



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



In the matter of:)	
)	
)	ISCR Case No. 15-01793
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

04/14/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on July 28, 2014. On October 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.¹ The action was taken 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 September 1, 2006.

¹ Item 1.

Applicant responded to the SOR on November 5, 2015,² and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on October 10, 2015.

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 on December 17, 2015. He did not submit a response to the FORM, nor did he assert any objections to the Government's evidence.

The case was assigned to me on March 17, 2016. The Government's exhibits included in the FORM (Items 1 to 6) are admitted into evidence.

Findings of Fact

The SOR alleges six delinquent debts totaling approximately \$10,035, and a Chapter 7 bankruptcy, filed in August 2011, and discharged in November 2011. Applicant admitted all the allegations in the SOR,³ and provided an explanation for each allegation. The evidence submitted with the FORM substantiates the SOR allegations.⁴

Applicant is 42 years old and has been employed by a defense contractor as a pipe fitter since July, 2014. He was terminated for cause from his previous position, held from 2006 to April 2014. He has never held a security clearance. He received his GED in 2003. He was married in 2013, but separated in June 2014, with the intent to file for divorce.⁵

Applicant admitted the SOR allegations, however asserted that the debts listed in SOR ¶¶ 1.b-1.f are either paid or the accounts are current. He asserted that SOR ¶ 1.g, a charged-off account with a bank for \$7,018, is current and the subject of ongoing settlement negotiations.⁶ Applicant's Chapter 7 bankruptcy was discharged in November 2011, with approximately \$26,000 in liabilities.⁷ He claimed that his bankruptcy resulted from being financially overextended on credit card and auto loan debts without sufficient income to maintain required payments.⁸

² Item 1.

³ Item 1.

⁴ Items 2–6.

⁵ Item 2.

⁶ Item 1.

⁷ Item 6.

⁸ Item 3.

Additionally, he stated that some SOR debts resulted from his job termination in April 2014, although he was re-employed in July 2014.⁹ Applicant attributed the bank debt alleged in SOR ¶ 1.b, to medical care costs for his spouse, and claimed that he is using a debt consolidation company to make monthly payments toward this debt, but did not provide evidence of this arrangement.¹⁰

Overall, no documentary evidence was submitted with Applicant's Answer or in response to this FORM to support his assertions regarding resolution of the SOR debts, or the status of consolidation or settlement negotiations. Additionally, although he reported using a credit consolidation company, he did not submit documentary evidence of such efforts, or of credit counseling or budget education. I was unable to evaluate his credibility and demeanor, or to discuss the status of the SOR debts since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.¹¹ In *Department of Navy v. Egan*¹², the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹³

⁹ Items 2-3.

¹⁰ Item 3.

¹¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

¹² *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹⁴

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive and classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive or classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and,
- (c) a history of not meeting financial obligations.

¹³ *Egan*, 484 U.S. at 531.

¹⁴ *Egan*, 484 U.S. at 531.

Applicant has unsettled delinquent debts, following a Chapter 7 discharge, which he is unable or unwilling to resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:¹⁵

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been working full time with his current employer since July 2014, however, he has not provided documentary evidence of resolution of any of the SOR debts. He has not shown evidence of the use of a debt consolidation payment plan and regular payments in accordance with such a plan. Finally, there is no evidence that Applicant has sought credit counseling or budget education since his 2011 bankruptcy.

There is insufficient evidence to determine that Applicant's financial obligations have been or will be resolved within a reasonable period. His financial issues are recent and ongoing. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to resolve his debts.

Based on the evidence contained in the record, I find that the SOR debts have not been sufficiently addressed to warrant application of any of the mitigating conditions. The totality of the unresolved delinquent debts incurred after receiving a bankruptcy discharge, leaves me with doubts about Applicant's overall financial condition and ability or willingness to face his financial responsibilities. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

¹⁵ AG ¶¶ 20e and 20.f are inapplicable.

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(a):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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 this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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 to 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge