



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 19-01486
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2019

**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 August 13, 2018. On May 31, 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 June 25, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 29, 2019, and the case was assigned to me on August 27, 2019. On the same day, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 24, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until October 11, 2019, to enable him to submit additional documentary evidence. He timely submitted AX B, which was admitted without objection. DOHA received the transcript (Tr.) on October 15, 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 39-year-old nuclear quality-control inspector employed by a defense contractor since May 2018. He served on active duty in the U.S. Navy from January 2001 to January 2015. He was involuntarily discharged, with an honorable discharge, under the Navy's high-tenure rule (failure to be promoted). He was unemployed from February to October 2015. He worked in the private sector from October 2015 until he was hired for his current job. He held a security clearance while on active duty, but it expired because of the time gap between his discharge from the Navy and his employment by a defense contractor.

Applicant married in May 2002 and has three children, ages 19, 16, and 13. He enrolled in a community college immediately after being discharged, and he received an associate's degree in February 2017.

The SOR alleges 12 delinquent debts totaling about \$31,496. Six of the debts are student loans totaling about \$29,831. The debts are reflected in credit reports from May 2019 and August 2018 (GX 3 and 4.) The evidence concerning the delinquent debts alleged in the SOR is summarized below.

**SOR ¶¶ 1.a-1.e: credit-card accounts charged off for \$436 and 428; collection account for \$281; telecommunication account placed for collection of \$170; and utility bill placed for collection of \$149.** As of the date the record closed, Applicant had taken no action to resolve these debts.

**SOR ¶ 1.f: government debt for overpayment of tuition, placed for collection of \$201.** This bill was incurred when Applicant failed to pass a college course paid for under the Post-9/11 GI Bill. He testified that this debt was resolved by diversion of his federal income tax refund, and he is again attending classes using his GI Bill benefits. (Tr. 27, 33-34.) The May 2019 credit report reflects that the debt was paid. (GX 3 at 3.)

**SOR ¶¶ 1.g-1.i: student loans totaling about \$29,831.** In August 2019, Applicant entered into a rehabilitation program for his delinquent student loans,

providing for nine monthly payments of \$47. (AX A.) As of the date of the hearing, he had made the first three monthly payments. (AX B.)

Applicant testified that he incurred moving expenses when he moved from another state to accept his current job, and he received some financial assistance from his current employer for the costs of moving. (Tr. 21.) He also testified that he obtained loans for car maintenance and repairs. (Tr. 24.) However, he provided no documentation to corroborate his testimony.

Applicant's current gross pay is about \$47,800 per year. His wife is not employed outside the home. He estimates that his net monthly remainder after paying all his financial obligations and living expenses is about \$100. (Tr. 23.) He has not sought or received financial counseling.

### **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(b) (“unwillingness to satisfy debts regardless of the ability to do so”); 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; and

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

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

AG ¶ 20(b) is not fully established. Applicant's involuntary separation from the Navy and subsequent unemployment for about eight months were conditions beyond his control. However, he has not acted responsibly. He has taken no action to resolve the consumer debts alleged in SOR ¶¶ 1.a-1.e, even though they are for relatively small amounts. He took no affirmative action to resolve the government debt, which was collected by diversion of his federal income tax refund. He took no action to resolve his student loans until the month before his hearing, well after he received the SOR and realized that they were an impediment to obtaining a security clearance. 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) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(d) is not established. Applicant has taken no action to resolve the debts alleged in SOR ¶¶ 1.a-1.e. The collection of the government overpayment was by involuntary diversion of his federal income tax return, which does not constitute a "good-faith effort" to resolve it. See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). He has begun a rehabilitation program for his delinquent student loans, but it is too soon to determine if he will complete it, and his track record of neglecting his debts raises doubt whether he will comply with the terms of any student loans that are granted even if he completes the rehabilitation program.

### **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). 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:

Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	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.

LeRoy F. Foreman  
Administrative Judge