



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



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 17-01783  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*  
03/19/2019

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Due to circumstances largely beyond his control, Applicant incurred significant delinquent debt which had a severe impact on his overall ability to maintain his finances, and resulted in several arrests for issuing worthless checks. However, Applicant did not intentionally issue worthless checks and repaid the amounts owed, and otherwise mitigated the financial concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on November 3, 2016. On July 25, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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 implemented by DOD on June 8, 2017.

Applicant answered the SOR on August 8, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 1, 2017, and the case was assigned to me on March 20, 2018. On May 21, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 6, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through D were admitted without objection. I left the record open until June 20, 2018, to enable Applicant to submit additional documentary evidence. He timely submitted AX D and AX E, which I have admitted without objection. DOHA received the transcript (Tr.) on June 14, 2018.

### **Findings of Fact**

The SOR alleges that Applicant filed Chapter 13 bankruptcy in 2009 which was dismissed in 2012, that he has 40 delinquent debts totaling \$66,165, and that between 1990 and 2014, he was arrested and charged with fraudulently issuing worthless checks. The debts include: 25 medical accounts totaling \$5,284; mortgage-loan arrearages of \$9,376; deficiency balances on three repossessed vehicles totaling \$37,498; an \$8,222 judgment; and several small consumer accounts. In his Answer, Applicant admits the bankruptcy and the 25 medical debts and 8 of the other debts, denies 7 of the debts, and admits the worthless checks charges. The debts are reflected in Applicant's credit bureau reports (CBR) from July 2017 and February 2017. (GX 4; GX 3.) His admissions in his Answer are incorporated in my findings of fact.

Applicant is a 53-year-old program analyst currently employed by a defense contractor since October 2016, and periodically employed in the defense industry since 2007. He and his wife married in 1991 and have a 13-year-old son. This is Applicant's first application for a security clearance. (GX 1.)

After high school, Applicant worked for a local manufacturing plant for many years and was generally able to support his family on his income. In 1999, Applicant's wife opened her own business, which she continues to operate. Her income from the business is minimal and unreliable, and sometimes she does not generate any income. When the manufacturing plant closed in 2003, Applicant was initially unemployed. He worked odd jobs and used his savings to support his family. In an effort to increase his employability, Applicant enrolled in college in 2008. He graduated in 2012 with a bachelor's degree, and has been taking master's degree level courses since June 2016. (GX 1; Tr. 18; Tr. 20-21; Tr. 23.)

Between 2007 and 2012, Applicant worked for a federal contractor in a low-paying, unskilled position. Due to ongoing financial strains, Applicant filed Chapter 13 bankruptcy in December 2009 (SOR ¶ 1.a). From 2009 until September 2012, Applicant paid approximately \$1,500 a month on his bankruptcy payment plan through an automated payroll deduction. He was laid off from his federal contractor job in September 2012 and was financially incapable of maintaining the payments while providing basic living

necessities for his family. The bankruptcy was dismissed for noncompliance with the payment plan in April 2013. (Tr. 30; GX 3.)

Applicant was unemployed from September 2012 to February 2013; from September 2014 to March 2015, and from January 2016 to September 2016 (Tr. 19-20; GX 1.) He was unable to afford health insurance during the periods of unemployment, and primarily due to his wife's and his son's chronic medical issues, incurred numerous medical debts. (Tr. 72-73.)

Applicant denies liability for the \$10,201 vehicle-loan debt alleged in SOR ¶ 1.w. Applicant's vehicle was repossessed for nonpayment after he had been laid off for more than 10 months. He initially negotiated repayment arrangements with the creditor, however, the creditor reneged on the agreement. (Answer.) Despite Applicant's position concerning this debt, the creditor sent Applicant a 1099-C Cancellation of Debt, which Applicant properly filed and paid the appropriate taxes for the forgiven debt amount. (Tr. 39-40.) This debt has been resolved.

Applicant denies the \$8,222 judgment entered against him in November 2010 by a merchandise-franchising company. (SOR ¶ 1.dd.) Applicant considered entering a business venture with the company. The company requested Applicant's personal contact information for the stated purpose of sending Applicant an invitation to a vendor show. At the show, Applicant collected information about the company, but did not sign a contract or make any other commitments to enter into a business venture with it. Without his permission, the company shipped merchandise and supplies to Applicant. He attempted, without success, to return the shipments. Applicant's calls and letters to the company went unanswered or unreturned. The company eventually stopped sending merchandise to Applicant, but he received an invoice demanding payment for the merchandise he received and was unable to return. He refused to pay the invoice, but again stated his willingness to return the items.

The company sought a judgment against Applicant. Applicant was served by the sheriff, and began in earnest trying to reach representatives from the company in order to prevent the matter from going to court. Applicant did not appear in court because he did not understand the process or the consequences of his failure to appear. (Tr. 47-48.) A default judgment was entered against Applicant for the full amount in November 2010. However, the company did not pursue collection of the default judgment and the judgment does not appear on Applicant's July 2017 CBR. (GX 4.)

Applicant has paid \$15,060, through garnishment of \$200 per pay period, on the \$16,367 judgment alleged in SOR ¶ 1.ee. Applicant purchased a vehicle which never ran properly. He voluntarily relinquished the vehicle to the seller, which sought and was granted a judgment against Applicant for the vehicle-loan balance. (AX A; Tr. 48-49.) This debt is being resolved.

Applicant paid the past due balance of \$9,376 (SOR ¶ 1.hh) owed for his mortgage-loan through a six-month repayment agreement with the mortgage lender which was

completed in June 2017. He is occasionally late with his mortgage-loan payments, but has not fallen into arrears since satisfying his repayment plan. (GX 4; Tr. 51- 52.) This debt has been resolved.

In early 2018, Applicant contracted with the credit-repair firm in an effort to resolve his delinquent accounts. Due to the high fees, Applicant terminated his relationship with the firm and attempted to resolve his delinquent accounts on his own by contacting many of the creditors and attempting to enter repayment plans. His efforts were not particularly successful, and he again retained the credit repair firm in May 2018. (Tr. 37-39.) The \$762 and \$527 consumer debts alleged in SOR ¶¶ 1.bb and 1.cc were paid through the credit-repair firm. Applicant disputed the \$424 consumer debt alleged in SOR ¶ 1.gg and the \$200 and \$70 medical debts alleged in SOR ¶¶ 1.ll and 1.mm through the credit-repair firm and they have been removed from Applicant's CBR. (AX B; Tr. 32-33.)

Applicant denies the \$959 and \$568 cellular-telephone services debts alleged in SOR ¶¶ 1.o and 1.p. Applicant changed service carriers with the understanding that the new service carrier would buy out any remaining contractual obligation Applicant had with the previous service carrier, and that both service carriers were paid in full through such an agreement. Several months after changing carriers, Applicant received a list of charges, but no explanation, from each of the carriers. He is disputing these debts through the credit-repair firm. (Tr. 36-38; Answer.)

Applicant has contacted the creditors of the medical debts alleged in SOR ¶¶ 1.b through 1.n, 1.q through 1.s, 1.u, 1.v, 1.ii through 1.kk, and 1.nn, and will begin repayment of these accounts as soon he is able. (Tr. 35-36; Tr. 38; Tr. 42.) Applicant contacted the creditor for the \$10,930 delinquent vehicle-lease debt alleged in SOR ¶ 1.aa, and stated that it was his intention to enter a repayment plan once his medical debts were resolved. (Tr. 41.) Applicant contacted the creditor for the \$588 payday loan (SOR ¶ 1.t) and is negotiating payment arrangements. The \$506 past-due debt alleged in SOR ¶ 1.z is for a one-month arrearage on the vehicle loan for Applicant's wife's vehicle. She has regular contact with the creditor and is working to bring this account current. (Tr. 41-42.)

Additionally, Applicant's wife periodically failed to timely file her quarterly tax returns for her business and was delinquent on her tax payments. Applicant established a payment plan with the IRS and the IRS also withheld Applicant's tax refunds for several years to offset the balance due. The IRS contacted Applicant several years ago to inform him that the account had been placed in a non-collectible status. Applicant recently contacted the IRS and was informed that there is no current balance due. (AX F; Tr. 62-64.)

In 1990, 2009, and 2014, Applicant was arrested and charged with fraudulently issuing worthless checks. In each instance, Applicant was experiencing financial strains and wrote checks for necessities, usually groceries, with the intention of depositing money into his checking account to ensure that the checks would clear. However, he was unable to do so and the checks bounced. Applicant made full restitution and paid the requisite court costs. Applicant never intended to commit a fraudulent or illegal act, is remorseful

about these mistakes and is actively more diligent about monitoring his checking account balance. (Tr. 56-58.)

All of Applicant's SOR debts were incurred prior to Applicant's current employment, which began in October 2016. (GX 4.) Applicant lives within his means, has not incurred any recent delinquent debts, and is able to maintain his ongoing financial obligations as well as unusual expenses such as uniforms or other costs associated with his son's extracurricular activities. (Tr. 73.) Applicant is also paying \$100 a month for a \$2,000 judgment for past-due homeowner's association dues. When Applicant purchased his home, the seller did not disclose the requirement of homeowner's association dues, and it was several years before Applicant was aware of the requirement. (Tr. 24-25; Tr. 60-61.) Applicant works part time as a pastor and receives a biweekly donation of approximately \$200. He also sporadically earns about \$100 a week when working for a friend with a lawn-care service. (Tr. 66-68.) Applicant intends to resolve his remaining delinquent accounts. He was sincere and credible while testifying.

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's 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." See 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 ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes three disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(d): deceptive or illegal financial practices such as . . . check fraud.

The following mitigating conditions are potentially applicable:

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.

Applicant's past financial problems were attributable to matters largely beyond his control. Specifically, he experienced a sustained period of underemployment and three periods of unemployment that resulted in his inability to maintain his financial obligations. Initially, Applicant acted responsibly by reorganizing his debts through Chapter 13 bankruptcy, into which he paid \$1,500 a month between 2009 and 2013, until he could no longer afford the payments because he was unemployed. Additionally, Applicant's wife and son both have chronic medical conditions that require frequent medical treatment. Because Applicant could not afford insurance while unemployed, he incurred substantial medical debt. It is significant that all of Applicant's SOR debts were incurred prior to starting his current employment in 2016 and that more than half of the delinquent accounts are medical debts. Applicant has not incurred any delinquent debts since gaining his current employment and health insurance coverage.

After the manufacturing plant closed in 2003, Applicant invested in his future by earning a bachelor's degree and taking coursework towards a master's degree. Since he gained more lucrative employment, Applicant has begun addressing his delinquent accounts within his means. He engaged the services of a credit-repair firm to assist him

in resolving his past-due debts, and has paid had four debts and has had four debts successfully removed from his CBR. He has contacted a number of his creditors on his own with the intention of establishing repayment plans. He entered and satisfied a six-month repayment plan with his mortgage-loan creditor and has resolved the \$9,376 arrearage alleged in SOR ¶ 1.hh. The creditor for the \$10,201 delinquent vehicle-lease debt (SOR ¶ 1.w) forgave the debt and Applicant properly filed the IRS 1099-C and paid the appropriate taxes. He has paid over \$15,000 through garnishment on the \$16,367 judgment alleged in SOR ¶ 1.ee. Although this debt is being resolved through garnishment, the fact that a debt is paid through garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006). Applicant is also voluntarily paying a \$2,000 non-SOR judgment.

Applicant is working with a credit-repair firm to pay or dispute several of his remaining delinquent accounts and has resolved five SOR debts through its services. He will pay the remaining delinquent accounts as soon as he is able. Applicant initially acted in good faith by filing Chapter 13 bankruptcy and maintaining his payments for nearly four years. After incurring delinquent debt due to circumstances largely beyond his control, he has continued to act in good faith by contacting his creditors, engaging a credit-repair firm and paying or successfully disputing a number of debts, rehabilitating his mortgage-loan, and otherwise addressing his delinquent debts. He also works part-time as a pastor and lawn-service worker to earn additional income.

“Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has not incurred any delinquent debt since 2016 and is working to resolve those accounts which remain outstanding. Applicant now maintains health insurance. Applicant’s financial delinquencies were not due to frivolous or irresponsible spending. Although Applicant experienced past financial issues, he established and instituted a plan to pay or otherwise resolve his delinquent debts, and lives within his means. Although Applicant’s finances are not perfect, he has made a good-faith effort to repay or successfully dispute his debts and has established a plan to resolve his financial issues within his means. AG ¶¶ 20(b), 20(d), and 20(e) apply.

On three occasions between 1990 and 2014, Applicant unintentionally issued worthless checks. He made restitution and paid the requisite court costs. He is remorseful about these mistakes and has instituted safeguards to prevent it from happening again. The last instance of issuing a worthless check occurred nearly five years ago. This



conduct is was infrequent and occurred under such circumstances that it is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

### **Whole-Person Concept**

Under AG ¶ 2, 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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2.

I have incorporated my comments under Guideline F in my whole-person analysis and have considered the factors in AG ¶ 2, but have also considered the following:

Applicant invested in his future by graduating from college and working towards a graduate degree. That investment resulted in more stable and lucrative employment. While Applicant and his wife have experienced some tax-related delinquencies in the past, they initially worked with the IRS and entered a repayment plan. That plan has since been suspended by the IRS and Applicant does not owe a balance on his tax account. Applicant is active in his community as a part-time pastor, and periodically works an additional part-time job to help with the household finances.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his financial circumstances. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.rr:

For Applicant.

## **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge