertions. Even if he was able to show resolution of the debts as he claimed, he continues to have significant unresolved delinquent accounts. Additionally, he did not show how his financial condition became so distressed as to acquire significant delinquent debts, nor did he show adequate efforts to resolve them, given his long work history. He presented no evidence showing his current financial condition or that he sought financial counseling. His financial situation is not under control and his history of incurring substantial delinquent debt raise serious questions about his judgment and willingness to comply with rules and regulations. Overall, no mitigating conditions apply.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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(d). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

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 my whole-person analysis. Applicant has not shown how he became financially distressed, that he has adequately addressed his continued delinquent accounts, and that he is now financially stable.

Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to continue his eligibility for access to classified information.

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.f; 1.h – 1.l:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge