DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-00186
	)	
Applicant for Security Clearance	)	

Appearances

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

11/28/2017

Decision

MARINE, Gina L., 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 May 3, 2016. On January 26, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him 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).

On February 22, 2017 and March 21, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 11, 2017, and the case was assigned to me on May 3, 2017. On July 10, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 10, 2017. I convened the hearing as scheduled.

I admitted Government Exhibits (GE) 1 through 4 into evidence, without objection. I appended to the record a letter the Government sent to Applicant as Hearing Exhibit (HE) I, and the Government's exhibit list as HE II. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through F, which I admitted, without objection. At Applicant's request, I left the record open to August 18, 2017. Applicant timely provided additional documents which I admitted as AE G and H, without objection.[1] DOHA received the transcript (Tr.) on August 17, 2017.

On June 8, 2017, the DOD implemented new AG (2017 AG).[2] Accordingly, I have applied the 2017 AG.[3] 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[4]

Applicant, age 55, married his wife in 1982. He has three adult children. He received an associate's degree in 1982, and a bachelor's degree in 1985. He has been employed full time by the same defense contractor since 1999. This is his first application for a security clearance.[5]

Applicant obtained four student loans for his children in 2003 and 2004, totaling approximately $74,256.[6] Applicant chose to repay the loans via a graduated repayment schedule, which provided a lower initial monthly payment that gradually increased over time until it reached the full repayment amount. For reasons not specified in the record, Applicant claimed that he had trouble paying the increased amount in approximately

[1] I initially advised the parties that these two documents would be admitted as AE G and HE II. I, *sua sponte*, admitted both documents as exhibits, AE G and H, after further considering the nature of certain information contained in HE II.

[2] 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*).

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

[4] Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR Answer, his SCA (GE 1), and the summary of his August 2015 background-investigation interview (GE 2).

[5] *See also* Tr. at 27-29.

[6] Tr. at 31-32, 33-34; GE 2 at 3, 5 and 6 (one opened in October 2003 with a high credit of $15,464, one opened in August 2004 with a high credit of $20,755, one opened in September 2004 with a high credit of $19,000, and one opened in September 2005 with a high credit of $19,037).

late 2005 or early 2006. After the lenders refused to renegotiate the terms of the loan or accept partial payments, he eventually defaulted on the loans.[7]

A state and a federal agency filed garnishments between 2007 and 2013 against Applicant's wages to collect their respective portions of the defaulted loans. The state agency reported a $42,024 balance owed in 2007 and $48,872 in 2013. The federal agency reported a $49,489 balance owed in 2008. By June 2016, two of the loans were in collection status with the federal agency in the amount of $47,608 (SOR ¶ 1.a / federal debt), and the other two were in collection status with the state agency in the amount of $27,090 (SOR ¶ 1.b / state debt).[8]

While Applicant acknowledged that they were not the ideal methods to resolve his defaulted loans, he believed the involuntary wage garnishments were the best way to ensure that they were paid. Therefore, he never disputed them and assumed that both the federal and state debts were being paid accordingly. Prior to early 2017, Applicant had not been in contact with either lender since the garnishments were issued, except for monthly statements he received about the state debt that reflected a reduced balance over time. He has never received any documents about the federal debt, nor has he ever inquired of his employer about where the garnishments were being sent. By July 2017, garnishments had reduced the balance of the state debt to $14,809.[9]

From approximately 2013 or 2014 through early 2017, Applicant had two wage garnishments deducted from his paycheck totaling approximately $750 bi-weekly, which he assumed was paying both the federal and state debts. For reasons unknown to Applicant, one of the two garnishments stopped in early 2017, leaving only one $443 bi-weekly deduction. Assuming it was the federal agency's garnishment that stopped, he contacted them. He then learned that the federal debt had not been paid via garnishment or otherwise, and that the federal agency had assigned it to a collection agency. Applicant attempted to contact that collection agency once in early 2017, a few days before the hearing, and at least once after the hearing. On each occasion, his call was answered by a recording advising of a temporary restraining order issued against it by a U.S. Court of Claims judge that generally prohibited contact with debtors, not specifically with Applicant.[10] He estimated that the balance of the federal debt was $61,813, as of August 2017.[11]

[7] GE 1 at 42; GE 4 at 2-3; Tr. at 24-27, 35-48, 69.

[8] GE 2 at 2-3; AE D through F; Tr. at 60-61.

[9] GE 4; AE F and H; Tr. at 24-25, 46-47, 48.

[10] AE G; Tr. at 25, 35-48, and 61.

[11] AE A; Tr. at 60-64.

During the course of the 17 years that Applicant has worked for his current employer, his annual salary has increased from $45,000 to $98,550.[12] He had a second part-time job from 2002 through 2014, for which he received approximately $150 to $300 per year. He has never received financial counseling. Aside from his student loan debts, he has managed his finances responsibly, including in 2015 and 2016 when he incurred extraordinary medical expenses. He uses a spreadsheet to manage his expenses, and currently operates with a monthly surplus of $415 by living in the same modest home for 30 years, using credit cards wisely, and not spending extravagantly. He has identified several discretionary expenses in his budget that he could eliminate to meet his expenses should it become necessary.[13]

Policies

"[N]o one has a 'right' to a security clearance."[14] 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."[15] 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."[16]

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.

[12] Tr. at 29-31.

[13] AE A through C; Tr. at 29-31, 48-56, 64-65, 68.

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

[15] *Egan* at 527.

[16] EO 10865 § 2.

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."[17] 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.[18] "Substantial evidence" is "more than a scintilla but less than a preponderance."[19] The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.[20] Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.[21] An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.[22]

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."[23] "[S]ecurity clearance determinations should err, if they must, on the side of denials."[24]

Analysis

Guideline F (Financial Considerations)

The 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. 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

[17] EO 10865 § 7.

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

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

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

[21] Directive ¶ E3.1.15.

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

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

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

> 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 . . .

Applicant's defaulted student loans 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).

The following are the potentially applicable mitigating conditions under this guideline:

> AG ¶ 20(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;
>
> AG ¶ 20(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; and
>
> AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant defaulted on the student loans as early as 2006. While his state debt has been considerably reduced through involuntary wage garnishments, Applicant's substantial federal debt remains unresolved.

AG ¶ 20(b) is not established. Applicant failed to meet his burden to establish that the student loan debts were caused by circumstances largely beyond his control. However, even if he had, he has not acted responsibly to resolve the federal debt.

AG 20 (d) is not established. I credit Applicant with making partial payments to his creditors immediately following the graduated payment increases. While involuntary garnishment payments do not suffice to establish good-faith efforts, I credit him with complying with those payments over an extended number of years, resulting in his state debt being signficantly reduced. I considered that Applicant believed that his federal debt was also being satisfied through involuntary wage garnishments until he learned otherwise in early 2017. I also considered that he discovered in early 2017 that the federal debt was being handled by a collection agency, with which he has been unable to make direct contact, despite his efforts. However, not only has the 2008 wage garnishment issued by the federal agency remained unsatisfied, there is no evidence that it was ever paid, even in part. Therefore, I cannot conclude that Applicant has demonstrated sufficient good-faith effort to resolve the federal debt.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of 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 Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his federal student loan debt. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge