



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



In the matter of: )  
)  
) ISCR Case No. 18-01997  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: *Pro se*

11/08/2019

---

**Decision**

---

LYNCH, Noreen A., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 1, 2018. On August 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F and Guideline E. The DOD CAF acted 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on March 7, 2019. The Defense Office of Hearings and Appeals (DOHA)

issued a notice of hearing on June 13, 2019, scheduling the hearing for August 29, 2019. I convened the hearing as scheduled.

I marked the Government's discovery letter as Hearing EX (HE) I. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, and presented Applicant's Exhibits (AE) A-E without objection. The record was kept open until September 30, 2019 for supplemental documentation. Applicant requested an additional 30 days and the Government did not object. The record closed on October 30, 2019. Applicant did not submit any evidence. However, on November 7, 2019, Applicant submitted a packet of documents, which was marked as AE F. The Government did not object and the document is entered into the record. The transcript (Tr.) was received on September 9, 2019.

### **Findings of Fact**

Applicant is a 47-year-old employee of a federal contractor. He graduated from high school in 1989 and attended college courses in chemistry, but he did not complete his degree. (GE 1) Applicant has obtained various certifications throughout his career. (Tr. ) He is married and has two children. He has held a security clearance since 2005. Applicant has been employed with his current employer for about a week. (Tr. 16). He has his own firm, which he began in 2008. He has been a contractor for the federal government since 2005. (GE 1)

### **Financial**

The SOR alleges in 1.a-1.h delinquent debts totaling approximately \$175,000. Applicant disputed the financial allegation listed in the SOR 1.a, and states the other accounts are settled or in payment plans. He noted that SOR 1.c is a duplicate account with 1.h. Applicant denied the personal conduct allegation listed in the SOR at 2.a for failure to disclose his debts on his SCA. (GE 1)

Applicant was unemployed for nine months in 2018. (Tr. 18) He noted in his 2016 SCA that until 2008, his financial situation was ideal. He went into debt caring for his parents, his in-laws and others, such as his sister, who needed help. (GE 1) His parents died in the time period of 2009 to 2011. He incurred substantial medical bills. Applicant also stated when he was interviewed for his security clearance in 2017, he had received about \$50,000 from his father's life insurance policy and about \$35,000 from a house sold in 2006. He stated that he paid larger loans and left the smaller ones unpaid. (GE 2)

As to SOR 1.a, Applicant is disputing this account for \$37,521 because he was a victim of fraud. He explained that he had a bank loan for a vehicle which he signed to an out-of-state car dealership. He sent a bank check in the amount of \$50,000 so that he could obtain a luxury car. He never received the car nor his money. Applicant contacted the fraud department of the bank. In 2016, the dealership sent \$13,000 to the bank. (AE A) Applicant received advice to pursue action through an attorney to possibly recoup his money. This happened in 2017. The bank is holding Applicant liable for the remainder

of the loan. Applicant contacted the bank in August 2018, but he has not set up a payment plan because he believes the matter is still “pending.” (Tr. 60) He was emphatic that the bank has not asked him for any money, but it is showing on his credit report as “charged off.” ( Tr. 58, GE 3)

As to SOR 1.b, this is a charged-off amount of \$6,852 owing to the same bank as 1.a. Applicant presented a letter dated November 11, 2018, that stated a payment has resolved the debt and it is settled in full. (AE A, Tr. 32)

As to SOR 1.c, it is a charged-off account in the amount of \$5,831, which was opened in 2006. This account is the result of a bank check in the amount of \$7,000 that Applicant gave to his brother-in-law so that he could get a car. He did not make the payments and Applicant realizes that he is liable for the amount. (Tr. 66) Applicant received a letter from the company and agreed to a payment plan of \$165 a month in August 2018. (AE B) There is no evidence of any payments and he did not know the current balance. Applicant states that this is the same account as in 1.h. He did not submit any receipts or payments for either account. In his post-hearing submission this account is listed on a 2019 creditor debt list in the amount of \$4,595. (AE F)

As to SOR 1.d, a charged-off account in the amount of \$14,755, Applicant stated that the account is settled. He also stated that this is the same account as listed in SOR 1.f. He submitted a 2018 letter that showed the account was settled for \$4,000 in 2018. (AE C) The 2016 credit report shows that the account was charged off in 2010. (GE 4)

As to SOR 1.e, a charged-off account opened in 2008 in the amount of \$7,663. Applicant explained that he used the loan money to help his family and others. (Tr. 84) He produced no documentation of current payments on his plan. His credit report states that the account was charged off in 2010. (GE 4) In his post-hearing submission this account is listed in his debt relief program. (AE F)

As to SOR 1.f, is a charged-off account in the amount of \$13,381 to the same bank as 1.d. Applicant stated that this is the same account. There is no documentary evidence of duplication. The other account was settled for \$4,000 in October 2018. (AE C) Applicant stated that he would produce evidence after the hearing, but he did not.

SOR 1. g, is an account past-due in the amount of \$87,962, with a total balance of \$220,550. Applicant bought a house in 2005 and rented the property. His tenants moved out and he could not replace them. (Tr.43) Applicant was late on his payments due to his father and brother dying. He paid for the costs of their funerals. This mortgage loan was not modified and Applicant stated the process took about three years but was not approved. ( AE E, Tr. 44) The house went to foreclosure. Applicant knows the house was sold but does not know if there is a deficiency that is owed. He thinks the deficiency might be \$2,000. (Tr. 90) He has not contacted the bank, but stated that he would pay the amount. (Tr. 93)

As to post-hearing submissions, Applicant presented a copy of a debt resolution agreement, dated November 6, 2019. The agreement has terms of 47 months with a total enrolled debt of \$80,152. The program is to start on November 29, 2019, with a total monthly payment of \$1,204. The creditors listed on the account are not all the same as the SOR allegations. Applicant also enclosed a 2016 credit report showing a score of 737. He submitted a copy of a 2016 transaction history from a credit union for a used auto loan that does not appear to match any of the SOR accounts. (AE F)

Applicant earns about \$150,000 a year. He received some advice from his church about finances but not formal counseling. (Tr. 94). He has a savings account and a 401(k) in the amount of \$10,000. There was no information about a budget or payment plans, but in his 2019 debt relief program a budget is included. (AE F)

### **Personal Conduct**

The SOR alleges under the personal conduct guideline at 2.a. that he falsified material facts on his 2016 SCA when answering Section 26: Financial Record. Applicant did not list any delinquent debts, defaults, charged-off accounts or collection accounts. He answered “No” to each subsection in the Section. Applicant admitted that he did not disclose any financial issues because he did not know about them. (Tr. 98) He acknowledged that he knew about the account in 1.a that he claims is fraudulent, but he did not consider that as a debt since it was being disputed, and he was never asked for any payments. (Tr. 99)

Applicant was confused at the hearing about the various accounts and said that some of them were old. He also stated that he obtained loans for others because that was what his father did to help people. He stated that he is trustworthy and intends to pay all his debts. (Tr. 102)

Applicant submitted six letters of reference from colleagues, friends, a cousin, and team leader who attest to his technical skill and loyalty. He also submitted various certifications that he has obtained over the years. (ANSWER)

### **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. 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.

## Analysis

### Guideline F (Financial Considerations)

The 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. 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 . . . .

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, corroborated by his credit reports and failure to provide sufficient documentation, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 indications 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 overdue creditors or otherwise resolve debts.

Applicant is disputing the debt concerning the car that he believes was a fraud perpetrated on him. He settled two accounts in 2018. He stated that he was unemployed for nine months and that he cared for his family for several years. However, he also gave a check to his brother-in-law for \$7,000 and did not follow up to see if payments were made. He knew it was his responsibility, but he did not do anything. He stated that he has several payment plans but given an extension of time to provide evidence of such, he did not do so. The evidence that he submitted did not related to the SOR allegations.

Applicant waited until 2018 to address any of the SOR allegations. He sent in documentation untimely that reflect he just signed a debt relief program and the payments have yet to start. This is not sufficient mitigation in the case. He may have had circumstances beyond his control but did not act responsibly. He has no track record of financial responsibility. He also took out loans so that he could help others. While that is laudable, it does not show good judgment. He had nine months of unemployment and could not pay all his own debts. He provided no evidence of payment arrangements or receipts for any of the debts that he claimed he had in place. He waited until more than sixty-days after the hearing to obtain debt relief services to begin to address his financial issues. He promises that he will pay all the debts. Promises to pay in the future are no sufficient for mitigation. Applicant acted too late in this case and has not met his burden of proof. None of the mitigating conditions apply.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied allegation 2.a that he did not disclose any delinquencies and remained emphatic that he did not deliberately falsify his security

clearance application by not disclosing any delinquent debts or collection accounts in response to Section 26. He noted that he had not checked his credit report and that he knew of the one debt that he was disputing. He stated that he was confronted with the other debts when he received the SOR and had the investigative interview. I found him credible in his assertion that he did not consider the mortgage a debt because he was in the process of modification. He did not deliberately falsify his SCA in 2016. AG 16(a) does not apply.

Here, Applicant did not report information accurately on his SCA in addition to material information about his debts on his 2016 SCA in Section 26. It is understandable that he was not focusing on the fraud debt or the mortgage loan at the time he completed his 2016 SCA and did not intentionally falsify his SCA. He met his burden under the personal conduct guideline. AG 16(a) does not apply.

### **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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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.

Applicant is a generous man who has helped his family and others by giving them money. However, he obtained loans to do so. He acknowledged that he took loans to help others as his father would do. After the hearing, he contacted a debt relief company. The terms are for 47 months and the monthly payment is \$1,200. The payments do not begin until the end of November. There is no track record for applicant at this time. He did settle two accounts in 2018. However, this is not sufficient to mitigate the financial security concerns.

He was unemployed for nine months and took care of his family. However, he allowed himself to get into debt by doing so. He had some circumstances beyond his



control but did not act responsibly. He intends to pay his debts but promises to pay in the future are not sufficient for mitigation.

Applicant did not intentionally falsify his 2016 SCA in section 26. He was credible in his testimony that he did not report the account that he believes was fraudulent and the home loan mortgage was in the process of modification. He did not think that there was anything to list under the financial section. The personal conduct security concerns are not established.

### **Formal Findings**

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

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

Subparagraphs 1.a-1.h Against Applicant:

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

### **Conclusion**

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

Noreen A. Lynch  
Administrative Judge