



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



In the matter of:)
)
) ISCR Case No. 15-05231
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

11/18/2016

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 October 21, 2014. On February 1, 2016, 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 February 24, 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 March 16, 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 March 23, 2016, and submitted documentation on March 25 and July 13, 2016, admitted as Applicant's Exhibits (AE) A and B, respectively. He did not assert any objections 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 Applicant is indebted on nine delinquent debts totaling approximately \$20,671. He is 46 years old and has been employed as a management analyst for a defense contractor since 2014. He has been consistently employed in full-time positions since 2001. He is unmarried but lives with a disabled cohabitant to whom he is a caregiver.

Applicant admitted SOR allegations ¶¶ 1.a – 1.f, and denied ¶¶ 1.g – 1.i. He provided explanations with each of his answers. His actions with respect to the SOR allegations and the current status of the debts are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a. Vehicle loan for \$5,121	Applicant requested a payment plan. Creditor suggested equal payments over 2 years.	No documentary evidence of payments on plan were provided. Not resolved.
1.b. Furniture loan for \$5,109	Creditor refused to offer payment plan. Requested payment in full.	No documentary evidence of payments or other resolution. Not resolved.
1.c. Vehicle loan for \$1,248	Applicant offered payment plan. Creditor suggested payment over 2 years.	No documentary evidence of payments on plan provided. Not resolved.
1.d. Bank credit card for \$625	Contract with creditor showed account charged off with no active collection.	No documentary evidence of attempts to resolve, previous payments, etc. Not resolved.

1.e. Collection on credit card for \$3,987	Contact with collection agent showed account closed per state statute of limitations.	No evidence of resolution of debt or previous account payments. No documentary evidence showing collection agent status. Not resolved.
1.f. Collection on credit card for \$3,709	Collection agent said account sold to collection agent in SOR 1.e. May be duplicate.	No evidence of resolution of debt or previous account payments. No documentary evidence showing account sold, duplicate, or with new collection agent. Not resolved.
1.g. Collection account \$310	Negotiated settlement and paid.	Resolved
1.h. Collection account \$310	Negotiated settlement and paid.	Resolved
1.i. Collection account for \$252	Paid	Resolved

Applicant diligently listed his debts in his SCA, and noted they became delinquent in or about 2010. However, he stated in his Answer that his financial difficulties began in late 2008 to early 2009 when the economy impacted his income. He became a caregiver for someone on disability in 2004.

In late 2010, he worked two jobs³ (one part-time) but missed a total of four weeks of work after suffering injuries to his hand and knee, from an auto accident. He was treated for a back injury for six months after the accident, but continued to work both jobs. Since he had to travel for his full-time job, he was unable to keep the part-time job after 2011. As a result, he was unable to make payments on his mortgage and other debts. His home was foreclosed and his car was repossessed. He had no savings and was struggling to manage his finances. He was forced to leave a rented home and live in two rented storage sheds with his cohabitant for three months. The sheds had no running water or electricity. He eventually left the sheds, but unknown to him, he remained responsible for another month's rent. He now believes he is getting "breathing room" to pay his debts, but his duties as a caregiver and cost of living have been financially challenging.

³ The full-time job lasted from September 2010 – June 2013, while the part-time job lasted from September 2010 – March 2011.

Of note, Applicant listed cruises and tourist trips to Mexico, Jamaica, and the Cayman Islands each year from 2007 – 2012. He has not obtained credit counseling or budgeting education.

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.⁴ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁵

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.⁶

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ *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).

⁶ *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 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. 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 job disruption and underemployment in or about 2010 to 2011, he has been steadily employed in full-time positions since 2001, and in his current position since 2014.

In response to the SOR, he took some action toward addressing his debts, and paid three debts listed in SOR ¶ 1.g – 1.i. Two debts, SOR ¶¶ 1.e, and 1.f are possibly duplicates, have been apparently charged-off and are not collectable, or are otherwise closed to collection efforts. These debts are mitigated under AG 20 ¶ (b) and (d). The debts under SOR ¶ 1.a – 1.d, remain unpaid with insufficient efforts toward resolution provided. No mitigation is appropriate.

Applicant's efforts to resolve his debts occurred too late. Two debts had fallen into an uncollectable status because of the passage of time or sale of the debt to another agent, but do not qualify for mitigation since Applicant ignored them until they were uncollectable and has not shown their status through documentary evidence. 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. No credit counseling or budget education has occurred. For his unresolved debts, Applicant has not acted responsibly under the circumstances. His overall financial status remains a concern, and his actions cast 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 resolve his remaining debts and meet his future 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 resolved three debts, but has not adequately addressed the large debts and waited too long to address those that are no longer collectable. Although he claims to have made progress on his overall financial condition, he did not follow through with evidence of payments or other resolution where applicable. Additionally, despite Applicant's narrative about his poor financial and living conditions, he was still able to vacation on cruises or other trips every year from 2007 to 2012. 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.d:	Against Applicant
Subparagraphs 1.e – 1.i:	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