



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-03774
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2018

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 11, 2017. On November 22, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 June 8, 2017.

Applicant answered the SOR on December 20, 2017, and requested a decision on the record without a hearing. On February 8, 2018, the Government sent a complete copy of its written case, a file of relevant material (FORM) including documents identified as Items 1 through 7, to Applicant. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on February 13,

2018, and timely submitted his response, to which the Government did not object. Items 1 and 2 are the pleadings in the case. Items 3 through 7 are admitted into evidence. The two documents attached to Applicant's FORM response are admitted as Applicant Exhibits (AE) A and B. The case was assigned to me on March 27, 2018.

Findings of Fact¹

Applicant, age 35, has seven minor children between the ages of 2 and 16. He has never married. He has cohabited with his girlfriend since 2017. Applicant earned a certificate of completion for technical-college courses that he took in 2008, 2009, and 2015. Since July 2016, he has been employed as an assembly mechanic by the same defense contractor who previously employed him from October 2015 until January 2016. This is his first application for a security clearance.

The SOR, under Guideline F, alleged 14 debts totaling \$77,023, including a \$51,710 child support debt, and six student loan debts totaling \$19,018. Under Guideline E, the SOR alleged six arrests that occurred between 2010 and 2015, including a DUI (2012), three driving while license suspended (2010, 2012, and 2014), a failure to appear (2013), two driving while a habitual violator (2013 and 2015), and 2014 charges for an interlock violation and failure to maintain liability insurance. In his SOR answer, Applicant admitted to each Guideline F and E allegation without explanation.²

In Applicant's FORM response, he claimed that he resolved "multiple delinquent accounts," including accounts not alleged in the SOR. He averred, without providing any corroborating documents, that he negotiated a payment arrangement to resolve the debt alleged in SOR ¶ 1.b. (a \$1,947 medical account). In addition, without providing any corroborating documents, he claimed that he is paying the child support debt (SOR ¶ 1.h) via wage garnishment and that he reduced the balance to \$51,129. Applicant provided documentation showing that he resolved only two of the 14 debts alleged: SOR ¶ 1.j (a \$304 water account)³ and SOR ¶ 1.n (a \$136 energy account).⁴

Applicant attributed his financial indebtedness to his "high" child support payment and to periods of unemployment. Since 2008, he has been unemployed six times. After he was laid off in December 2008, Applicant remained unemployed until August 2009. After an argument with his supervisor, he quit his job in January 2010. He remained

¹ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 2), his SCA (Item 3), and the summary of his 2017 security clearance interview (Item 7). Item 7 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by the Government that he was entitled to make corrections, additions, deletions, and updates to Item 7. Applicant was also informed that he was entitled to object to consideration of Item 7 on the ground that it was not authenticated. Applicant did neither in his response to the FORM. Therefore, I conclude that he has waived any objection to Item 7.

² Items 4 and 5.

³ AE B.

⁴ AE A.

unemployed until January 2011. After being fired for misusing an employee discount in April 2012, he immediately found employment, where he remained until he was laid off in September 2012. He remained unemployed until March 2013. In August 2013, he quit his job due to his mother passing away and remained unemployed until September 2014. He then worked continuously until May 2015, when he quit to pursue other job opportunities. He remained unemployed until October 2015. After he was laid off again in January 2016, he remained unemployed until June 2016. Since then, he has been employed continuously.

During Applicant's August 2017 security clearance interview, he disclosed that he was expecting a worker's compensation settlement (amount not specified) within the next three months. He anticipated that he would use the proceeds to settle his debts. The record is silent as to the status of that settlement.

Applicant claimed that he was not aware that his license had been suspended due to an unpaid traffic ticket prior to his 2010 arrest. He averred that he had only a "few drinks" and thought he was fine to drive prior to his 2012 arrest. The court sentenced him to six months in jail (all but two days suspended), placed him on probation for one year, suspended his license for an unspecified period, and ordered him to install an interlock device on his vehicle. Applicant admitted that he knowingly drove on a suspended license in 2014 because he had to "get somewhere." He did not have insurance at the time or have his interlock device installed because he did not want to pay for it since he was not driving (except for that one instance) while his license was suspended. For the 2014 violations, the court extended his probation for another six months. He was also arrested in 2014 for child support violations (not alleged).⁵ He believed that the failure to appear charge was related to child support. In Applicant's FORM response, he stated that he has not been arrested since January 2015, and that he has maintained a valid driver's license since January 2018.⁶

Policies

"[N]o one has a 'right' to a security clearance."⁷ 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."⁸ 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."⁹

⁵ Because this arrest was not alleged, I will consider it only to evaluate mitigation and whole person.

⁶ Item 6.

⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸ *Egan* at 527.

⁹ EO 10865 § 2.

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.

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."¹⁰ 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.¹¹ "Substantial evidence" is "more than a scintilla but less than a preponderance."¹² The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.¹³ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁴ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁵

¹⁰ EO 10865 § 7.

¹¹ See *Egan*, 484 U.S. at 531.

¹² See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹³ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁴ Directive ¶ E3.1.15.

¹⁵ 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.”¹⁶ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹⁷

Analysis

Guideline F (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. 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.¹⁸

Applicant's admissions and the credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so) and AG ¶ 19(c) (a history of not meeting financial obligations).

These security concerns have not been mitigated by any of the following potentially applicable factors:

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,

¹⁶ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁷ Egan, 484 U.S. at 531; See also AG ¶ 2(b).

¹⁸ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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's numerous delinquent debts remain unresolved. I cannot conclude that Applicant's financial indebtedness is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not established. His periods of involuntary unemployment were circumstances beyond his control. However, Applicant did not meet his burden to establish that he has acted responsibly to address his delinquent debts.

AG ¶ 20(d) is not established. I credit Applicant with resolving the debts alleged in SOR ¶¶ 1.j and 1.n. Because he did not provide corroborating documentary evidence, I cannot conclude that he negotiated a payment arrangement to resolve the debt alleged in SOR ¶ 1.b, that he is paying his child support debt, or that he has resolved other accounts not alleged in the SOR.

Guideline E (Personal Conduct)

The security concern under this guideline, as set out in AG ¶ 15, includes: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information."

Applicant's DUI and other arrests establish the general concerns involving questionable judgment and unwillingness to comply with rules and regulations, and the following specific disqualifying condition under this guideline:

AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The security concerns raised under this guideline have been mitigated by the following applicable factor:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's most recent arrest was over three years ago. I do not consider his arrests (especially the DUI, him knowingly driving on a suspended license, and failure to pay child support) to be minor offenses. Many of the arrests related to his DUI conviction. These offenses demonstrated a pattern of poor judgment and failure to follow rules. However, because so much time has passed without the recurrence of any similar offenses or any behavior that would suggest that they are likely to recur, I find that they do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

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 Guidelines F and E in my whole-person analysis, and I have considered the factors AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated security concerns raised by his personal conduct, but not those raised by his financial indebtedness. 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

Subparagraphs 1.a – 1.i: Against Applicant

Subparagraph 1.j: For Applicant

Subparagraphs 1.k – 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 2.a – 2.f:	For Applicant
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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