



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-00535  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

12/17/2019

**Decision**

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond his control, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on October 24, 2016. On March 20, 2019, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Ex. 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) effective June 8, 2017.

Applicant answered the SOR on May 20, 2019, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 6, on July 11, 2019. On July 15, 2019, the Defense Office of Hearings and Appeals (DOHA) transmittal

letter and a complete copy of the FORM were sent to Applicant. Applicant's receipt is dated August 1, 2019. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information. Applicant did not file a response. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1. The case was assigned to me on October 22, 2019.

### **Findings of Fact**

Applicant is a 33-year-old mechanic employed by a federal contractor since November 2015. He served honorably on active duty in the U.S. Marine Corps from November 2004 until December 2013. He completed a three-month project management program in December 2014. He married in January 2006 and divorced in December 2012. He previously held a security clearance while on active duty. (GX 1.)

The SOR alleges three debts totaling \$33,679. The debts are comprised of a \$15,711 charged-off personal loan, a \$9,875 a charged-off credit card, and an \$8,093 balance due on a vehicle-loan after repossession. Applicant admits each of the allegations. The delinquent debts are reflected in Applicant's December 2018 and November 2016 credit bureau reports (CBR) (GX 6; GX 5), and discussed in his personal subject interview (PSI) summary (GX 4) and e-QIP (GX 3). Applicant's admissions are incorporated in my findings of fact.

After leaving active duty, Applicant was unemployed from December 2013 until January 2014. In January 2014, Applicant began working as an operator for a manufacturing company. At some point between January and May 2014, he was diagnosed with testicular cancer and began undergoing treatments. He was physically unable to continue working. In May 2014, he moved to another state with his fiancée with the intention of continuing to recover then finding work and enrolling in school. He was unemployed from May 2014 until January 2015. Applicant worked as a technician for an aerospace company from January 2015 until September 2015, when he moved to be closer to his family. He was unemployed from September 2015 until November 2015, when he began working for his current employer.

Due to his inability to work while undergoing cancer treatments, and the lasting impact of his periods of unemployment between 2013 and 2015, Applicant was unable to sustain his financial obligations. His vehicle was repossessed in November 2014 (SOR ¶ 1.c), and his house was foreclosed upon in February 2015. His credit card became delinquent in March 2014 (SOR ¶ 1.b) and he defaulted on his personal loan in September 2014 (SOR ¶ 1.a). Applicant incurred an additional \$4,626 debt that went to collection in May 2014, but that debt has since been repaid through garnishment. (GX 5; GX 1.) Applicant attempted to consolidate his debts, but was unable to do so. (GX 4.) The SOR debts remain outstanding.

Applicant's CBRs show a credit history dating back to 2007, that includes paid off personal loans, vehicle loans, credit cards, and a line of credit. Applicant has not incurred any other delinquent accounts since 2014. He is current on all his open accounts. (GX 6.)

## 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. 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.” See 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; see AG ¶ 2(b).

## **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....

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

The record evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(a): an 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; and

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.

The conditions that caused Applicant to become delinquent on his financial obligations arose under unique circumstances which were largely beyond his control.

Specifically, Applicant's financial issues are the result of a medical crisis that he experienced in 2014 that led to an eight-month period of unemployment. Applicant also experienced other periods of unemployment between 2013 and 2015 that affected his overall ability to address these delinquent accounts. However, Applicant acted responsibly under the circumstances.

Despite his financial strains, Applicant has managed to live within his means without incurring any additional debts. With the exception of the debts he incurred in 2014, Applicant has a long-standing sound financial record, which includes consistent repayment of personal loans, credit cards, and vehicle loans. He repaid a \$4,626 debt through garnishment. He attempted to consolidate the SOR debts, but was unable to do so. His credit reports are indicative of someone who is currently financially stable and lives within his means. Applicant's delinquent debts did not arise from lack of self-control, irresponsibility, or unwillingness to abide by rules and regulations, and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(b) 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably on active duty in the Marine Corps for nine years. He has a strong credit history and is currently financially stable and fiscally responsible.

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 potential security concerns raised by his financial issues. Accordingly, I conclude he has carried her burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge