



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



In the matter of:)
)
) ISCR Case No. 16-03463
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2017

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 November 10, 2015. On December 16, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹

Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents,

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

known as the File of Relevant Material (FORM), was submitted by Department Counsel, and is undated.

A complete copy of the FORM was provided to Applicant on December 19, 2016, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 31, 2017, and submitted a response, marked as Applicant Exhibit (AE) A. The Government's exhibits included in the FORM (Items 1 to 5) and AE A are admitted into evidence. The case was assigned to me on October 1, 2017.

Findings of Fact

Applicant is a 47-year-old engineer employed by a defense contractor since November 2015. He was unemployed from May to July 2012, October to December 2013, and May to November 2015. He received a bachelor's degree in 1995. He married in 1994, separated in August 2015, and is now divorced. He has previously held a DOD security clearance.

The SOR alleges 12 delinquent debts, totaling about \$20,683, including a 2015 mortgage foreclosure, delinquent medical debts, a business loan, and other accounts. Applicant admitted the SOR allegations.

Applicant acknowledged his debts, some of which were incurred while he was married and supporting a business his spouse operated. He also stated that he suffered financial hardships resulting from his divorce and periods of unemployment. He generally noted his intent to resolve the SOR debts once employed.

He retained a credit-repair firm to assist him, and they have successfully removed some of his collection accounts and a charged-off item from his credit report. He did not submit documentary evidence of any efforts taken to address his delinquent debts through negotiations, payment plans, disputes, or other means. With regard to two of the largest SOR debts (SOR ¶¶ 1.a and 1.b), which total over \$18,000, Applicant noted that he retained his credit-repair firm to "work out a repayment plan." No such plan has been submitted into evidence. He also acknowledged that his delinquent medical debts, which total about \$1,940, were incurred during his periods of unemployment. He noted in his response to the FORM, that this was an "insignificant amount." In addition, he did not submit documentary evidence of a current budget or financial statement.

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 the status of his debts and current finances.

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. The revised AG apply to this case.

“[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 supporting the SOR allegations 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.

Although Applicant's delinquent debts may have been incurred under circumstances beyond his control, to include periods of unemployment and divorce, they remain current and he has not shown responsible action to resolve them. He has been employed since 2015, yet has not taken sufficient action to satisfactorily address his debts through negotiation, payment plans, or other means. In addition, he has not explained the circumstances of his mortgage foreclosure. Although retention of a credit-repair firm may be a positive first step, Applicant has not shown what efforts have been made to resolve his debts, besides efforts to clearing older debts from his credit report. This does not constitute satisfactory resolution unless Applicant shows that they were legitimately disputed, which is unlikely given his admission of responsibility for the debts.

Applicant's failure to show efforts to resolve his debts raises serious questions about his judgment and willingness to comply with rules and regulations. He presented insufficient evidence showing efforts to resolve debts, the degree of financial counseling he may have received, his current financial status, and an ability to manage his finances. He has not shown that his financial situation is under control or that his financial problems are unlikely to recur. No mitigating condition is fully applicable.

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's delinquencies remain an ongoing concern. He has not shown sufficient effort to resolve his debts. I have little record evidence to evaluate the extent his job loss and divorce impacted his finances, the status of the SOR debts, and whether his current financial situation is under control.

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 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:	Against Applicant
Subparagraphs 1.a – 1.l:	Against Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge