



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 18-00502
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2018

Decision

MARINE, Gina L., 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 March 28, 2016. On April 3, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 May 12, 2018, and requested a decision on the record without a hearing. On May 30, 2018, Department Counsel submitted the Government's written case and sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 6. 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 June 6, 2018, and did not respond. Items 1 and 2 contain the pleadings in the

case. Items 3 through 6 are admitted into evidence. The case was assigned to me on September 12, 2018.

Findings of Fact¹

Applicant, age 50, divorced in 2003 and has no children. He earned a bachelor's degree in 1991. He attended graduate courses for two semesters between 1994 and 1995, but did not earn a degree. He honorably served in the U.S. Army from May 1991 through July 2001, both as an active and inactive reservist. Applicant has been employed as a network operations engineer since 2016. He was offered a position with a defense contractor in 2015 that is contingent upon him being granted a security clearance.

Applicant has four delinquent debts, including two federal student-loan accounts totaling \$95,645 and two medical accounts totaling \$126.² Without providing any corroborating documents, he disputed the \$72 medical debt on the basis that the creditor informed him that he did not have an outstanding balance, and the \$54 medical debt on the basis that he paid it.

Applicant undertook the student loans to help pay for the costs associated with his undergraduate degree and graduate courses. He attributed the default of those loans to a period that began in 2004, when he fell behind with the payments and never fully caught up. The balances have increased over the years due to penalties and interest. In his SCA and during his background investigation interview, Applicant claimed that he began making payments on the loans after he left school but, due to periods of employment, he stopped paying at times. He also asserted that he applied for one or more forbearances and made intermittent payments whenever he could afford them. Applicant averred that his income tax refunds have been applied towards the balance owed, and that he had resumed regular direct payments after a 2013 loan consolidation. Applicant did not provide any documents to corroborate payments, forbearances, the refunds applied, or any other indicia that his student-loan debts are being paid or otherwise resolved (despite being given opportunities to do so during his background investigation and in his response to the FORM).³

Between 2005 and 2016, Applicant was unemployed twice: once between May 2007 and June 2008 after a layoff by his employer of eight months; and again, from November 2015 through May 2016 after he was fired by his employer of six years for

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 November 2016 security clearance interview (Item 4). Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 4. Applicant was also informed that he was entitled to object to consideration of Item 4 on the ground that it was not authenticated. Applicant did not respond to the FORM. Therefore, I conclude that he has waived any objection to Item 4.

² Items 5 and 6.

³ Item 4 at 8 and 10.

reasons that he disputed.⁴ The record does not address his employment history prior to 2005. Applicant assessed his current financial status as stable and has neither sought nor received any financial counseling.⁵

Policies

“[N]o one has a ‘right’ to a security clearance.”⁶ 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.”⁷ 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.”⁸

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.”⁹ 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.

⁴ Item 4 at 2-4.

⁵ Item 4 at 8-9.

⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁷ *Egan* at 527.

⁸ EO 10865 § 2.

⁹ EO 10865 § 7.

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

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁵ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹⁶

Analysis

The concern under Guideline F (Financial Considerations) 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,

¹⁰ See *Egan*, 484 U.S. at 531.

¹¹ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹² See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹³ Directive ¶ E3.1.15.

¹⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁵ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

unconcerned, or negligent in handling and safeguarding classified information.¹⁷

Applicant's admissions and the credit reports establish two disqualifying conditions under this guideline.¹⁸ He has not provided evidence to support any of the potentially applicable mitigating factors.¹⁹ Not only did he fail to pay two relatively minor medical debts, but he owes substantial student-loan debts to the federal government. Therefore, I conclude that Applicant has not mitigated the security concerns raised by his failure to pay delinquent debts. In reaching this decision, I have also considered the whole-person factors at AG ¶ 2(d).²⁰

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.d: Against Applicant

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

¹⁷ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

¹⁸ AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

¹⁹ 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, 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).

²⁰ (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.