



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 18-02660  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

11/01/2019

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guideline F (Financial Considerations) raised by Applicant’s delinquent debts and failure to timely file federal and state income tax returns. He has mitigated the concerns raised by his untimely filing of federal and state income tax returns, but he has not mitigated the concerns raised by his delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on January 6, 2017. On March 14, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on May 15, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 1, 2019, and the case was assigned to me on July 23, 2019. On August 28, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 26, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not offer the testimony of any other witnesses. Applicant's Exhibits (AX) A through BB were attached to his response to the SOR and were reintroduced at the hearing. AX CC through FF were submitted at the hearing. AX A through FF were admitted without objection. DOHA received the transcript (Tr.) on October 16, 2019.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 48-year-old test engineer employed by a defense contractor. He served on active duty in the U.S. Navy from September 1989 to September 1993. He enlisted in the Army National Guard in June 1994. In March 1995, he reenlisted in the U.S. Navy. He served on active duty until he retired from the Navy in May 2012 as a chief warrant officer. He held a security clearance in the Navy and retained it when he was employed by a defense contractor.

Applicant married in June 1993, divorced in February 2013, and married his current spouse in May 2014. He has five children from his first marriage, ages 26, 24, 17, 14, and 11. He has three stepchildren in his current marriage. He attended a technical institute from September 2013 to September 2014, enrolled in a university in January 2015, and completed the requirements for a bachelor's degree in technical management in August 2019. (Tr. 21.)

Applicant was unemployed for about a month after retiring from the Navy. He was employed in the food-processing industry from August 2012 to July 2013. In May 2013, he was reprimanded and suspended for two days after using derogatory language about a subordinate during a conversation with his supervisor. In June 2013, he was placed on an "employee improvement program" after cross-contamination of food occurred during an operation under his supervision. In July 2013, he quit his job because he was frustrated with the work environment. (GX 1 at 17.) He was unemployed from July 2013 to April 2014, when he was hired by his current employer.

Applicant's Navy career was stellar until September 2010. He progressed rapidly through the ranks, received numerous awards and decorations, and was commissioned as a warrant officer in 2009. He deployed on sea duty in May 2010, and he had been at sea for about four months when his then wife told him that she wanted a divorce. He became deeply depressed and his duty performance deteriorated to the point that he received two "letters of instruction" from his commanding officer and was detached for cause from his assignment. Faced with a board of inquiry to determine whether he should

be separated from the Navy, he chose to retire. (AX A at 2.) He has a service-connected disability due to sinusitis (10%) and a major depressive disorder (50%). (Tr. 20.)

Applicant's then wife filed for divorce in 2011. The divorce was final in February 2013, and Applicant was ordered to pay child support for their five children in the amounts of \$1,350 per month from December 2012 to January 2014; \$1,203 per month until December 2019; \$960 per month until April 2023, and \$617 per month until February 2026. (AX I.) He also was required to pay his ex-wife alimony of \$1,000 per month, and she was awarded 37.9 % of his military retired pay.

The SOR alleges 11 delinquent debts totaling about \$66,603, and failures to timely file federal and state income tax returns for tax years 2015, 2016, and 2017. The delinquent debts are reflected in credit reports from August 2018 and May 2017 (GX 4 and 5.)

On March 29, 2019, about two weeks after the SOR was issued, Applicant hired a debt-management company and enrolled in a debt-management plan (DMP), under which he pays the debt-management company \$195 per week to manage the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d, which he expects to resolve by 2023. (AX L at 4, 10, 15.) Applicant is directly responsible for other debts not in the DMP. The evidence concerning the allegations in the SOR is summarized below.

**SOR ¶ 1.a: credit-card account charged off for \$22,120.** This debt is included in Applicant's DMP. A \$78 payment was made on April 12, 2019. (AX X at 1.)

**SOR ¶ 1.b: vehicle loan charged off for \$9,697.** This debt is included in Applicant's DMP. A \$204 payment was made on April 19, 2019. (AX X at 1.)

**SOR ¶ 1.c: cellphone account placed for collection of \$3,871.** This debt was settled for \$1,858 in April 2019. (AX M.)

**SOR ¶ 1.d: unsecured personal loan charged off for \$3,858.** This debt is included in Applicant's DMP, which provides for a monthly payment of \$443. (AX X at 2.)

**SOR ¶ 1.e: collection account placed for collection of \$1,919.** This debt was added to Applicant's DMP in May 2019, and it provides for monthly \$300 payments. (AX Y; Tr. 23-24.)

**SOR ¶ 1.f: telecommunications account placed for collection of \$460.** In April 2019, this debt was settled for \$322. (AX O.)

**SOR ¶ 1.g: utility bill placed for collection of \$387.** This debt was paid in October 2018. (AX P.)

**SOR ¶ 1.h: telecommunications account placed for collection of \$384.** This debt was settled for \$268 in April 2019. (AX Q.)

**SOR ¶ 1.i: cellphone account placed for collection of \$2,937.** This debt was settled for \$1,200 in March 2019. (AX R.)

**SOR ¶ 1.j: cellphone account placed for collection of \$1,122.** This debt was settled for \$617 in May 2019. (AX S.)

**SOR ¶ 1.k: child-support arrearage of \$19,848.** This debt is not reflected in the credit reports submitted in evidence by Department Counsel (GX 4 and 5). However, Applicant disclosed delinquent alimony payments totaling \$30,000 in his SCA, during a personal subject interview (PSI) in February 2018, and in response to DOHA interrogatories. (GX 1 at 51; GX 2 at 9-10; GX 3.) The arrearage is actually a combination of alimony and child support. Applicant stopped paying child support and alimony when he was unemployed in 2013 and 2014. (GX 2 at 10.) Pursuant to a court order, child support and alimony are withheld from Applicant's pay at the rate of \$1,203 per month for child support; \$240 per month for a child-support arrearage; and \$1,000 per month for alimony. He is paid weekly, and \$564 per week is withheld from his pay. (AX T; AX V.) Between March 2013 and September 2019, he has paid a total of about \$161,446 in child support and alimony. (AX CC.)

In May 2016, Appellant filed a motion to terminate the alimony on the ground that his ex-wife and another man are living together as husband and wife and have two children together, but have not formally married because marriage would terminate her entitlement to alimony. The issue has not yet been resolved. (Tr. 17-18.)

Appellant's ex-wife claims that he owes an arrearage of about \$30,000 for alimony. He testified that he has paid about \$39,000 in alimony since he filed his motion to terminate it. If his alimony payments are refunded, the amount refunded would offset the child-support arrearage. (Tr. 28.) Applicant's attorney for the alimony litigation is in the process of scheduling a trial date. (AX FF.)

**SOR ¶¶ 1.l and 1.m: failures to timely file federal and state income tax returns for 2015, 2016, and 2017.** In Applicant's response to DOHA interrogatories, he stated that he did not file federal and state tax returns for 2015, 2016, and 2017, because he knew he was entitled to refunds, and he believed that his refunds would be seized and applied to the alimony arrearage. (GX 2 at 10; GX 3 at 3.) He testified that his accountant advised him that he could file late if he was entitled to refunds, so long as he filed within three years to avoid forfeiture of the refunds. (Tr. 29-30.) All past-due federal and state tax returns were filed in March and April 2018. (AX W; AX-Z; AX EE.)

Applicant's net monthly income is about \$14,970. He has monthly expenses of about \$7,943 and debt payments of about \$5,602, leaving a net monthly remainder of \$1,424. (AX J.)

Applicant's site manager has known him for several years and has been his supervisor for one year. He states that Applicant "consistently demonstrates high moral

character and solid personal conduct.” He trusts Applicant “implicitly and without hesitation.” (AX C at 1.)

Applicant’s project manager has known Applicant for five years and has been his supervisor for three years. He states that Applicant “always seeks to do what is right and honest for the company as well as our U.S. Navy customer.” He has no doubts about Applicant’s trustworthiness, judgment, and reliability. (AX C at 2.)

## **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 and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially relevant:

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;

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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's marital breakup, the legal expenses related to alimony, his premature retirement from the Navy, his major depressive disorder, and his short period of unemployment after retiring from the Navy were conditions largely beyond his control. However, his unemployment from July 2013 to April 2014 was voluntary and not a condition beyond his control. Furthermore, he has not acted responsibly. Even though he has been employed since April 2014, he took no significant action to resolve the delinquent debts alleged in the SOR until October 2018, when he paid the delinquent utility bill. He did not hire the debt-management company or pay any of the other debts alleged in the SOR until he received the SOR and realized that his security clearance was in jeopardy. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(c) is partially established. Applicant has received financial counseling and enrolled in a DMP, but he has not yet established a track record of payments on the three debts included in the DMP. He has not yet resolved the alimony issue. He is making regular child-support payments by court-mandated automatic payroll deductions, but he has not yet resolved the child-support arrearage.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.c and 1.f-1.j, which are resolved. It is not established for the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d, which are included in the DMP, because Applicant has not yet established a track record of compliance with the payment agreements. It is not established for the child-support arrearage, which is being paid by involuntary payroll deductions, which are not the equivalent of good-faith payments. See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011).

AG ¶ 20(g) is established. Applicant has no federal or state tax debts, and he has filed all the overdue tax returns. I have noted that Applicant candidly admitted that he delayed filing his income tax returns to prevent his ex-wife from seizing his refunds. However, I have also noted that he relied on bad advice from an accountant about his obligation to file timely returns and that he filed the past-due returns a year before the SOR was issued.

### **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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. He served with distinction in the Navy for many years and held a security clearance without incident. His military career ended abruptly when his wife of many years left him and he fell into a period of deep depression. Since his retirement from the Navy, he has earned the respect of his current supervisors. He has recently taken significant steps to right his financial ship. However, he did not seriously address his delinquent debts until he realized that his security clearance was in jeopardy. Furthermore, insufficient time has passed to determine whether he will comply with his payment agreements and resolve the alimony and child-support issues. See Directive ¶¶ E3.1.37 through E3.1.40 (reconsideration authorized after one year). 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 failures to timely file his federal and state income tax returns, but he has not mitigated the security concerns raised by his delinquent debts.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.c, 1.f-1.j, 1.l, and 1.m:	For Applicant
Subparagraphs 1.a, 1.b, 1.d, 1.e, 1.k:	Against 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.

LeRoy F. Foreman  
Administrative Judge