



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 19-00646
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Dan O’Reilly, Esq., Department Counsel  
For Applicant: *Pro se*

10/09/2019

**Decision**

FOREMAN, LeRoy F., 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**

Applicant submitted a security clearance application on November 27, 2017. On March 13, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 7, 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 6, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 26, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and presented the testimony of one witness. He did not submit any documentary evidence. I kept the

record open until September 27, 2019, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on September 4, 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 31-year-old refueler and outside machinist employed by a defense contractor since October 2017. He has never held a security clearance.

Applicant earned a bachelor's degree in May 2010. He was employed as the dean of students at a public school from September 2010 to August 2014. He moved from another state to his state of current residence to be nearer to a woman who became his cohabitant and to seek a better-paying job. He found employment as a mathematics teacher in a public school in June 2014. He bought a home in March 2016. (Tr. 55-56.) His cohabitant was not employed, and Applicant paid her medical bills, car payments, and her other "needs," which he did not define. His provisional teaching certificate expired in 2017, and he failed the test for recertification. He was unemployed from June 2017 until he was hired for his current job. He fell behind on his payments during his unemployment. (Tr. 61.) He lost about \$200 in wages while visiting his seriously ill father. (Tr. 71.) He broke up with his cohabitant around June 2018 (Tr. 61.)

In October 2018, Applicant was questioned about his delinquent debts by a security investigator. (GX 2.) He hired a credit counselor in March 2019. It is not clear from the record whether he hired the credit counselor before or after the SOR was issued on March 13, 2019, but he attached documents from his credit counselor to his answer to the SOR.

Applicant's credit counselor testified that she has been in business for 26 years and has about 600 clients. (Tr. 19, 26.) She testified that she is in the process of being certified by the state as a credit counselor. (Tr. 36.) She is the sole member of her company. (Tr. 45.) She testified that she prepared a budget for Applicant, reviewed his financial situation, and was in the process of negotiating with creditors. She anticipated that a financial plan for Applicant would be completed by December 2019. (Tr. 20.) She charges \$287.50 as a retainer fee and an \$80 application fee. Applicant will pay \$50 every two weeks until his financial goals are met. The fees are for her services and are not applied to Applicant's debts. (Tr. 25.) As of the date of the hearing, Applicant had not yet started paying the fees. (Tr. 27.)

The SOR alleges eight delinquent consumer debts totaling about \$20,964, which are reflected in credit reports from February 2019 and January 2018. (GX 3 and 4.) The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: unsecured loan charged off for \$9,735 in January 2017.** Applicant incurred this debt to install a new heating and cooling system in his home. He knew the system needed to be replaced when he bought the home. (Tr. 66.) His payments were \$150 per month. He stopped making payments in 2017, when he became unemployed. He did not contact the creditor or make any efforts to resolve this debt. (GX 2 at 2.) Applicant's credit counselor testified that she had contacted the creditor and that they agreed to send her a written offer, but she had not received it as of the date of the hearing. (Tr. 27-29.) After the hearing, Applicant's credit counselor submitted a status report reciting that the creditor had insisted on full payment and Applicant had agreed to make monthly \$300 payments until a lower settlement amount is offered. (AX A.) Applicant submitted no evidence of payments under this agreement.

**SOR ¶ 1.b: collection account for \$4,836, opened in September 2017.** Applicant's credit counselor testified that she had disputed the amount of the debt and that the collection agency was willing settle for 25% of the amount. (Tr. 29.) She testified that this debt is for homeowners' association fees. (Tr. 30.) However, her status report indicates that the original creditor is an electronics and appliance store. The credit counselor testified that she had received a written settlement offer, and that she anticipated that the debt would be settled by September 15, 2019. (Tr. 31-32.) Her status report reflects that the collection agency had agreed to accept monthly \$100 payments beginning in October 2019.

**SOR ¶ 1.c: credit-card account charged off for \$2,579 in May 2017.** Applicant's credit counselor testified that she was trying to negotiate a settlement but had not received a written offer. (Tr. 33.) Her status report recites that the creditor agreed to settle the debt for \$515 and that Applicant agreed to make a \$100 payment and pay the balance within 30 days. Applicant submitted no evidence of any payments under this agreement.

**SOR ¶ 1.d: charge account charged off for \$2,174 in August 2016.** Applicant's credit counselor testified that she disputed the amount of the debt. She testified that, in March 2019, she offered to pay \$1,000 in three installments, but she had not received a response as of the date of the hearing. (Tr. 36-37.) Her status report recites that the creditor agreed to settle the debt for \$869, with monthly \$75 payments beginning in October 2019.

**SOR ¶¶ 1.e and 1.g: telecommunications debts placed for collection of \$426 in August 2017 and charged off for \$300 in May 2016.** Applicant's credit counselor testified that these accounts are duplicates. She testified that this creditor has offered to settle the debts for \$175, but she had not received the offer in writing. (Tr. 39.) Her status report recites that both debts were disputed, one debt was deleted from the credit record, and the other is under investigation. Only one \$300 debt to this creditor is reflected in the February 2019 credit report. (GX 3.) Applicant submitted no evidence of payments on the \$300 debt.

**SOR ¶ 1.f: charge account charged off for \$335 in May 2016.** Applicant's credit counselor testified that she asked the creditor to remove some of the late fees included

in this debt, but she did not recommend settling this account because it would preclude Applicant from obtaining another account with this creditor. (Tr. 42.) The status report recites that this debt is no longer collectable under local law and will be deleted from Applicant's credit reports. Applicant has made no payments on this debt.

**SOR ¶ 1.h: telecommunications account placed for collection of \$579 in November 2017.** This debt is for unreturned equipment. Applicant testified that the equipment had been returned. (Tr. 43.) His credit counselor testified that the account has been reopened. The status report recites that the equipment has been returned and deletion of the credit-report entry is pending. The debt was not reflected in the February 2019 credit report. (GX 3.) This debt is resolved.

Applicant did not submit documentary evidence of any payment agreements, payments, or correspondence from creditors for any of the debts alleged in the SOR. The credit counselor's status report includes a footnote reciting that Applicant is currently waiting for letters from creditors and that payment plans are scheduled to be completed by March 2020. (AX A.)

Applicant currently earns about \$42,000 per year. His net monthly remainder after paying all living expenses is \$500-600. (Tr. 67.)

### **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).

The two debts alleged in SOR ¶¶ 1.e and 1.g are duplicates. Only one debt to this creditor is reflected in the more recent credit report from February 2019. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved the debt alleged in SOR ¶ 1.g for Applicant.

Applicant's admissions and the documentary evidence submitted at the hearing establish the following 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 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(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(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 unemployment for four months was a condition largely beyond his control. The replacement of his heating and cooling systems was not a condition beyond his control, because he admitted that he knew the

systems would need replacement before he bought the house. However, he has not acted responsibly. His financial problems began in 2017, but he did not contact his creditors or make any efforts to modify his payments. He knew his financial problems raised security concerns after his interview with a security investigator in October 2018, but he did not hire his financial counselor until March 2019.

AG ¶¶ 20(c) and 20(d) are not fully established. Although the evidence about his credit counselor's qualifications is sparse, it appears that she is a "legitimate and credible source" of financial advice and assistance. However, Applicant's financial problems are not yet under control. His credit counselor has outlined a plan for resolving his debts, but he has presented no evidence of payments or payment agreements to carry out the plan.

Applicant did not begin to address his debts until March 2019, well after his interview with a security investigator and about the time he received the SOR. "A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake." ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019).

The credit counselor's status report reflects that Applicant is relying on the unenforceability of the debt alleged in SOR ¶ 1.f. Even if judicial enforcement of this debt is precluded by the statute of limitations, reliance on such a remedy is not normally a substitute for good-faith efforts to pay off debt. ISCR Case No. 07-16427 (App. Bd. Feb. 4, 2010.).

Applicant has submitted no documentary evidence of the payment agreements reflected in his credit counselor's status report. However, she was a credible witness, and her status report is sufficient to corroborate Applicant's testimony that he is trying to resolve his delinquent debts. However, there is no evidence that Applicant has started to carry out his financial plan. Thus, the evidence reflects promises to pay debts unsupported by a track record of payment. Promises to pay delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's credit counselor has given him a plan to resolve his debts, but there is no documentary evidence of "significant actions" to implement the plan.

### **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 Guidelines F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant has taken a step in the right direction by obtaining assistance in resolving his debts, but he has not established a track record of financial responsibility. If he carries out his plan for resolving his debts, he may be able to qualify for a security clearance in the future. See Directive ¶¶ E3.1.37 through E3.1.39 (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 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): **AGAINST APPLICANT**

Subparagraphs 1.a-1.f: **Against Applicant**

Subparagraphs 1.g-1.h: **For Applicant**

### **Conclusion**

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.

LeRoy F. Foreman  
Administrative Judge