



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 20-02591  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*  
03/24/2021

**Decision**

HESS, Stephanie C., Administrative Judge:

Applicant mitigated the security concerns raised by his delinquent debt. Access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on October 14, 2016. On November 19, 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 (E.O.) 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 DOD on 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 January 6, 2021. On that same day, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5 was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated January 6, 2021, and Applicant’s receipt is dated January 14, 2021. The

DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. He did not file a response. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on March 9, 2021.

### **Findings of Fact**

Applicant, 49, is an IT manager employed by a defense contractor since September 2016. He received his bachelor's degree in 1983 and his master's degree in 2003. He and his wife married in 1996 and have two adult children. This is his first application for a security clearance. (GX 2.)

Under Guideline F, SOR ¶ 1.a alleges that Applicant owes a delinquent credit-card debt of \$21,322. Applicant was confronted with the account during his June 2018 personal subject interview (PSI). According to the PSI, the account was in collection as of January 2017 with a balance of \$24,022. Applicant disputed the debt as not being his, asserting that he had no delinquent credit cards and did not have an account with this creditor. He denied any knowledge of the account. (GX 3.) While Applicant admits the SOR allegation in his Answer, he states that he believes the account has been resolved because it no longer appears on his credit-monitoring site and the site does not show any collections accounts. The debt is reflected on his May 2019 credit bureau report (CBR) but does not appear on his December 2020 CBR. (GX 4; GX 5.)

In addition to the \$21,322 credit-card account alleged in SOR ¶ 1.a, Applicant's 2019 CBR listed four open credit-card accounts, all of which were current at the time. The credit cards had credit limits of \$4,500, \$3,500, \$2,400, and \$124. The credit limit on the account that Applicant disputes above was \$25,950. Applicant's 2020 CBR shows only the four current credit-card accounts.

Applicant's December 2020 CBR shows that he was 30-days past due on his mortgage-loan payment and that he has periodically been 30-days past due with his mortgage-loan payment dating back to October 2018. However, the CBR also shows that Applicant has never been more than 30 days late on any payments. During his PSI, the investigator confronted Applicant with being 30-days late on his December 2016 mortgage-loan payment. Applicant explained that his wife pays the bills through standard mail and that the mortgage payment may have been inadvertently late as a result of this practice. (GX 5; GX 3.)

On his October 2016 e-QIP, Applicant listed that he had a \$320 medical bill turned over to collection in January 2016. Applicant explained in his PSI that payment of the medical bill was denied by his insurance, he unsuccessfully disputed the denial, and ultimately paid the account prior to completing his e-QIP. (GX 2; GX 3.)

According to a major credit-reporting agency:

Collections can be removed from credit reports in only two ways:

1. If the collection information is valid, you must wait seven years from the original delinquency date for the information to cycle off your credit reports. The original delinquency date is the date the account first became delinquent and after which it was never again brought current.
2. If collection information is inaccurate, you can file a dispute on the collection information in your credit report. Depending on what the inaccuracy is, the collection account may be updated rather than removed.

Applicant's CBRs show a credit history dating back to 1998 that includes paid-off credit cards and vehicle loans. With the exception of the single SOR debt and the periodic late mortgage-loan payments, Applicant CBRs show no history of financial delinquencies. He lives within his means and is current on all his other open accounts including his student loans and second mortgage loan. (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 following disqualifying conditions are potentially applicable:

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; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In his PSI, Applicant disputed any knowledge of the \$21,322 credit-card debt alleged in SOR ¶ 1.a, stating that he did not have an account with the creditor and that he was not delinquent on any of his credit-card accounts. At the time, he had four other credit-card accounts that were in a current status. Those credit-card accounts remained current through December 2020. He listed a paid collection account on his e-QIP and explained the reason for the delinquency during his PSI.

While Applicant admitted the SOR allegation, he did not state that he was responsible for the debt. He instead stated that he believed the account was resolved because it no longer appeared on his credit-monitoring site and there were no collection accounts listed on the site.

There are only two ways for a derogatory account to be removed from a credit report: automatically after seven years from the date of first delinquency or following a successful dispute. The account alleged in the SOR does not appear on the December 2020 CBR so for it to have been automatically removed due to the passage of time, the account would have had to become delinquent no later than December 2013. If the account was actually Applicant's, then either Applicant was oblivious about a credit-card account with a \$25,950 credit limit and a \$21,322 delinquent balance or he lied about the account throughout his background investigation. A more plausible and consistent explanation given the entirety of the record is that the account was successfully disputed by Applicant or by his wife.

"A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure." ISCR Case No. 09-

02160 (App. Bd. Jun. 21, 2010.) While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. This is the first time Applicant has been through a security clearance application process, which necessarily includes the first time he has responded to an SOR and subsequently received a FORM. While Applicant did not provide any mitigating documentation to support his assertion that the SOR debt had been resolved, it is likely he did not think it was necessary to do so. Specifically, the December 2020 CBR (GX 5) included in the FORM corroborates Applicant's assertion that the SOR account has been resolved.

I find that Applicant's listing of derogatory financial information on his e-QIP and his forthcoming explanations about his finances during his PSI, including his consistent disputing of any knowledge of the SOR debt, support the conclusion that Applicant is credible. Applicant's long history of overall financial stability and his current financial circumstances are indicative of a person who exercises good judgment and are sufficient to establish a track record of financial responsibility. He has no history of any significant debt other than the account alleged in the SOR. There is nothing in the record that suggests Applicant is financially irresponsible or that he is likely to incur debt due to reckless spending. The SOR debt no longer appears on Applicant's financial records and is unlikely to be a source of vulnerability to coercion or exploitation. Applicant's past financial issues do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(e) 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's overall credit history is indicative of a person who takes his financial responsibilities seriously. Security clearance adjudications are not meant to be punitive but rather are to determine an applicant's current ability to properly handle and protect classified information. Ultimately, the record shows that Applicant has demonstrated the good judgment, reliability, and trustworthiness required of those granted access to classified information.

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 financial issues. 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

Subparagraph 1.a: 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