



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



In the matter of:)
)
) ISCR Case No. 15-06170
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2017

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 12, 2012. On February 5, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹ Applicant answered the SOR on April 20, 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 June 20, 2016.

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.

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 August 28, 2016. He submitted a response to the FORM, marked as Applicant Exhibit (AE) A. The Government's exhibits included in the FORM (Items 1 to 7) and AE A are admitted into evidence. The case was assigned to me on May 19, 2017.

Findings of Fact

Applicant is a 54-year-old technician employed by a defense contractor since 2012. He worked in Kuwait from 2014 to 2015. He retired from the United States Army after serving from 1983 to 2006. He was unemployed from 2006 to 2010, while he was a student. He has been married since 1987, has three children, and received his bachelor's degree in 2010. He does not hold a DOD security clearance.

The SOR alleges Applicant is delinquent on six debts, the largest including a home foreclosure mortgage balance and a credit card collection account, totaling about \$50,000. He admitted the SOR allegations, and provided evidence in mitigation. After retiring from the Army in 2006, his family income consisted of his military retirement and his spouse's income from commissions for work with a financial services company. His spouse's income was inconsistent until 2013. They now receive income from his military retirement, his employment, and his spouse's full-time work as a registered nurse and part-time in the financial services industry. Applicant became aware of his debts when he started his job in late 2012, and sought the assistance of a financial counselor. After dissatisfaction with the credit counselor, Applicant retained another company in July 2015. Through these efforts, his debts have been paid, disputed or deleted from his credit bureau report.

In response to the FORM, Applicant provided credit reports from the three credit reporting agencies, dated in August 2016. Each credit report shows that Applicant does not carry any collection accounts or deficiencies owed, and he has a high credit rating.² He also provided a phone service account statement showing no delinquencies. Finally, he provided bank and investment statements showing he has nearly \$50,000 in liquid assets.

Applicant accepted responsibility for his past financial delinquencies, and attested that they were incurred during a period when he was a student and lived on an inconsistent family income. He and his spouse have been fully employed since 2013, and have resolved their financial delinquencies through the long-standing use of a credit counselor and credit repair agency. There are no current collection accounts and his most recent credit report reflects a positive financial status.

² Two state liens filed in 2010 and 2012 were released in 2012. (GE 5)

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. These AGs are applicable to this decision.

“[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 for financial considerations 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following mitigating conditions 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 resolved the majority of his delinquent debts through use of a financial counselor and credit repair agency since 2015. He provided credit reports and other evidence to show that he has addressed his debts, does not have any current collection accounts or deficiencies, and his current credit report reflects a positive financial status.

Applicant's financial condition that led to the SOR debts was largely due to insufficient income to meet his family's expenses after he retired from the Army and attended college. He and his spouse now enjoy multiple streams of income. He took appropriate action to resolve the debts within his control and to dispute other debts when appropriate. Applicant appears to be on a sound financial footing, and has sufficient financial resources to meet all of his financial needs. He has not incurred any new financial delinquencies in the last several years, and sufficient time has passed to suggest that it is unlikely to recur. AG ¶¶ 20(a) - (e) apply.

Applicant's resolved debts and current financial status leave me without doubts about his overall financial condition and ability to face his financial responsibilities. His past financial delinquencies no longer cast doubt on his current reliability, trustworthiness, and good judgment.

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 taken sufficient action to resolve his financial delinquencies, and is currently financially sound.

Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him 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:	For Applicant
Subparagraphs 1.a – 1.f:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Gregg A. Cervi
Administrative Judge