

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. Items 1 through 5 are admitted into evidence without objection. He timely submitted Applicant's Exhibit (AE) A, which was admitted without objection. The case was assigned to me on May 7, 2018.

Findings of Fact

Applicant is 57 years old and works as an information assurance analyst for a defense contractor. He has worked for his employer since August 2016, and requires a clearance for his employment. He has been married since 1987, and he and his wife have two adult children. Applicant graduated from high school in 1979, attended U.S. Army courses during his military service, and received an associate's degree in approximately 2005. He served in the U.S. Army and the Army National Guard on and off between 1980 and 2012, when he received an honorable discharge. He has held a security clearance in the past.

Applicant attributes his financial problems to several periods of unemployment. He was unemployed in 2007, 2009, and between July 2011 and October 2011; December 2012 and February 2013; July 2013 and June 2014; June 2015 and August 2015; and November 2015 and January 2016. (Item 1, Item 2 and Item 3 at 3) Applicant also experienced other periods of underemployment and part-time employment.

The SOR alleges 19 delinquent debts totaling over \$82,000. In his Answer to the SOR, Applicant stated he is paying \$500 a month to the \$66,277 student loan alleged in ¶ 1.a. (Item 1) In his Response to the FORM, Applicant provided a December 22, 2017 pay stub reflecting a payment for this debt. He is paying \$258 per paycheck. As of December 22, 2017, the pay stub reflected 12 payments, totaling \$3,103 for the year. Applicant struggled to pay this debt due to his various periods of unemployment and this debt became delinquent in approximately October 2014. (Item 5 at 1)

Fourteen of the debts alleged in the SOR are for medical bills, totaling \$7,577. Applicant states that ¶ 1.d. is related to a workers' compensation claim and he is not responsible for this debt. (Item 3 at 16) He believes SOR ¶¶ 1.m. and 1.n. are duplicates; however, in the credit bureau reports the debts have different account numbers, indicating they are not duplicates. (Items 4 and 5). Applicant was unaware he had an outstanding judgment for a medical debt (SOR ¶ 1.r.).

The remaining medical debts (SOR ¶¶ 1.c., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.l., 1.o., and 1.p.) are related to unpaid co-pays. The majority of these debts became delinquent between 2000 and 2015. There is no evidence that Applicant has incurred any delinquent debts since starting his current employment in August 2016. He has expressed an intent and a desire to pay and resolve these medical debts.

In his Answer to the SOR, Applicant claimed he was unaware of the debt alleged in SOR ¶ 1.b. Based upon account information in the credit reports, this \$8,477 debt

appears to be the balance for a vehicle loan. Applicant voluntarily turned in a vehicle for repossession in approximately January 2016. He was unable to maintain the payments due to employment issues. (Item 2 at 50, Item 3 at 16 and 22, Item 4 at 5, and Item 5 at 2 and 3)

Applicant denied the debt in SOR ¶ 1.k. He contacted Defense Finance Accounting Services and learned that this debt was for a life insurance policy; however he claims he never held a life insurance policy while he served in the military. (Item 3 at 16) He denied SOR ¶ 1.q. because he has never held an account with this creditor.

Starting in 2005, Applicant was only able to make partial mortgage payments. He tried to sell his home and unsuccessfully tried to modify the loan. This home was foreclosed on in 2008, and the mortgage was satisfied. (Item 2 at 49-50 and Item 3 at 15 and 23)

In his Response to the FORM, Applicant maintained that he is current on the majority of his debts and some of the SOR allegations are duplicates. (AE A) The majority of his debts appear to have become delinquent between approximately 2010 and 2015. Applicant was unemployed for large stretches of time during this period.

Policies

“[N]o one has a ‘right’ to a security clearance.”¹ 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.”² 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.”³

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

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

² *Egan* at 527.

³ EO 10865 § 2.

classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Adverse 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.”⁴ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing 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.⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”⁶ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.⁷ Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁸ An applicant has the burden of proving a potential mitigating condition, and the burden of disproving it never shifts to the Government.⁹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹¹

⁴ EO 10865 § 7.

⁵ Directive ¶ E3.1.14.

⁶ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

⁸ Directive ¶ E3.1.15.

⁹ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

Analysis

Guideline F: Financial Considerations

The security 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

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.¹²

Applicant's admissions, his credit reports, and the remaining exhibits 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. Three 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, . . .), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicants are not required to be debt-free in order to qualify for a security clearance.¹³ In this case, Applicant struggled financially several years ago due to

¹² ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

¹³ 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

employment issues. The documentation he presented shows he is making payments toward his largest and most significant debt. His debts are not related to frivolous or irresponsible spending. Rather, due to a lack of steady and consistent income he was unable to pay for his student loan, his vehicle, his home, and medical bills. There is no evidence he irresponsibly generated credit card debt, personal loans, or other non-essential financial obligations. Additionally, he has not incurred any new delinquent debts in over two years. Mitigation under AG ¶ 20(a), 20(b), and 20(d) was established.

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 applicable 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 this guideline, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns at issue. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

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).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. – 1.s.: 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.

CAROLINE E. HEINTZELMAN
Administrative Judge