



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



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-01334  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*  
02/28/2020

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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 granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 1, 2018. On May 8, 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 June 4, 2019, and requested a decision on the written record without a hearing. On December 3, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 7. 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 December 13,

2019, and did not respond. Items 1 and 2 are the pleadings in the case. I admitted Items 3 through 7 into evidence. The case was assigned to me on February 14, 2020.

### **Evidentiary Matter**

Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 5 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 5 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 5 could be considered as evidence in his case. Applicant received the FORM, including a copy of Item 5, but neither responded to the FORM nor otherwise objected to Item 5.

### **Findings of Fact**

Applicant, age 60, is married with one adult stepson. He graduated from high school in 1976. He served honorably in the U.S. Navy from 1980 through 2000. He has been employed as a flight electrician by the same defense contractor since 2004. He was granted a DOD security clearance in 2008. (Item 4; Item 5 at 2)

The SOR alleged two delinquent student-loan accounts totaling \$82,850. In his SOR response, Applicant denied the allegations on the basis that both accounts had been paid in full. The SOR allegations were corroborated by Applicant's May 2018 and April 2019 credit reports. The record did not contain any information about how or why the accounts went into default. (Items 1, 2)

Applicant cosigned the two alleged accounts for his stepson to attend college with the intent that his son would be solely responsible for repayment. They were private loans totaling \$49,800. One account number ending in 1037 was opened in 2005 and the other ending in 1052 was opened in 2007. He was interviewed in November 2018 by a DOD authorized investigator conducting the background investigation for his security clearance application. He provided documents to the investigator showing that the two alleged accounts had been paid in full in 2017. (Item 5 at 3, 6, 7; Item 6 at 12; Item 7 at 2)

In his SOR response, Applicant stated that, sometime after the SOR was issued, his son mailed paperwork directly to the DOD CAF to confirm the full payment of the two alleged accounts. However, the DOD CAF never received that paperwork and it was not otherwise included in the record. In the FORM, the Government argued that Applicant had not met his burden to prove that the two alleged accounts had been paid in light of the 2018 and 2019 credit report entries and missing paperwork alleged to have been sent to the DOD CAF by his son. (FORM; Items 2, 3)

Applicant considers his financial situation to be stable. He is willing and able to pay his expenses. Besides the alleged student-loan accounts, Applicant otherwise lives within his means and manages his finances responsibly. (5 at 2; Items 6, 7)

### **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. 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. 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 security concern under Guideline F (Financial Considerations) 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. 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))

The two alleged student-loan accounts, which were corroborated by the 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).

The security concerns raised under this guideline have been mitigated by the following applicable factors:

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; and

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

Applicant cosigned the two alleged student-loan accounts for his stepson to attend college. Both he and his son were responsible for repayment to the creditor. The 2018 and 2019 credit reports showed the two accounts in delinquent status. It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14 for pertinent allegations. See, e.g., ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) and ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). At that point, the burden shifts to Applicant to establish either that he is not responsible for the debt or that matters in mitigation apply.

Applicant met his burden by providing documents, which were included among the Government's exhibits, showing that the two alleged accounts had been paid in full in 2017, well before the security-clearance process began. He is otherwise managing his finances responsibly. The alleged debts occurred under circumstances not likely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, and judgment.

### **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 adjudicative 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 mitigated security concerns raised by the delinquent debts alleged in the SOR. Accordingly, Applicant has 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:           FOR APPLICANT

Subparagraphs 1.a – 1.b:           For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine  
Administrative Judge