



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 20-00094
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
 For Applicant: *Pro se*  
 11/03/2020

**Decision**

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to unusual circumstances largely beyond his control, Applicant experienced financial delinquencies, but mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on September 20, 2018. On April 18, 2020, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. 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) effective June 8, 2017.

Applicant answered the SOR and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on July 14, 2020. On July 17, 2020, the Defense Office of Hearings and Appeals (DOHA) transmittal letter and a complete copy of the FORM, including Government’s Exhibits (GX) 1 through 5,

were sent to Applicant. Applicant's receipt is dated August 21, 2020. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He did not respond. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1. The case was assigned to me on October 29, 2020.

### **Findings of Fact**

Under Guideline F, the SOR alleges two debts: a \$22,136 charged-off vehicle loan and a \$136,902 charged-off mortgage loan. Applicant admits each of these debts. The delinquent debts are reflected in Applicant's September 2018 and September 2019 credit bureau reports (CBR) (GX 4; GX 5) and discussed in his personal subject interview (PSI). (GX 3.) His admissions in his Answer are incorporated in my findings of fact.

Applicant, 46, is a supervisor employed by a defense contractor since June 2018. He has worked for federal contractors since at least January 2008. He served honorably in the U.S. Army from January 1993 until July 2002. He received two aerospace certifications in 2012. He was denied a security clearance in 2013 due to financial issues. He married in 1996 and divorced in 2002. Applicant remarried in 2016. He has an adult son and a 17-year-old daughter. (GX 2.)

In February 2012, Applicant cosigned a vehicle loan for his then-girlfriend. Applicant accepted a position to work overseas from October 2012 until October 2014. He left his then-girlfriend in charge of his finances to include his mortgage loan, his truck loan, and several consumer accounts. Applicant's then-girlfriend did not pay the accounts, including her vehicle loan on which Applicant was the cosigner and Applicant's mortgage loan. (GX 2 through 5.) Applicant's then-girlfriend routinely withdrew money from Applicant's accounts in the amounts of the account payments that were due which resulted in Applicant's believing that she was timely paying his accounts. (GX 2.) Applicant was informed by a relative of his then-girlfriend that his accounts were not being paid in about October 2013. Applicant contacted the creditors and began attempting to resolve the delinquent accounts. (GX 2; GX 3.)

The \$22,136 debt alleged in SOR ¶ 1.a is for the charged-off vehicle loan that Applicant cosigned for his then-girlfriend. Applicant was contacted in 2015 by an agent attempting to recover the vehicle. Applicant explained to the agent that Applicant's former girlfriend was in possession of the vehicle and that he had not seen the vehicle since he returned from overseas. He provided the agent with as much information as he had to assist in the recovery of the vehicle. This debt was charged off to profit and loss in July 2017. (GX 2; GX 4.)

Upon learning that his accounts were delinquent, Applicant contacted his mortgage-loan lender and was informed that his loan was in foreclosure. He attempted to resolve the account but was informed by the lender that it was too late to stop the foreclosure process. The \$136,902 debt alleged in SOR ¶ 1.b was charged off to profit and loss in July 2017. (GX 2.)

Applicant was also delinquent on the following accounts: an \$8,300 car loan; a \$5,300 car loan; a \$373 consumer account; a \$3,800 consumer account; a \$390 consumer account; a \$362 cable bill; and a \$500 credit-card account. He resolved the majority of these accounts in 2013 and the final outstanding account in March 2017. (GX 2; GX 4.)

Applicant purchased his current house in June 2018 and is current on his mortgage loan with no record of any late payments. He is current on all his open accounts, including his child support payments, a credit card, and several consumer accounts. He lives within his means and has not incurred any delinquent debt since 2013. (GX 4; GX 5.)

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The record evidence establishes 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 under this guideline 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; and

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, or a death, divorce or separation...) and the individual acted responsibly under the circumstances.

Applicant's financial problems arose in 2012 under unusual circumstances and were due to conditions that were largely beyond his control. Applicant misplaced his trust in his former girlfriend which resulted in numerous accounts of Applicant's becoming delinquent, including the two debts alleged in the SOR. Upon learning that his accounts were not being paid by his former girlfriend, Applicant acted responsibly by contacting his creditors and resolving the majority of his delinquent accounts in 2013. He contacted his mortgage-loan lender but was unsuccessful in preventing the foreclosure. He provided information to the agent attempting to recover the vehicle that Applicant cosigned for his former girlfriend. He has continued to act responsibly by living within his means, remaining current on all his open accounts, and by not incurring any additional delinquent debts since 2013. The two SOR debts have been charged off to profit and loss and are unlikely to be sources of vulnerability to coercion or exploitation. His current mortgage lender clearly determined that lending money to Applicant was an acceptable risk.

The unusual circumstances under which Applicant's debts arose are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. The age of his debts and his established pattern of overall management of his finances since 2013 are indicative of a responsible person who can be entrusted with access to classified information. AG ¶¶ 20(a) and 20(b) apply.

### **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. 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 I have also considered the following:

Applicant served honorably in the U.S. Army for over nine years. He has not incurred any delinquent debt since 2013 and clearly lives within his means. The denial of Applicant's previous security clearance in 2013 occurred in the midst of Applicant's financial difficulties that he has since resolved. I am confident that Applicant will continue his efforts to maintain financial stability.

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 mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge