DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 16-00336
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant mitigated the security concerns raised by his delinquent debts. Eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on May 27, 2016. On January 6, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 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 (2006 AG).

Applicant answered the SOR on February 3, 2017, and requested a decision on the record without a hearing (answer). On March 27, 2017, a complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant. He received it on April 17, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of

his receipt of the FORM. Applicant did not object to the Government's Items. Hence, Items 1 through 6 are admitted into evidence without objection. He submitted additional evidence, which was admitted without objection as Applicant's Exhibit (AX) A. The case was assigned to me on May 10, 2018.

On June 8, 2017, the DOD implemented new AG (2017 AG).[1] Accordingly, I have applied the 2017 AG.[2] However, I have also considered the 2006 AG, because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

Findings of Fact[3]

Applicant is 33 years old and works as a system administrator for a defense contractor. He has worked for his employer since August 2012, and requires a clearance for his employment. He has been cohabitating with his partner since 2014. He has a son from a previous relationship and his partner has a child. Applicant attended some college and received an IT certification in 2010. He served as a guardsman in the Air National Guard from 2004 to 2010, and received an honorable discharge.[4]

The debts listed in SOR ¶¶ 1.a. through 1.f. total $11,907. Applicant denied all of the debts and claimed he paid or disputed them. They appear in his 2015 credit report (Item 3), but do not appear in his 2016 and 2017 credit reports (Items 4 and 5).

In his answer to the SOR, Applicant submitted documentation from January 2017, demonstrating he had no open collection accounts with Equifax and Transunion. He disputed SOR ¶ 1.b. with the creditor. The company was unable to validate this debt (Item 1 at 4). Applicant showed that SOR ¶¶ 1.c., 1.d., and 1.f. were removed from his credit reports. In his response to the FORM, Applicant provided documentation that he paid SOR ¶¶ 1.a., 1.d., 1.e., and 1.f. (AX A at 2 to 6).

[1] On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*) The SEAD-4 became effective on June 8, 2017. (SEAD-4 ¶ F, *Effective Date*) The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*)

[2] ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

[3] Applicant's personal information is extracted from his security application (Item 2) unless otherwise indicated by a parenthetical citation to the record.

[4] Applicant served full-time in the Air National Guard between 2004 and February 2008. He served as a traditional guardsman between February 2008 and July 2010. He deployed to Afghanistan, as a civilian, between July 2011 and August 2012.

In his SCA and his August 2015 interview with a government investigator, Applicant disclosed he struggled financially when he tried to start his own business in January 2010. The business was unsuccessful and was liquidated in December 2012 (Item 3 at 13 and 35). Prior to starting his own business, he was in school full-time between June 2009 and January 2010. Both of these periods impacted his ability to pay his debts. The only significant debt alleged in the SOR is related to an emergency medical procedure that occurred when he did not have health insurance. Throughout the investigative process, Applicant has reiterated his desire to be financially responsible and to resolve his delinquent debts. His most recent credit report shows no new delinquent debts or obligations (Item 5).

Policies

"[N]o one has a 'right' to a security clearance."[5] 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."[6] 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."[7]

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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."[8] Thus, a decision to deny a security clearance is merely an indication the applicant has not met

[5] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[6] *Egan* at 527.

[7] EO 10865 § 2.

[8] EO 10865 § 7.

the strict guidelines the President and the Secretary of Defense have established for national security eligibility.

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.[9] "Substantial evidence" is "more than a scintilla but less than a preponderance."[10] The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.[11] Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.[12] An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.[13]

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."[14] "[S]ecurity clearance determinations should err, if they must, on the side of denials."[15]

Analysis

Guideline F: Financial Considerations

The concern under Guideline F 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 . . . .

[9] *See Egan*, 484 U.S. at 531.

[10] *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[11] ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

[12] Directive ¶ E3.1.15.

[13] ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[14] ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

[15] *Egan*, 484 U.S. at 531; *See also* AG ¶ 2(b).

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.[16]

Applicant's admissions and his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations).

AG ¶ 20 describes conditions that could mitigate security concerns. Four are potentially applicable in this case:

> (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;
>
> (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.

I considered that Applicant is not required to be debt-free in order to qualify for a security clearance.[17] Applicant struggled financially several years ago. He was underemployed and did not have health insurance. The only significant debt that is alleged was for an emergency medical procedure. Applicant made payments toward his debts prior to the issuing of the SOR. The documentation he presented shows he has made concerted efforts to resolve his obligations. Additionally, he has not incurred any new debts. Mitigation under AG ¶ 20(a), 20(b), 20(d), and 20(e) was established.

[16] ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

[17] ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person.
An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

> (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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns at issue.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. – 1.f.:	For Applicant

Conclusion

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

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CAROLINE E. HEINTZELMAN
Administrative Judge