



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-00893  
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 Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

07/29/2019

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**Decision**

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MARINE, Gina L., 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 (SCA) on June 13, 2018. On April 10, 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 (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on May 1, 2019, and requested a decision on the record without a hearing. On May 30, 2019, the Government sent a complete copy of its written case, a file of relevant material (FORM) including documents identified as Items 1 through 5, to Applicant. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on June 6, 2019, and did not respond.

Item 1 contains the two pleadings in the case. Items 2 through and 5 are admitted into evidence. The case was assigned to me on July 17, 2019.

### **Procedural Matter**

I extracted the below findings of facts from Applicant's SOR answer (Item 1), his SCA (Item 2), and a summary of his security clearance interview (SI) (Item 3). Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 3. The Government included a separate footnote entitled "**IMPORTANT NOTICE TO APPLICANT**" in the FORM to notify Applicant of his right to object to the admissibility of Item 3 on the ground that it was not authenticated. In that paragraph, Applicant was also notified that if he did not raise any objection to Item 3 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 3 could be considered as evidence in his case. Applicant received the FORM, which included a copy of Item 3. He did not respond to the FORM or otherwise object to Item 3.

### **Findings of Fact**

Applicant, age 43, has been in a relationship analogous to marriage since 2015. His was previously married from 2000 through 2008. He has three minor children and one adult child. He served on active duty in the U.S. Marine Corps from 1994 until 1996, when he was discharged due to medical injuries. His Department of Veterans Affairs disability rating is 30%. He received a high school diploma in 1994, and attended community college from 2008 through 2012. He has been employed full time as a material rigger by a defense contractor since April 2018. He reported no prior security clearances.

Applicant admitted each of the debts alleged in the SOR totaling approximately \$56,402 including: a \$17,868 child support account (SOR ¶ 1.a), six federal student loan accounts totaling \$28,434 (SOR ¶¶ 1.b – 1.f and 1.h), 22 medical accounts totaling \$3,659 (SOR ¶¶ 1.k – 1.ff), a \$3,321 automobile loan account (SOR ¶ 1.g), a \$1,698 personal loan account (SOR ¶ 1.i), and one \$1,422 retail charge account (SOR ¶ 1.j). While Applicant reported no periods of unemployment, he attributed his financial indebtedness to a period beginning in 2016 when his income was reduced due to the lack of availability of full-time hours and continuing through a 2018 layoff. In November 2018, Applicant reported that he was gainfully employed and had "the means" and willingness to resolve his delinquent debts. He also claimed numerous actions that had either been taken or would be taken to resolve his delinquent debts. (Item 1 and 3).

Applicant's child support debt resulted from an arrearage owed. The record is unclear as to which child or children it relates, or to what financial issue it can be attributed because Applicant provided inconsistent explanations between his SCA, SI, and SOR Answer. In addition to an ongoing voluntary wage garnishment, in 2016 and 2017, his federal tax returns were garnished and applied to repay the debt. Without providing any substantiating documents, he claimed that the balance had been reduced to "\$10,000 or less" as of April 2019, and that the wage garnishment had been "consistently" paid during the past eight to ten years. (Item 1 at 5, Item 2 at 35, Item 3 at 10, Item 4 at 3).

Applicant's student loan accounts were opened in 2011 and 2012. They were placed in deferment status in 2018 and rehabilitated as of April 2019. As of May 2019, the accounts were reported as no longer in delinquent status. (Item 1 at 5-6, Item 3 at 9-10, Item 4 at 4-5, Item 5 at 4-5).

During his November 2018 SI, Applicant stated that his medical debts were being consolidated and would be paid in full. The record does not specify on whose behalf or the reason these debts were incurred. In his May 2019 SOR Answer, he stated that he was "getting in contact" with his creditors to resolve the accounts in phases, ranging from "within the next month" to "by the end of this year." (Item 1 at 6-8, Item 3 at 5-9; Item 5 at 1 and 2).

Applicant's automobile loan account resulted from a voluntary repossession following a blown engine. He financed the vehicle in 2014 for \$5,202. The account was charged off in 2017 in the amount of \$3,321. Applicant believed that the creditor resold the vehicle and acknowledged "an amount owed," but did not specify it. Applicant took on a \$10,825 personal loan with the same creditor in 2014. The loan was to be repaid in \$257 monthly payments over 48 months. The account was charged off in 2017 in the amount of \$1,698. During his November 2018 SI, Applicant stated that he was working with the creditor to pay both debts. In his May 2019 SOR Answer, he stated that he was "getting in contact" with the creditor to set up a payment plan to resolve both debts by the end of the 2019. (Item 1 at 5 and 6, Item 3 at 9, Item 4 at 5).

Applicant opened a retail charge account in 2014 with a \$1,000 credit limit. The account was charged off in 2017 in the amount of \$1,422. During his November 2018 SI, Applicant stated that he was willing to pay this debt. In his May 2019 SOR Answer, he stated that he had been in contact with the creditor who offered a settlement and planned to pay the debt by the end of the 2019. (Item 1 at 6, Item 3 at 9, Item 4 at 6, and Item 5 at and 5).

## **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." (*Egan* 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." (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant 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.” (EO 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. (*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. (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. (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; 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. 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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his credit reports 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).

None of the following potentially applicable mitigating conditions under this guideline are established:

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; and

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

I credit Applicant with rehabilitating his delinquent student loans and find the allegations concerning those debts in his favor. However, substantial debts remain unresolved. He did not provide sufficient evidence for me to conclude that his child support debt is current or to establish the ongoing payments he allegedly made. While he is not required to be debt-free in order to qualify for a security clearance, he failed to demonstrate that he acted responsibly to address his debt. Despite being gainfully employed with the means to pay his debts since at least November 2018, he has not paid a single debt. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

## Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1ff:	Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge