



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00834
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

02/13/2019

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On March 30, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on August 21, 2018. He requested an administrative determination and waived a hearing before an administrative judge. On September 11, 2018, Department Counsel requested a hearing and notified Applicant.

The case was assigned to me on October 17, 2018. On the same day, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing on November 13, 2018, via video teleconference. I convened the hearing as scheduled. Department Counsel offered Government Exhibits (GE) 1-6, which were admitted into evidence without objection. Applicant testified, but he offered no exhibits at the hearing. I kept the record open until December 7, 2018, to give Applicant the opportunity to provide documentation in support of his case. On December 6, 2018, he emailed to me three documents. I have marked Applicant's email and three documents as Applicant Exhibits (AE) A-D and admitted them into the record, without objection. DOHA received the transcript of the hearing on November 29, 2018 (Tr.).

### **Findings of Fact<sup>1</sup>**

Applicant is 43 years old and works as a defense contractor. He served in the U.S. Navy for 20 years and was honorably discharged in June 2014 at the pay grade of E-6. He worked primarily as a machinist and "contractor engineer." He has been married twice, once in 1994 and again in 2017. His first marriage ended in divorce in January 2005. He has three children, two of whom are adults and one is a minor. He pays child support to the mother of the minor child. He also has two stepchildren as a result of his remarriage. (Tr. 22, 23, 47.)

Applicant received his high school diploma in 1994 or 1995, and has been taking college courses to earn an associate's degree in automotive technology. He also hopes to earn a bachelor's degree in business. (Tr. 7, 21.)

Following his honorable discharge from the Navy in 2014, Applicant obtained a job with a defense contractor in another state. He is currently employed with a successor company. At his own expense, he moved to the area where his new employment was located. The new area has a higher cost of living, which has strained Applicant's financial situation. He is also still recovering from certain expenses associated with his 2005 divorce. (Tr. 24, 25.)

While in the Navy, Applicant held a security clearance. On October 25, 2011, the Department of the Navy Central Adjudication Facility granted Applicant a secret clearance with a condition that he seek financial counseling for assistance in resolving his delinquent debts. Applicant failed to provide this information in his SCA. A 2011 credit report reflected that Applicant had several delinquent debts and a vehicle repossession and auto loan deficiency at that time. He testified that he was never advised about the conditional nature of his clearance, and he did not seek financial counseling at that time. He testified further that his debts in 2011 were the result of his 2005 divorce. (GE 2; GE 4; Tr. 15, 24.)

On June 20, 2017, Applicant submitted a security clearance application (SCA) in connection with his new employment with a defense contractor. He disclosed a tax debt in his SCA, which he subsequently paid through a garnishment. That debt was not alleged

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application, dated June 20, 2017, (GE 1), unless otherwise indicated by a parenthetical citation to the record.

in the SOR. He failed to disclose the debts alleged in the SOR because he claims he was unaware of them at the time he prepared his SCA. (GE 2; Tr. 4.)

Applicant provided income and expense information to the background investigator, which showed that he had a \$4,000 monthly surplus. At the time of the hearing, his monthly financial situation was still stable, though his wife was contributing less income from her part-time employment and his monthly rent had increased from \$1,275 to \$2,500 after moving his new family in March 2017. (Tr. 54; GE 3 at 8.) In his SOR Answer, Applicant wrote that he was working with a financial counselor to resolve his debts with the debt collectors. He testified that he had received financial counseling from his tax preparer. He claimed that this person helped him contact one or more of his creditors for the purpose of seeking to resolve his debts and has helped him prepare a budget. Applicant was unable to recall her name at the hearing, and he provided no additional information or documentation after the hearing. (SOR Answer at 1; AE 3 at 8-9; Tr. 32-33, 42, 45-46, 53.)

The SOR alleges seven delinquent debts totaling about \$38,000. Applicant's most significant debts arose in 2016 and 2017 while he was employed as a contractor and was receiving retirement and disability pay from the Navy. One small credit-card debt arose in 2011 and two minor debts arose in 2014 and 2015 after he retired from the Navy and relocated for his new employment.

**SOR ¶¶ 1.a: rental expense in collection with a balance of \$986.** In June 2016, Applicant was evicted from an apartment he shared with his future second wife and her child after a disruptive incident involving the woman and the child. Applicant was not present at the time of the incident. According to his testimony, Applicant paid the creditor \$500 towards this debt in October 2018, one month before the hearing. (Tr. 28.) On December 3, 2018, three weeks after the hearing, he paid the balance due of \$780. He provided evidence of the second payment. (AE B.) Applicant has resolved this debt, though he paid it well after his receipt of the SOR.

**SOR ¶ 1.b: credit card account in collection with a balance of \$1,416.** Applicant took out this credit card while in the Navy. He defaulted on the account in 2017. (GE 5 at 3.) He agreed to pay the debt through a voluntary, automatic deduction of \$220 from his Navy retirement account. (GE 3 at 5; Tr. 28-29.) He has paid this debt, and he now has a credit on the account of \$342. (AE C.) This debt is resolved.

**SOR ¶ 1.c: vehicle loan charged off for \$26,058.** Applicant's ex-wife opened this account in April 2011 in Applicant's name using a power of attorney that she held. She did this without his knowledge. Shortly thereafter, he found out about her unauthorized actions. He did not dispute the \$24,000 loan, however, because he was trying to get back together with her at that time, some six years after they had divorced. At that time he was paying his ex-wife \$1,200 of monthly child support, and she was using that money to pay the \$700 per-month vehicle loan payment. For a reason unknown to Applicant, she stopped paying on the loan in 2016, and the bank charged off the loan in December 2016 after repossessing the truck. At the time of the hearing, Applicant had been unable to

resolve this debt because the creditor wanted a large, lump-sum payment, which he could not afford. He testified that the creditor did not want to work with him on a payment plan. He last contacted the creditor in September 2018, and he was waiting for the creditor to respond. After the hearing, he advised in an email that he had set up with the creditor an automatic payment of \$400 per month out of his retirement pay starting in January 2019. Neither Applicant's offer of a payment plan nor the creditor's acceptance of the plan has been documented, and no payments have been made as of the close of the record. (Tr. 30-33, 50-51, 56; AE A.) The debt is not yet resolved.

**SOR ¶ 1.d: installment loan charged off for \$8,595.** Applicant borrowed money to pay for his relocation in 2014 following his retirement from the Navy. He repaid the loan and took out a second loan in April 2016, basically refinancing the initial loan. At that time, he had additional expenses to move some personal property he had left in storage in his prior residential area and to pay rent that was past due on his prior residence. He defaulted on this installment loan in 2016, and the lender wrote off the loan balance in November 2016. In his November 2017 background interview, Applicant said that two months earlier, he began paying the creditor \$175 per month and the current amount of the debt was \$7,540. He provided no documentation to support this assertion. After the hearing, he sent me an email in which he wrote that he has increased the payments to \$390 per month from his retirement account, starting in January 2019. (GE 5 at 3; GE 3 at 5; Tr. at 33-38, 52; AE A.) It appears that this debt may be in the process of being resolved, but Applicant has provided no documentary evidence to support that conclusion.

**SOR ¶ 1.e: credit card account charged off for \$492.** The bank that issued this credit card charged off this account in July 2011. Applicant admitted this debt in his SOR response, but at the hearing he testified that he had forgotten about the debt. As of the hearing, he had not contracted the creditor. He testified that the debt was related to his 2005 divorce. After the hearing, he paid the debt with another credit card, and he provided the confirmation number because he did not yet have a corroborating receipt from the creditor. (GE 5 at 3; Tr. 38-39; AE A.) It appears that this credit-card debt has been resolved with a payment using another credit card.

**SOR ¶¶ 1.f, and 1.g: delinquent auto insurance and utility bills in collection with a total balance of \$169.** These accounts have been in collection since 2015 and 2014, respectively. After the hearing, Applicant provided evidence of his payment of the insurance bill. (AE D.) Applicant provided no information regarding the utility debt in the amount of \$52, though he testified that he would pay it off by the end of November 2018. (Tr. 40.) The debt alleged in SOR ¶ 1.f is resolved; the debt alleged in SOR ¶ 1.g is not.

## 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.” 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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.

## Analysis

### Guideline F (Financial Considerations)

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions, testimony and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

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(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 indication that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Several of Applicant's debts were ongoing at the time of the hearing. Applicant's 2011 credit report in the record established that his financial difficulties began years ago. More recent credit reports in the record show that his problems are continuing. In 2017, he told the background investigator that he had a substantial excess monthly income each month, yet he failed to take comprehensive steps to address his largest debt or any of the more modest debts. Applicant failed to show that his financial difficulties are unlikely to recur or that his history of financial problems do not cast doubt on his reliability and judgment.

AG ¶ 20(b) is partially established. Applicant's largest debt, his ex-wife's loan for a truck, remains. She used Applicant's power of attorney without his permission to obtain the loan. Applicant did not dispute this debt when he learned about it. He failed to take action for personal reasons. Arguably, these were circumstances that arose beyond his control since he did not originate this debt. However, his failure to take effective steps to begin to resolve this debt until after the hearing was not responsible under the circumstances.

AG ¶ 20(c) is partially established. Applicant offered no documentary evidence that he has received any formal financial counseling, but he did testified that his tax preparer had assisted him on his finances and debts. This informal adviser does not appear to qualify as a "legitimate and credible source," and there is no documentary evidence or other substantial evidence clearly indicating that Applicant's largest debt is being resolved.

AG ¶ 20(d) is partially established. Applicant has made some efforts to pay several of the debts alleged in SOR, but with one exception, all of his efforts occurred after his receipt of the SOR. His reluctance to deal with his largest debt until after the hearing demonstrates his general lack of good faith in dealing with his debts in a timely manner. Due to this delay, he has not been able to show a track record of consistent payments of this debt. Also, with respect to his payment of the credit-card debt set forth in SOR ¶ 1.e with another credit card, Applicant has not reduced his overall indebtedness, which undercuts the value of his mitigating effort to repay his debts.

### **Whole-Person Concept**

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. 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 and applying the adjudicative factors in AG ¶ 2(d).<sup>2</sup>

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<sup>2</sup> The factors are: (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)

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. I have considered Applicant's 20 years of service in the Navy and his honorable discharge. I have also weighed the fact that his ex-spouse misused Applicant's power of attorney and the fact that her default on the vehicle loan occurred at a time he was paying her a significant amount of child support. On the other hand, Applicant accepted this financial obligation before his ex-wife defaulted on the loan. His failure to make serious efforts to begin to resolve this debt until after the hearing does not evidence the requisite responsibility required for eligibility for a security clearance. Also, Applicant has not established a track record of financial stability after many years of being unable to pay his debts.

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns raised by his past actions.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

### **Conclusion**

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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.



I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

John Bayard Glendon  
Administrative Judge