



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 18-00828
)	
Applicant for Security Clearance)	

Appearances

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

11/26/2018

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 April 7, 2017. On April 19, 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 31, 2018, and requested a decision on the record without a hearing. On June 21, 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 26, 2018, and responded that he did not have any objections or additional

material to provide. 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 68, is married and has three adult children. He earned a bachelor's degree in 1975. He was offered an auditor position with a defense contractor in 2016 that is contingent upon him being granted a DOD security clearance. He has been working for another employer since 2017. Applicant was previously granted security clearances by other government agencies in 2000, 2009, and 2013.

Applicant admitted all but one of the 20 delinquent debts alleged in the SOR. He disputed the debt alleged in SOR ¶ 1.b, a \$3,149 credit-card account in collection status with Creditor A, on the basis that it was the same debt alleged in SOR ¶ 1.n, a \$3,667 credit-card account that was charged off by Creditor A. The credit reports validate his dispute. The 19 remaining debts total \$71,600, including a \$21,489 student-loan account, 13 credit-card accounts totaling \$49,402, and five medical accounts totaling \$709.²

Applicant's financial problems began in June 2013, when his employer of 15 years eliminated his position during a downsizing. Before that, his income of over \$100,000 per year and his wife's unspecified income were sufficient to meet their expenses. He did not become employed again until February 2014, when he accepted a term position that ended in March 2015. He was unemployed again until September 2015, when he began another temporary position that ended in February 2016. He remained unemployed until he started his current position in May 2017.

Applicant attributed the delays in finding jobs during his unemployment periods to not being able to find positions despite his best efforts, and to having a health issue in late 2016 and early 2017 that required some medical procedures and rehabilitation. Between 2013 and 2016, his wife's parents also had health issues. His wife was unemployed during an unspecified period while she cared for her mother until her mother passed away sometime in 2016, and then her father until he passed away in April 2017. When Applicant was in between jobs, he also helped care for them.

Applicant did not incur the credit-card debt due to what he referred as living extravagantly (i.e., buying expensive cars or other high-priced items, and taking vacations). He does not have a car and his wife drives a 2008 vehicle that has been paid off. He owns his home and has remained current with his mortgage payments. However,

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 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 expressed no objection in his response to the FORM. Therefore, I conclude that he has waived any objection to Item 4.

² Items 5 and 6.

he acknowledged that he and his wife used their credit cards to live beyond their means, including providing financial support to their three children. Once Applicant and his wife became unemployed, they could not afford the minimum balances.³

Applicant believes that the income he expects to earn if he is granted a security clearance “will be more than adequate compensation to help resolve [his financial] issues.” In the meantime, he averred that his student-loan debt was in forbearance, that he had been in communications with some of his creditors, and that he continues to try to resolve his debts. Applicant did not provide any documents corroborating the forbearance, his efforts to resolve the debts, or any other indicia that they are being paid or otherwise resolved.⁴

Policies

“[N]o one has a ‘right’ to a security clearance.”⁵ 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.”⁶ 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.”⁷

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.

³ Item 4 at 2-3; Items 5 and 6.

⁴ Item 4 at 8 and 10.

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶ *Egan* at 527.

⁷ EO 10865 § 2.

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.”⁸ 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.⁹ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁰ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹¹ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹² An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹³

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁴ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹⁵

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

⁸ EO 10865 § 7.

⁹ See *Egan*, 484 U.S. at 531.

¹⁰ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹¹ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹² Directive ¶ E3.1.15.

¹³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁴ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁵ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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.¹⁶

Applicant's admissions and the credit reports establish two disqualifying conditions under this guideline.¹⁷ He has not provided evidence to support any of the potentially applicable mitigating factors except as to his substantiated dispute of the debt alleged in SOR ¶ 1.b.¹⁸ Although the 2013 layoff, periods of involuntary unemployment, and medical issues were circumstances beyond his control, Applicant has not met his burden to establish that he acted responsibly under those circumstances. Therefore, in light of the record, I conclude that the security concerns raised by Applicant's failure to resolve delinquent debts is not mitigated. In reaching this decision, I have also considered the whole-person factors at AG ¶ 2(d).¹⁹

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

¹⁶ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

¹⁷ AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

¹⁸ 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); AG ¶ 20(d) (the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts); and AG ¶ 20 (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.

¹⁹ (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.

Subparagraphs 1.c – 1.t: 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