



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 19-00674  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: *Pro se*

01/22/2020

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**Decision**

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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 December 19, 2017. On March 18, 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 May 30, 2019, but his answer was returned by the DOD CAF on August 21, 2019, because it was incomplete. He completed and resubmitted his answer on August 27, 2019, and requested a hearing before an

administrative judge. Department Counsel was ready to proceed on October 18, 2019, and the case was assigned to me on the same day. On October 24, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 15, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until December 9, 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 December 2, 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 37-year-old engineering technician employed by a defense contractor since December 2017. He served on active duty in the U.S. Navy from September 2005 to September 2013 and was discharged under the Navy high-tenure rules for failure to be promoted. He began working for a defense contractor immediately after he was discharged. He was employed by various defense contractors and non-government employers from September 2013 until he was hired for his current position. He was voluntarily unemployed from May 2014 to August 2015, September 2016 to August 2017, and October to December 2017 to attend college. He was unemployed from November 2015 to June 2016, after leaving his job at a gym because it "was getting rid of the attendees." (Tr. 31-33; GX 1 at 13-18.) He earned a bachelor's degree from an art institute in June 2017. His educational expenses were covered by the GI Bill. He held a security clearance in the Navy and retained it as an employee of a federal contractor.

Applicant married in July 2004 and divorced in October 2012. He remarried in January 2013. He has two children from his first marriage, ages seven and four, and a three-year-old child from his current marriage. His oldest child lives with her mother, and he pays child support for her. His two youngest children live with him and his current wife. (Tr. 25.)

The SOR alleges seven delinquent debts totaling about \$34,400 that are reflected in credit reports from January 2018 and February 2019. (GX 2 and 3.) The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: child support arrearage placed for collection of \$22,636.** Applicant fell behind in his child-support payments during his periods of unemployment. Since January 2017, he has been paying \$600 per month by direct deduction from his pay. The last payment was on December 4, 2019. (AX A.)

**SOR ¶ 1.b: deficiency of \$14,562 after vehicle repossession.** Applicant testified that his vehicle was repossessed after he missed one or two payments. (Tr. 21.) He paid about \$900 to redeem the vehicle. He testified that his payments are current. (Tr. 54-57.)

He believes that he still owes about \$10,000 on the vehicle loan. (Tr. 79.) He did not provide any documentary evidence to support his testimony. The February 2019 credit report reflects that the account is still delinquent. (GX 3 at 2.)

**SOR ¶ 1.c: secured loan charged off for \$725.** Applicant testified he incurred this debt to repair the transmission in his wife's car. (Tr. 58.) He testified that he has saved up about \$200 to pay this debt and is hoping to settle it for less than the full amount. (Tr. 20, 22.) He received an offer to settle the debt for about \$300, but his wife advised him to not accept the offer and wait for a better offer, and he followed her advice. (Tr. 58-59.) The debt is not resolved.

**SOR ¶¶ 1.d-1.g: medical bills placed for collection of \$207, \$231, \$95, and \$67.** Applicant admitted these debts in his answer to the SOR, but he testified that he does not know anything about them. (Tr. 19, 64.) He has not attempted to contact the creditors or the collection agencies. (Tr. 86.) He has not disputed any of the debts. They are not resolved.

Applicant sought and received financial counseling while he was in the Navy. He also received financial advice from his mother, who worked in the banking industry. (Tr. 67.)

Applicant testified his gross annual income is about \$52,000. (Tr. 29.) He and his wife currently have a net remainder of about \$300 after paying all expenses. (Tr. 70.) About two weeks before the hearing, Applicant and his wife traded in one of their older cars and bought a 2016 used car, borrowing about \$11,000 to finance the purchase. (Tr. 73-74.)

Applicant's wife has been offered a job in another state. She will be moving in December 2019, and he and the children will follow her in January 2020. He expects to incur moving expenses and to maintain two residences until he joins his wife at her new job location. (Tr. 20-21.) His wife's annual pay for her new job will be about \$52,000.

Applicant hopes to find employment in their new home state, but had not done so as of the date the record closed. (Tr. 48-50.) He intends to remain in his current job until he finds employment at his wife's work location. (Tr. 82.)

### **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 documentary evidence in the record 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"). 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; 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 numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's discharge from the Navy was involuntary, but it did not cause any period of unemployment. Three of Applicant's periods of unemployment were the result of his voluntary decision to resume his college education. The information about his unemployment after leaving the job at the gym is sparse, but it appears to indicate that he left because he was dissatisfied with the job.

AG ¶ 20(c) is not fully established. Applicant received financial counseling while in the Navy and from his mother, but the debts alleged in SOR ¶¶ 1.b-1.g are not resolved or under control.

AG ¶ 20(d) is established for the child-support obligation alleged in SOR ¶ 1.a, but not for the other debts. Applicant testified that the repossession of his automobile, alleged in SOR ¶ 1.b, is resolved, but he submitted no documentary evidence to support his testimony or to rebut the credit report reflecting that the debt is not resolved. Applicants who claim that a debt has been resolved are expected to present documentary evidence supporting their claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). He presented no evidence that the debts alleged in SOR ¶¶ 1.b-1.g are being resolved.

### **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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has gained control of the child-support arrearage, but his overall financial situation is in disarray. The status of the car loan in SOR ¶ 1.b is unclear, and he admits that he owes at least \$11,000 on the loan. His net monthly remainder after paying all living expenses is minimal. He recently incurred an \$11,000 debt to replace an

older vehicle. He is facing moving expenses and the costs of maintaining two households. He has done nothing to resolve the medical debts in SOR ¶¶ 1.c-1.g. 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

Subparagraph 1.a: For Applicant

Subparagraphs 1.b-1.g: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge