



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



In the matter of:)
)
) ISCR Case No. 17-01866
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

10/05/2018

Decision

Gregg A. Cervi, 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 February 27, 2016. On July 26, 2017, 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

known as the File of Relevant Material (FORM), was submitted by Department Counsel on September 29, 2017.

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 and submitted a response, marked as Applicant exhibit (AE) A. The Government's exhibits (GE) 1 to 9, and AE A are admitted into evidence. The case was assigned to me on March 6, 2018.

Findings of Fact

Applicant is a 58-year-old mental-health professional, employed by a defense contractor working at a U.S. military facility since 2016. He was previously employed in a similar position at another military facility since 2012. He earned a doctorate degree in 2002 and a bachelor's degree in 1992. He has been married since 2013 and has no children. He previously held a DOD security clearance.

The SOR alleges six delinquent debts totaling about \$20,667. Applicant's debts include an unpaid judgment, a state tax lien, and credit card bank accounts. Applicant admitted a small credit card debt and stated he is paying on an overpayment of state benefits that resulted in a judgment. He denied the remaining debts, claiming the state tax lien is a mistake, and asserting that the remaining credit card debts have been charged off and no longer active.

SOR ¶ 1.a is a small credit card debt for \$56. Once notified of the debt, Applicant paid it in August 2017. This account is resolved.

SOR ¶ 1.b is a tax lien placed by state A in 2016. Applicant acknowledged living and working in state A, but when he moved to state B in 2011, he continued to receive tax notices from state A. In September 2016, Applicant notified state A that he disputed the tax debt and provided some but not all documentation showing his residence and employment in state B for the years in question. It is unclear what the current status is with the state A tax obligation, as Applicant's November 2017 credit report continues to show an unresolved \$2,845 tax lien from state A. However, Applicant has taken adequate measures to address the state tax delinquency and has provided sufficient documentation to state A to refute the debt.² This account is being resolved.

SOR ¶ 1.c is an unpaid judgment from state A to recoup overpayment of state unemployment benefits. Applicant applied for and began receiving state unemployment benefits in 2009 and 2010. At some point, Applicant did not correctly disclose his dates

² In his response to the FORM, Applicant provided a Federal IRS Release of Levy/Release of Property from Levy form, sent to state B tax authorities in June 2015, showing a release of levy. It is not clear on the form what levy is being released, although Applicant claims it releases the state A tax lien. The form makes no mention of state A, an amount, or date the levy was imposed. In addition, Applicant provided a 2017 state A personal income tax payment of \$95 for tax year 2016, apparently to show that no additional taxes were owed.

of re-employment, resulting in an overpayment. In 2011, the state sent Applicant a notice of the judgment filing for \$9,542, but Applicant did not respond to the court because he had moved out of state. The judgment remained delinquent thereafter. In his Answer to the SOR, he claimed he paid 10% of the balance in 2017, but did not provide evidence of such payment. He stated that since this judgment debt does not incur interest charges, he typically pays other obligations that incur interest before this debt. Applicant claimed in his response to the FORM, that his 2016 Federal income tax refund of \$946 was to be redirected to apply to this judgment, but provided evidence from state A that only \$74 of his 2016 state tax refund was applied to the debt.

SOR ¶¶ 1.d-1.f are credit card debts totaling \$8,224. Applicant noted in his Answer that during the recession, he was unable to pay these debts, but claimed they are no longer active because they have been charged off. These collection accounts are recorded in Applicant's 2016 credit report (GE 7) and show one account becoming delinquent in 2009, while two others show delinquencies beginning in 2016. Three smaller collection accounts with the same lender as alleged in SOR ¶¶ 1.e and 1.f, became delinquent in 2010, but are not alleged in the SOR. Applicant asserts that the delinquent accounts no longer appear on his 2017 credit report and are not active debts. No evidence of attempts to resolve the debts was provided.

Applicant noted in his Answer, that state B had a high cost of living, and he used credit cards to pay for the move and to improve his credit score. His move back to state A cost \$14,800, and he lost income while waiting for credentialing in his new position. In 2004, Applicant filed a Chapter 7 bankruptcy to discharge credit cards he used to pay debts and living expenses. The bankruptcy debts were discharged in 2004.

In his response to the FORM, Applicant disclosed that his spouse has chronic health issues, has been on medical leave since September 2017, and his physician could not say when he would return to work. Since his spouse's paid leave has been exhausted, the household income has decreased. As a result, they stopped payments on their student loans, but expected to resume them in February 2018. Applicant did not provide documentation of notice to or concurrence by the student loan lenders of the cessation of payments or an agreement to restructure loan payments. Given no payments toward student loans and delinquent debts, Applicant provided a budget showing a monthly net remainder of \$145. Applicant's Federal joint tax return for 2016 shows an income of \$163,122, and he noted in his Answer that his student loan principle balance is currently \$135,000 despite paying \$60,000 in interest so far. Applicant noted his highly productive work history and service to military personnel.

Law and Policies

"[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 in the record supporting the SOR allegations are sufficient to establish the disqualifying conditions above.

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.

Applicant's unresolved debts have been a recurring problem despite a 2004 bankruptcy discharge, a stable work history since at least 2012, and a significant joint income. He points to the recession, moving costs, and a high cost of living as reasons for his delinquent debts. However, he has not shown sufficient documentation of good-faith efforts to resolve his debts or regular progress toward paying on a state judgment. By his own statement, his household income has been recently reduced due to his spouse's illness and loss of work, and he has stopped paying on his student loans to be able to pay other obligations. I have insufficient evidence of Applicant's ability or willingness to satisfy the SOR debts for which he is responsible, and his financial status appears unstable. I am unable to determine that his finances are under control, that debts will be resolved, and that similar problems are unlikely to recur.

Applicant has not shown that he has sought financial assistance or financial counseling. His long-standing disregard for delinquent debts and failure to adequately address a judgment when he had the means to do so, and ignoring other debts because they have been charged off, directly impugn his judgment and raise significant doubts about his ability and willingness to pay financial obligations. He has made significant efforts to resolve the state tax lien and a small credit card debt. With regard to the remaining debts, no mitigating condition fully applies.

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).³ 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 evidence of whole-person

³ (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.

factors sufficient to overcome the financial concerns. 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 and 1.b:	For Applicant
Subparagraphs 1.c-1.f:	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