



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



In the matter of: )  
)  
) ISCR Case No. 17-04218  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

02/27/2019

**Decision**

MURPHY, Braden M., Administrative Judge:

Applicant has several delinquent debts. They were incurred several years ago, but they remain ongoing and unresolved. He did not provide sufficient evidence to mitigate the financial security concern. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 17, 2016. On May 1, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>1</sup>

<sup>1</sup> The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) (December 10, 2016), effective June 8, 2017.

Applicant answered the SOR on June 2, 2018, and requested a hearing. The case was assigned to me on November 16, 2018. On November 26, 2018, a notice of hearing was issued scheduling the hearing for December 10, 2018. The hearing convened as scheduled. At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 5. Applicant testified but did not submit any exhibits. The hearing transcript (Tr.) was received on January 2, 2019.

### **Amendment to the SOR**

At the start of the hearing, I amended the SOR to correct the spelling of one of the words in the name of the creditor in SOR ¶¶ 1.a through 1.f, without objection. (Tr. 15)

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a - 1.g. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 28 years old. He is a high school graduate. He has never married and he has no children. He served in the U.S. Navy from April 2010 to February 2012, when he received a general discharge under honorable conditions. (Tr. 33-34; GE 1)

When Applicant was a junior sailor, he was walking on base one evening, and saw a debit card lying on the ground. He picked it up, and instead of turning it in to authorities, he used it for his own expenses, such as gas and utilities. He charged about \$230 on the card before he was caught. (Tr. 31, 75-77; GE 5 at 6)

Soon thereafter, Applicant was interviewed by the Navy Criminal Investigative Service (NCIS). He was charged with violating Article 121 of the Uniform Code of Military Justice (larceny and wrongful appropriation), was referred to Captain's Mast, where he received non-judicial punishment of 45 days restriction and 45 days extra duty, and reduced in rank. A few months later, he was notified that he was being given a general discharge under honorable conditions. (Tr. 33-36, 57-62; GE 1; GE 2) Applicant paid full restitution to the sailor whose debit card he misused.<sup>2</sup> (Tr. 62, 77)

After leaving the Navy, Applicant was briefly unemployed. He then worked odd jobs from spring 2012 through the end of 2013. (Tr. 69) In January 2014, he was hired by a defense contractor. In October 2014, he took a job with the same employer in a new state. He divided his time between the two locations until September 2017, when he moved to the new state full time. (Tr. 69-72, 84-87)

---

<sup>2</sup> The debit card Applicant found was issued by the same institution that is the creditor for all but one of the SOR debts, but none of them relate to that incident. (Tr. 75)

Applicant worked in that position from October 2014 until June 2016, when he and many others were laid off. He then worked odd jobs until February 2018, when he was rehired by his current employer and clearance sponsor. (Tr. 36-38, 54, 69, 84-87)

The SOR alleges that Applicant has about \$17,000 in delinquent debt. Applicant incurred all of the debts during his time in the Navy, and all but one of the debts are to the same creditor, a credit union. The debts are listed on Applicant's credit reports from June 2016, November 2017, and December 2018. (GE 2, GE 3, GE 4) Applicant used loans to finance the purchase of two motorcycles and a used car, and also had other loans and credit cards. This includes SOR ¶¶ 1.a (\$7,433), 1.b (\$5,416), 1.c (\$2,156), 1.d (\$1,153), 1.e (\$552), and 1.f (\$4,094). (Tr. 38-43, 77-79) The accounts remain on a recent credit report. (GE 4)

In about 2012, Applicant received an e-mail on his military e-mail account concerning an overseas job offer. He applied for the job, but was soon asked to send money to the sender. This was a scam, as Applicant belatedly realized, but not before he took out another loan (SOR ¶ 1.f) to pay for it. (Tr. 40-43)

Applicant fell behind on his various accounts, and they were charged off or placed for collection. He later spoke to someone at the credit union in an attempt to settle his accounts, but took no further action to resolve them. (Tr. 43-49) As he testified, "I didn't deal with it for so long that it was like, you just start new." (Tr. 80) He has not reached out to the credit union recently to resolve his debts. (Tr. 83)

SOR ¶ 1.g (\$765) is a debt to a health club in the geographic location where Applicant served in the Navy. Applicant said he notified the gym that he was quitting membership when he moved. The account shows no activity after he left the area in January 2014. Applicant disputed the account and it no longer appears on his credit report. (Tr. 49-51, 72-75; GE 2 at 9; GE 4; GE 5 at 8)

Applicant later engaged a debt resolution firm to help him clean up his credit. He paid them \$99 a month for 14 months. He now has other credit cards that he is using more responsibly to improve his credit rating. He has received informal advice from family members on how to improve his credit but has not pursued formal credit counseling. (Tr. 62-64, 83)

Applicant also acknowledged that for a three-year period, he did not file his tax returns. He later filed all those returns. He also acknowledged that at the time of the hearing (December 2018) his 2017 tax returns remained unfiled.<sup>3</sup> (Tr. 64-68, 89-90)

Applicant makes \$19.36 an hour. He works full time, He earned about \$40,000 in 2018. He pays \$1,600 in rent and is current. He lives with a cohabitant, his girlfriend. He has no other debts but for those in the SOR. He also has a part-time, evening job as a security guard, earning \$80 a night two or three nights a week. He said he was unable

---

<sup>3</sup> Applicant's tax issues are not alleged in the SOR, so I have not considered them as disqualifying conduct.

to address his debts because his employment was not particularly stable. He also wanted to focus on more recent expenses once he started his new life in a new location. (Tr. 49-54, 68)

Applicant acknowledged his mistakes. He accepted blame for accruing his older debts, and for not addressing them responsibly. He noted that he has not accrued any newer debt, and that he works hard and stays out of trouble. (Tr. 92-93)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”<sup>4</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

---

<sup>4</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

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

The security concern for 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. . . .

The financial considerations guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable: AG ¶¶ 19(a) (inability to satisfy debts); and 19(c) (a history of not meeting financial obligations).

Conditions that could mitigate 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(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 to resolve the issue.

AG ¶ 20(e) applies to mitigate SOR ¶ 1.g, the debt to the health club. While Applicant admitted the debt, he disputed its validity, and it no longer appears on his credit report. His other debts, all to the credit union, remain outstanding and unresolved.

Applicant's debts were all incurred during his brief time in the Navy, which ended in early 2012, now several years ago. Although the debts are old, Applicant has also never taken any serious steps to resolve them in the time since then. He has been content to "start new," as he put it, by focusing on his more recent accounts. The fact remains, however, that his delinquent debts to the credit union are ongoing and unresolved. They are a "continuing course of conduct,"<sup>5</sup> even though they are dated. As such, they continue to cast doubt on Applicant's current judgment, reliability, and trustworthiness.

Applicant had not filed his 2017 tax returns as of the date of the hearing, and he acknowledged filing several years of earlier returns late as well. While not alleged as disqualifying conduct, Applicant's irresponsible handling of his duties as a taxpayer serves as another example of the security concerns already evident due to his ongoing debts. AG ¶ 20(a) does not apply.

Applicant's debts are the result of overspending. He financed the purchase of a car and two motorcycles while he was a junior sailor in the Navy, and took out several other loans as well. AG ¶ 20(b) has some application because he had some employment instability in recent years, and that circumstance impacted his ability to address his debts. Nevertheless, he has yet to address his debts in a responsible way, so AG ¶ 20(b) does not fully apply. Similarly, Applicant simply has not established enough of a track record of financial responsibility or of good-faith efforts to repay his debts for AG ¶ 20(d) to apply. Applicant has not participated in formal credit counseling from a reputable source, and his debts are not yet resolved or under control. AG ¶ 20(c) does not apply.

### **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(d):

---

<sup>5</sup> ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

(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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant needs to establish a track record of financial stability and of good-faith steady payments towards his debts before he can establish that he is a suitable candidate for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

### **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-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

### **Conclusion**

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

---

Braden M. Murphy  
Administrative Judge