



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



In the matter of:)
)
) ISCR Case No. 17-02305
)
Applicant for Security Clearance)

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2018

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 December 15, 2015. On October 16, 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 January 5, 2018.

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 did not submit a response. The Government's exhibits (GE) 1 to 3, 5, and 6 are admitted into evidence. GE 4 is a portion of an Office of Personnel Management (OPM) Report of Investigation (ROI) known as a personal subject interview (PSI) is not admissible without authentication.² The record does not contain notice to Applicant of an opportunity to correct, object, or waive authentication of the exhibit. As such, Applicant did not knowingly waive an objection to the PSI, therefore GE 4 is not admitted. The case was assigned to me on July 25, 2018.

Findings of Fact

Applicant is a 36-year-old full-time lead information technology specialist, employed by a defense contractor since 2015. He reported previous employment in full-time positions since leaving the active duty military in 2007. He is attending college, but does not yet have a degree. He married in 2003 and divorced in 2007. He remarried in 2010 and has two children. Applicant served on active duty in the U.S. Navy from 2002 to 2007 and was honorably discharged. He previously held a DOD security clearance while on active duty.

The SOR alleges eight delinquent debts totaling over \$277,000, including six medical collection accounts, a phone utility collection account, and a federal tax delinquency of approximately \$274,000. Applicant admitted all of the SOR allegations, and noted in his Answer to the SOR that the medical debts were paid (SOR ¶¶ 1.a – 1.g) and he is working with a tax attorney to finalize an IRS payment plan. Applicant provided evidence with his Answer that a phone utility collection account was paid. (SOR ¶ 1.f)

Applicant reported in his 2015 SCA, that he failed to file and pay Federal income taxes from 2012 to 2014. He stated that for 2012, he was trying to catch up on other financial obligations; in 2013 he had family problems at home and an injury that kept him from working half of the year, and that he filed "tax documentation;" and in 2014 he changed jobs and only worked part-time for eight months and his family was having problems at home with a troubled child that required him to take a job closer to home. Applicant noted then that he hired a tax attorney to arrange a payment plan with the IRS and file the "tax paperwork." He said the payment plan "should be set up within the next few weeks."

Nearly two years later in his 2017 Answer to the SOR, Applicant again reported that he was working with a tax attorney to finalize a payment plan with the IRS. He stated that he fell behind on his taxes due to an injury in 2012, and has been trying to catch up ever since. No documentation of payments on collection accounts or a proposed IRS

² Directive, E3.1.20.

payment plan were provided. Additionally, he did not provide evidence of his current financial status, financial counseling, or other mitigating evidence, except for a credit report entry showing payment of the debt in SOR ¶ 1.f, that was submitted with his Answer.

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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state or local tax returns or failure to pay annual Federal, state, or local income tax as required.

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 delinquent debts and especially the tax delinquencies have been a recurring problem that have not been sufficiently addressed. Although Applicant vaguely alluded to under-employment and difficulty with a troubled child, he has not shown how these issues prevented him from paying his medical debts or his Federal income taxes when due. He claimed to be working on an IRS repayment plan for at least two years but has yet to resolve the matter, and he failed to document payments on his medical collection accounts. Applicant is required to document good-faith efforts to resolve his debts and a stable financial status as evidence that similar problems are unlikely to recur. No such mitigating evidence was provided.

Applicant's long-standing disregard for his debts and Federal tax obligations directly impugn his judgment and willingness to comply with rules and regulations. He presented no documentary evidence showing his current financial condition, or that he sought financial counseling or other assistance to address his debts. He has not shown that his financial situation is under control, or that he has a reasonable basis to dispute his delinquent debts. There is no documentary evidence in the record supporting an IRS approved tax repayment plan or payments made pursuant to the plan, or a reasonable explanation for his tax delinquencies. No mitigating condition 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

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

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 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-1.e; 1.g-1.h:	Against Applicant
Subparagraph 1.f:	For 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

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.