



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



In the matter of:)
)
) ISCR Case No. 15-03302
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2016

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 August 29, 2012. On November 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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.

Applicant answered the SOR on November 30, 2015, and included a letter of explanation. He 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 January 29, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections to the proposed evidence, and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 21, 2016, and submitted an undated letter in response, marked as Applicant Exhibit (AE) A. He did not assert any objections to the Government's evidence. The case was assigned to me on May 3, 2016. The Government's exhibits included in the FORM (Items 1 to 6) and AE A, are admitted into evidence.

Findings of Fact

The SOR alleges eight delinquent debts, totaling approximately \$44,436, including, charged-off accounts, collection accounts, and a past-due mortgage. Applicant admitted SOR ¶¶ 1.a-1.c, and denied SOR ¶¶ 1.d-1.h. The evidence submitted with the FORM substantiates the SOR allegations.

Applicant is 41 years old and employed by a defense contractor since 2010. He has held a security clearance in the past. He was married in 1999 and divorced in 2008. He served on active duty in the U.S. Marine Corps from 1995 to 2005, and was honorably discharged. He currently works overseas as part of his civilian employment.

SOR ¶ 1.a alleges a delinquent mortgage account that is past due in the amount of \$21,675 with a total amount owed of \$291,018. Applicant noted in his Answer to the SOR that he was on a payment plan and intended to apply excess cash to the account and pay it off in six months. In his response to the FORM, he deleted the payment plan language, and stated that he never received the excess cash he was hoping for. He stated he was not successful in refinancing the account and intends to "force the sale" and cut ties to his ex-wife financially. No documentation regarding the current status of this account has been provided.

SOR ¶ 1.b alleges a delinquent education loan in the approximate amount of \$16,694. In his Answer, Applicant noted that he had negotiated a pay-off amount for less than the amount owed, but that he had to further investigate the status of the account. In his response to the FORM, he claimed that the loan was paid in January 2016, but he did not provide documentary evidence in corroboration.

SOR ¶ 1.c alleges a delinquent cable service debt. Applicant claimed in his Answer that his girlfriend researched the bill and determined it was legitimate, and that it would be paid in the "next check." In his response to the FORM, he claimed his girlfriend set up a payment plan, but he did not provide documentary evidence in corroboration.

SOR ¶ 1.d alleges a small medical debt that Applicant intended to verify. No further information was provided regarding this debt. SOR ¶¶ 1.e-1.h allege various consumer debts. Applicant stated in his Answer that they did not appear on his credit report and therefore denied the allegations. No further information was provided regarding these debts.

Applicant noted his 20 years of service to the United States Government through military and civilian service, including service in the Pentagon during 9/11. He also discussed a string of bad circumstances, including his divorce, difficulties with his girlfriend's health and personal situation, his job loss when his company lost a government contract, and that he is earning less than he did in the past. He noted his hope of a new contract and pay raise, and efforts taken to reduce his living expenses.

No additional information was provided to show Applicant's current financial status or efforts to resolve the debts listed in the SOR. Additionally, there is no evidence of credit counseling or budget information. He failed to provide any corroborating evidence to show he is paying and/or addressing his delinquent debts.

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.¹ In *Department of Navy v. Egan*,² the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.³

¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

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.⁴

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.

² *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).

³ *Egan*, 484 U.S. at 531.

⁴ *Egan*, 484 U.S. at 531.

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.

Applicant has unresolved delinquent debts resulting from several personal and financial difficulties, including a divorce and loss of income. 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:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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: and
- (f) the affluence resulted from a legal source of income.⁵

None of the mitigating conditions are fully applicable. Applicant has been working full time with his current employer since 2010. Although he has alluded to financial difficulties arising from his divorce and other difficult situations that give rise to conditions that are largely beyond his control, he did not provide evidence that he acted responsibly under the circumstances. There is no documentary evidence to show what efforts were taken to address his debts including payment, disputing or other

⁵ AG ¶ 20 (f) is not applicable.

responsible resolution of the debts. Additionally, there is no evidence to show his current financial status in order to evaluate the likelihood of financial responsibility going forward, and Applicant has not sought credit counseling or other financial assistance.

There is insufficient evidence to determine that Applicant's financial obligations have been or will be resolved. 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. The totality of the unresolved delinquent debts leaves me with doubts about Applicant's overall financial condition and ability or willingness to address his financial responsibilities. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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).

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 Applicant's Answer and 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 through 1.h:	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