



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-00918
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2019

**Decision**

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Concerns). Applicant defaulted on 13 consumer accounts and has admitted that he owes all but three of these debts. The total of the admitted debts is about \$28,000. He also filed two Chapter 7 bankruptcy petitions, one in 2001 and the other in February 2019. All of the admitted debts are included in the bankruptcy proceeding. Applicant provided insufficient evidence in mitigation. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 18, 2017, Applicant filed a security clearance application (SCA) seeking to renew a previously granted clearance. On April 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on May 9, 2019, and elected to have his case decided on the written record in lieu of a hearing. He admitted 12 of the 15 SOR allegations, but failed to provide any documentation regarding mitigating circumstances or character evidence.

On June 27, 2019, Department Counsel submitted the Government's written case in an undated File of Relevant Material (FORM), which included eight attached documents, identified as Items 1-8. Applicant received the FORM on July 17, 2019. One of the documents offered by Department Counsel was Applicant's Chapter 7 bankruptcy petition, which was filed about two months before the issuance of the SOR in February 2019 (the 2019 Petition). A copy of the FORM with the attached items was provided to Applicant. He was afforded an opportunity to file objections and to submit a written response and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. He did not respond to the FORM.

By failing to respond to the FORM, Applicant raised no objection to the admission of Item 8 attached to the Government's FORM, which is an unauthenticated report of investigation summarizing Applicant's May 21, 2018 background interview. Department Counsel advised Applicant in his FORM that Applicant had the right to object to the admissibility of this evidence as unauthenticated and that his failure to do so may constitute a waiver of any objection he may have. He was also advised in the FORM that he could provide corrections or updates to the information summarized in the document. By failing to respond to the FORM, Applicant made no objections or comments about Item 8. I conclude that he has waived his right to object to the admissibility of this document. I have marked the Items attached to the FORM as Government Exhibit (GE) 1-8. All documents are admitted without objection. The case was assigned to me on September 20, 2019.

### **Findings of Fact**

I have incorporated Applicant's admissions to the allegations set forth in SOR ¶¶ 1.a-1.f and 1.i-1.n in my findings of fact. I have also considered his notation in his SOR response that the debts alleged in SOR ¶¶ 1.c-1.f and 1.i-1.n were included in his 2019 Petition. Applicant's personal information is extracted from GE 3, his SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, the Government's FORM, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 42 years old and has married twice and divorced twice. Since 2009, he has lived with his domestic partner. They have one child, age 7. He graduated from high school in 1995. He has worked full time as a transportation officer for a state correctional facility since 2006. In 2017, he began working part time as an armed security guard for his security clearance sponsor. He is also an employee of an ambulance company. He has worked with that company for a number of years, but has chosen not to work any hours at that job since 2017. He is a first-time applicant for a security clearance.

Applicant's partner lost her full-time job in 2015. Since then, she has been looking for a full-time job, but has only worked at part-time jobs causing her annual income to be reduced from about \$33,000 to about \$11,000. Applicant claims that this loss of income has caused him to be unable to pay a number of his debts, which are listed in the SOR and discussed below. As a result of his financial situation, Applicant filed the 2019 Petition. As noted below, the petition seeks the discharge of the debts listed in the SOR among other debts. In his petition, he claims that his income is about \$2,600 per month and his expenses are about \$3,100 per month and that the total amount of his unsecured debts is about \$47,000. (SOR 1.c) (GE 8 at 1; GE 5 at 12.)

Applicant has a long history of financial difficulties. In 2001, he filed a petition for bankruptcy under Chapter 7 and successfully discharged his debts. The record does not contain any information regarding the amount of the debts discharged. (SOR 1.b) (GE 4 at 3.)

Applicant admits the following debts:

**SOR ¶ 1.c – Debt owed to a credit union in the amount of \$11,012 on a deficiency following repossession of a motorcycle** – This account was opened in 2009 when Applicant purchased a motorcycle. He defaulted on the loan in 2012, and the motorcycle was repossessed. Applicant owes a deficiency of \$11,012 following the creditor's resale of the collateral. In his 2019 Petition, he lists the amount of the debt as \$22,643. He has provided no information regarding the discrepancy. This debt is included in the bankruptcy. (GE 5 at 26; GE 7 at 2.)

**SOR ¶ 1.d – Debt in the amount of \$11,449 owed on a repossessed vehicle** – In 2011, Applicant borrowed \$12,162 to buy a 2001 vehicle. He defaulted on the loan in 2013, and the vehicle was repossessed and eventually resold. He remains responsible for the deficiency in the amount of \$11,449 and other charges. In his 2019 Petition, he lists the amount of the debt as \$6,253, which is the same amount appearing in GE 7, the most recent credit report in the record. This debt is included in the bankruptcy. (GE 5 at 32; GE 6 at 3; GE 7 at 2.)

**SOR ¶ 1.e – Debt in the amount of \$3,465 owed on a second repossessed vehicle** – Applicant purchased this 2004 vehicle in 2014. Applicant defaulted on the vehicle in early 2015. According to his SCA, he defaulted in October 2016 because "a member of his household," presumably his partner, lost her job. The debt has been the subject of a garnishment of Applicant's wages. This debt is included in the bankruptcy. (GE 3 at 29-30; GE 5 at 25; GE 6 at 3; GE 7 at 2.)

**SOR ¶ 1.f – Credit-card account charged off in the amount of \$408** – This account was opened in 2014 and he defaulted on the debt in 2015. This debt is included in the bankruptcy. (GE 5 at 27; GE 6 at 3; GE 7 at 2.)

**SOR ¶¶ 1.i through 1.n – Six delinquent debts owed on communications and medical accounts.** Applicant is indebted on collection accounts originally owed to a

cellphone service provider (SOR ¶ 1.i for \$722) and to two TV entertainment providers (SOR ¶¶ 1.j for \$431 and 1.l for \$202) and on three medical collection accounts (SOR ¶¶ 1.k, 1.m and 1.n for \$234, \$95, and \$47, respectively). In his SOR response, he wrote that all six debts were included in his 2019 bankruptcy petition. Four of the six accounts are listed in the 2019 Petition. The debts alleged in SOR ¶¶ 1.j and 1.l for TV entertainment accounts are not readily apparent on the list of unsecured creditors in the 2019 Petition, but are likely listed under the names of different collection agencies or consolidated with other debts. (GE 5 at 27, 28, 33; SOR response at 2.)

Applicant denies and disputes the following debts in his SOR response:

**SOR ¶¶ 1.g, 1.h, and 1.o – Disputed debts** – Applicant disputes three alleged debts in his SOR response. He claims he paid in or about August 2015 the debt for \$365 he owed to a bank, which is the subject of SOR ¶ 1.g. He writes that he is paying off the debt of \$771 owed to a furniture store, which is alleged in SOR ¶ 1.h, and that the balance as of the date of his May 2019 SOR response was \$107. He also asserts that he has a payment arrangement to pay the debt of \$312 owed for personal property taxes, which is alleged in SOR ¶ 1.o, to pay \$25 per month and as of May 2019, he only owed about \$75. He provided no documentation to support his claims. (SOR response; GE 2 a 2; GE 8 at 4.)

Aside from his 2019 Petition, Applicant offered no evidence regarding his debts. His employment at two jobs to pay his living expenses provides some evidence of his character. By failing to respond to the FORM, he has provided no bankruptcy records or other evidence updating the status of his case. His petition states that he received credit counseling from an approved credit counselling agency within six months of the filing of the petition. (GE 5 at 9.)

## 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 as follows:

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.

Applicant's admissions in his SOR response and the documentary evidence in the record establish the following potentially 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 creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debts 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 behavior is current and frequent and did not occur under circumstances that are unlikely to recur, as evidenced by his 2001 Chapter 7 bankruptcy discharge of his debts. His financial condition casts doubts on his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is partially established to the limited extent that some of Applicant's debts became delinquent in 2015 or later, after his partner lost her full-time employment. On the other hand, his two largest debts became delinquent before 2015, specifically the debts alleged in SOR ¶¶ 1.c and 1.d. Applicant has offered no evidence, however, that he has acted responsibly in addressing his many debts. He lost three vehicles in repossessions and his only response to his indebtedness on the resulting deficiencies is to file a Chapter 7 bankruptcy petition seeking to discharge the debts. The same is true for his other debts.

AG ¶ 20(c) is partially established. The 2019 Petition introduced by the Government reflects that Applicant received credit counseling in connection with his preparation for filing his 2019 Petition. By failing to respond to the FORM, Applicant made no attempt to show that this counseling has helped him in any way and that he has organized his finances to better control them in the future to avoid the problems of delinquent debts that caused him to file the 2019 Petition.

AG ¶ 20(d) is not established. Applicant's possible discharge of his debts in a Chapter 7 bankruptcy proceeding does not constitute a good-faith effort to repay his creditors or a good-faith effort to resolve his debts. Moreover, the record evidence simply shows that he has filed a bankruptcy petition. There is no evidence that the bankruptcy court has approved a discharge and that Applicant's debts have in fact been discharged.

AG ¶ 20(e) is not established. The three debts that Applicant disputes in his SOR response are small and are unrelated to the cause of his financial problem. Moreover, he does not dispute the legitimacy of the debts, he merely claims that he paid one debt alleged in the SOR and is in the process of paying the other two, notwithstanding that he filed the 2019 Petition three months before his SOR response. He failed to provide any documentation in support of his claims.

### **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 and applying the adjudicative factors in AG ¶ 2(d). These factors are (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). 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:           AGAINST APPLICANT

Subparagraphs 1.a - 1.o:           Against 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.

John Bayard Glendon  
.Administrative Judge