



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



In the matter of:)
)
) ISCR Case No. 17-04330
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, 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 January 12, 2016. On January 31, 2018, 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 March 23, 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 submitted a response, marked as Applicant exhibit (AE) A. The Government's exhibits (GE) 1 to 10, and AE A are admitted into evidence. The case was assigned to me on September 5, 2018.

Findings of Fact

Applicant is a 42-year-old engineering consultant, sponsored for a security clearance by a defense contractor. He was previously employed as a security officer, senior software engineer, and a test engineer. He was fired from a job with a defense contractor in 2015 for using a corporate credit card while not on travel, a violation of company policy. He is unmarried and has two children. Applicant served on active duty in the U.S. Air Force from 1995 to 2004 and was honorably discharged. He has attended college but has not attained a degree. He previously held DOD security clearances.

The SOR alleges 12 delinquent debts totaling over \$22,000, and that Applicant was terminated from a job for misuse of a corporate credit card. The debts include defaulted student loans, credit card and credit union debts, an apartment collection, various consumer and utility debts, and unpaid child support. Applicant admitted all of the SOR allegations except for a utility debt, and provided explanations and supporting documents with his Answer.

SOR ¶ 1.a is a vehicle car loan that was charged-off in 2015. Applicant claimed that he was unable to pay it due to his child-support requirements. In April 2017, Applicant contacted the lender and arranged for a payment plan. He has been making automatic payments since then, paying off over \$5,000, and provided evidence of the agreement to continue payments of \$100 per month to repay the debt. This account is being resolved.

SOR ¶¶ 1.b and 1.f are delinquent credit card accounts that have been charged off for about \$4,728. Applicant stated in his Answer that he thought the accounts were paid, and he intended to contact the creditor and establish a payment plan. In his response to the FORM, Applicant provided two settlement offer letters from the creditor to permit installment payments over several months, ending in January 2019. No records of payments under these plans were provided.

SOR ¶¶ 1.c-1.e, 1.g, and 1.i are five collection accounts by the Department of Education for defaulted student loans, now totaling about \$13,527. Applicant admitted his education loans are in default. He believed that they were deferred until he graduated from college, however, because he stopped attending school from 2014 to 2017. He failed to provide a current address to the Department of Education, so notifications of his default status did not reach him. In his Answer, Applicant provided a December 2017 letter showing a loan-rehabilitation agreement. It requires nine consecutive payments of \$183

per month for nine months. He provided a document showing two payments in January 2018 of \$183 each, and two previous payments of \$398 in November 2017, and \$1,300 in February 2017. Applicant did not explain the erratic payment history, nor did he provide an updated payment status in his response to the FORM.

SOR ¶ 1.h is debt for child-support arrears owed to a state child support services office. Applicant claimed he fell behind several times on child support due to unemployment and increased obligations, but the latest arrearage resulted in a delay in starting a new job in 2018. He provided documentation showing the state issued an income withholding order for monthly support payments to be withheld from Applicant's pay. The monthly support amount of \$1,391, beginning in April 2018, is now being automatically deducted from his pay.

SOR ¶ 1.j is a collection account owed to a cable utility. Applicant was unaware of the debt until he attempted to reinstate the utility in a new home. In his Answer, he provided evidence of payment in January 2018. This debt is resolved.

SOR ¶ 1.k is a collection account for an apartment rental debt. In 2016, Applicant paid a settlement on the account and it was closed. This debt is resolved.

SOR ¶ 1.l is a \$140 debt owed to an electric utility in state A, after Applicant moved without paying the final bill. Applicant provided evidence of settling a utility debt in state B, but did not show resolution of the debt from the utility in state A.

SOR ¶ 1.m alleges Applicant was terminated for misuse of a corporate credit card reserved for official travel expenses, but was used to pay about \$800 in his girlfriend's car and insurance expenses. Applicant admitted the incident and stated that he repaid the balance when he received the bill. He acknowledged that misusing the card was "a poor decision" that he regrets, but claimed he was in a "bad place" at the time.

Many of the debts were incurred as a result of poor financial decisions, unemployment from January to October 2013, and adjustments in child-support requirements. Of note, despite being fired in 2015 and suffering financial difficulty, including for child support obligations, Applicant traveled on three international vacations in 2016. In April 2018, Applicant enlisted the aid of a credit-repair company and received credit counseling in May 2018.

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
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

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, especially his student loans and child-support arrearage have been a recurring problem that have not been sufficiently addressed to show that the problem is unlikely to recur. Although Applicant alluded to unemployment in 2013 and child-support obligations, he has not shown sufficient documentation of good-faith efforts to resolve his debts, regular progress toward their payments when a payment plan is established, and a stable financial status. Given Applicant's discretionary spending on international travel in 2016, I have insufficient evidence of Applicant's ability or willingness to satisfy his current financial obligations and pay the delinquent debts to which he is responsible. Therefore, I am unable to determine that his financial status is under control and that similar problems are unlikely to recur.

Although Applicant has sought help with repairing his credit and received financial counseling, it was too late to overcome a history of delinquencies that have been largely unaddressed until his security clearance investigation raised financial issues. Applicant has not shown sufficient progress toward regular, recurring payments on student loan debts, to indicate that the debts are likely to be resolved. I have insufficient evidence of his current financial status and his ability to meet future financial obligations. Finally, the intentional misuse of a corporate travel credit card to pay for his girlfriend's expenses reflects poor judgment and a deliberate failure to abide by rules and regulations. Applicant's long-standing disregard for his delinquent debts and failure to follow corporate credit card rules directly impugns his judgment and raises significant doubts about his willingness to comply with rules and regulations in the future. 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).² Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be

² (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.

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.h, 1.j, and 1.k:	For Applicant
Subparagraphs 1.b-1.g; 1.i, 1.l-1.m:	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