



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 19-02386
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric C. Price, Esq., Department Counsel  
For Applicant: *Pro se*

03/12/2020

\_\_\_\_\_

**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 February 9, 2019. On August 30, 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 October 23, 2019, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on December 27, 2019. On December 30, 2019, a complete copy of the file

of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 9, 2020, and did not respond. The case was assigned to me on March 3, 2020.

The FORM included a summary of a personal subject interview (PSI) conducted on April 10, 2019. (FORM Item 4.) The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant did not respond to the FORM. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **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 52-year-old security specialist employed by defense contractors since December 2017. He graduated from high school in June 1985. He served on active duty in the U.S. Air Force from August 1985 to March 1991 and received an honorable discharge. He married in February 1998, divorced in October 2009, married in September 2016, and divorced in May 2018. He has two children, ages 19 and 24. He attended a university from September 2003 to March 2005 but did not receive a degree. He first received a security clearance while in the Air Force in 1986 and again in September 2009 as an employee of a defense contractor.

Applicant worked for defense contractors as a police advisor in Iraq from May 2007 to January 2009 and as a law enforcement professional in Afghanistan from March 2009 to October 2012. He was unemployed from October 2012 to December 2013. He was a county police officer from December 2013 to May 2014 and then moved to another state and was unemployed for three months. He worked in the private sector as a field technician from August 2014 to January 2016. He relocated to another state again and was unemployed from January to March 2016. He worked in the private sector as a security officer from March 2016 to January 2017, when his company lost its contract. He was unemployed from January to March 2017. He was employed as a commercial driver from May to October 2017, relocated again, and was unemployed from October to December 2017, when he was hired by a defense contractor. When that employer's contract expired in January 2019, he was immediately hired for his current job.

The SOR alleges ten delinquent debts totaling about \$35,714, which are reflected in credit reports from March and December 2019. (FORM Items 5 and 6.) He admitted all

the debts in his answer to the SOR. The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: credit-card account referred for collection of \$9,700.** Applicant used this credit card to purchase a timeshare.

**SOR ¶ 1.b: credit-card account charged off for \$5,568.** Applicant used this credit card for daily living expenses.

**SOR ¶ 1.c: collection account for \$9,123.** In the April 2019 PSI, Applicant was unable to provide any information about this account. The December 2019 credit report reflects that it is an educational debt. (FORM Item 6 at 1.) It became delinquent in May 2017 and was referred for collection in September 2017.

**SOR ¶¶ 1.d-1.g: collection accounts on behalf of the same original creditor for \$3,004; \$2,730; \$2,204; and \$1,763.** Applicant has provided no information about these accounts.

**SOR ¶ 1.h: telecommunications account referred for collection of \$681.** This debt was referred for collection in June 2016.

**SOR ¶¶ 1.i and 1.j: debts of \$216 and \$185 to an insurance company.** Applicant switched insurance companies before paying the full premium to the first insurance company. The debts are for unpaid premiums.

Applicant provided no evidence of contacts with his creditors, payments, payment plans, disputes, or other resolution of the debts. In his answer to the SOR, he attributed his delinquent debts to his divorce in 2009 and a substantial loss of income. He did not provide any further details. He did not provide any information about the circumstances of his multiple moves from one state to another. He did not provide any information about his current financial status.

### **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 FORM establish the following 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; 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) and 20(d) are not established. Applicant's divorces and periods of unemployment were circumstances beyond his control. He provided no information about his frequent relocations that would support a finding that they were conditions beyond his control. He has not acted responsibly. He submitted no evidence of contact with creditors, payments, payment plans, settlement offers, disputes, or any other attempts to resolve the debts.

### **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). I have considered Applicant's honorable service in the U.S. Air Force and his service as an employee of defense contractors, including his service in a combat zone. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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**

Subparagraphs 1.a-1.j:

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