



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 18-00696  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esquire, Department Counsel  
For Applicant: *Pro se*

12/17/2018

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**Decision**

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GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

**Statement of the Case**

On March 31, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On January 22, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to those interrogatories on February 19, 2018. On April 18, 2018, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), (December 10, 2016), *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear as to when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated June 11, 2018, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on August 2, 2018, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on August 8, 2018. Applicant's response was due on September 22, 2018. Applicant apparently chose not to respond to the FORM, for as of December 14, 2018, he has not done so. The case was assigned to me on December 13, 2018.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted with comments all of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.i.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a defense contractor. He has been serving as a service technician with his current employer since October 2016. A 1997 high school graduate, Applicant received an associate's degree in 2011. He never served with the U.S. military. He has never held a security clearance. Applicant was married in October 1999, and separated in June 2011. He has been cohabiting since July 2014. He has two children, born in 1999 and 2009.

### **Financial Considerations<sup>1</sup>**

During his enhanced subject interview conducted by an investigator from the U.S. Office of Personnel Management (OPM) in September 2017, Applicant attributed his financial issues to his separation from his spouse after he found out about her infidelity; child support payments; and several periods of unemployment. He had previously reported in his e-QIP that he had been unemployed from July 2009 until June 2010; from December 2010 until March 2011; from June 2011 until September 2011; and from

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<sup>1</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (e-QIP, dated March 31, 2017); Item 3 (Enhanced Subject Interview, dated September 28, 2017); Item 6 (Answers to Interrogatories, dated February 19, 2018); Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 18, 2017); Item 5 (Equifax Credit Report, dated December 20, 2017); Item 1 (Applicant's Answer to the SOR, dated June 11, 2018).

December 2011 until August 2012. During his periods of unemployment, Applicant was supported financially by unemployment compensation, his father, or by his personal savings, and he spent his time hunting for a job, doing chores on the family farm, or attending school.<sup>2</sup> Those combined factors made it difficult for him to remain current on his bills and child support, and some accounts became delinquent, and he developed a child support arrearage. The arrearage was resolved in August 2013 when the Internal Revenue Service (IRS) applied his tax refund to the debt, and he borrowed \$3,000 from his family to make the final payment.<sup>3</sup>

The SOR identified nine delinquent accounts that had been placed for collection or charged off as generally reflected by Applicant's May 2017 or December 2017 credit reports. Applicant claimed that some of the accounts may have been generated by his wife, or because she broke their informal agreement that he would work to earn the money, and she would stay home and pay the bills.<sup>4</sup> He acknowledged that he has not entered into any agreements or made any payments to the creditors, although he said in his Answer to the SOR that he hoped to start doing so by July 2018.<sup>5</sup> Those debts, totaling approximately \$38,625, are described below:

There are seven delinquent student loans (SOR ¶ 1.a., for \$7,745); (SOR ¶ 1.b., for \$6,863); (SOR ¶ 1.c., for \$6,646); (SOR ¶ 1.d., for \$4,938); (SOR ¶ 1.e., for \$4,306); (SOR ¶ 1.f., for \$3,277); and (SOR ¶ 1.h., for \$3,211), that remain unresolved, with no evidence of any efforts by Applicant to either contact the creditor(s), enter into repayment arrangements, or make even small periodic payments. There are also a satellite television account (SOR ¶ 1.g., for \$401), and a cellular telephone account (SOR ¶ 1.i., for \$1,238), that remain unresolved, although Applicant previously indicated the former would be paid off by July 2018, and the latter would be paid off by November 2018.<sup>6</sup>

Applicant failed to indicate his monthly net pay, monthly expenses, debt payments, or if he has any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of financial counseling. Applicant offered no evidence to indicate that his financial situation has improved, or that it is now under control.

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<sup>2</sup> Item 3, *supra* note 1, at 5-7.

<sup>3</sup> Item 3, *supra* note 1, at 10.

<sup>4</sup> Item 3, *supra* note 1, at 10.

<sup>5</sup> Item 1, *supra* note 1; Item 6, *supra* note 1.

<sup>6</sup> It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>7</sup> 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>8</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>9</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>10</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship

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<sup>7</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>8</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>9</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>10</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>11</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>12</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

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

The security concern relating to the guideline 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. 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 individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG 19:

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<sup>11</sup> *Egan*, 484 U.S. at 531.

<sup>12</sup> See Exec. Or. 10865 § 7.

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had nine delinquent accounts that had been placed for collection or charged off. Although he was questioned about those delinquent accounts in September 2017, to date, he has not made any efforts to address them. He acknowledged having an inability to meet his financial obligations over a period of years since 2011. It is unclear if his avoidance of his financial obligations is associated with an unwillingness to satisfy his debts or merely an inability to do so. AG ¶¶ 19(a) and 19(c) have been established, but AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under 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;<sup>13</sup>
- (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;<sup>14</sup> and

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<sup>13</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

<sup>14</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than

(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.

AG ¶ 20(b) minimally applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant attributed his financial difficulties to his separation from his spouse; child support payments; and several periods of unemployment. However, during his periods of unemployment, Applicant was supported financially by unemployment compensation, his father, or by his personal savings. He also claimed to have insufficient funds to maintain his financial responsibilities.

There is no documentation to reflect that Applicant made any efforts, much less "good-faith" efforts, before or after he was interviewed by OPM in September 2017; before or after the SOR was issued in April 2018; or even after he was sent the FORM in August 2018, to: obtain financial counseling from a legitimate and credible source, such as a non-profit credit counseling service; dispute his delinquent accounts with the credit reporting agencies or the creditors themselves; contact his creditors to set up repayment plans; or indicate that payments had been made to his creditors.<sup>15</sup> An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.<sup>16</sup> In this instance, to date, there is no evidence that any corrective actions have been taken by Applicant. There is no evidence to conclude that Applicant's finances are under control.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or

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merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>15</sup> See ISCR Case No. 12-01335 at 5 (App. Bd. Dec. 29, 2017).

<sup>16</sup> See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

(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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>17</sup>

There is very little evidence mitigating Applicant's conduct. Applicant is a 39-year-old employee of a defense contractor. He has been serving as a service technician with his current employer since October 2016.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has nine delinquent accounts that had been placed for collection or charged off, totaling \$38,625. He has made no efforts to resolve them. Applicant has not obtained financial counseling. There is no evidence of a budget, and he offered no evidence to indicate that his financial situation has improved, or that it is now under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>18</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each

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<sup>17</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>18</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).



