



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 19-03409
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

November 13, 2020

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**Decision**  
\_\_\_\_\_

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). Applicant defaulted on 15 financial obligations. He provided significant evidence in mitigation. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 4, 2016, Applicant submitted a security clearance application (SCA) seeking a clearance for the first time. On February 4, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) effective for all adjudicative decisions on or after June 8, 2017.

On March 10, 2020, Applicant responded to the SOR and submitted over 150 pages of supporting documentation (Answer). He also elected to have his case decided

on the written record in lieu of a hearing. In his Answer, he admitted each of the SOR allegations regarding his 15 delinquent debts. He also provided a detailed explanation of how he became indebted and the steps he has taken to resolve his debts.

On April 15, 2020, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), including six documents identified as Items 1-6. The FORM and the six attachments were provided to Applicant, which he received on June 16, 2020. He was afforded an opportunity to file objections and to submit a written response and documents within 30 days of his receipt of the FORM. Applicant provided no response.

By not responding to the FORM, Applicant raised no objection to the admission of FORM Item 3, an unauthenticated report of investigation summarizing Applicant's April 27, 2018 background interview. In his FORM, Department Counsel advised Applicant that he had the right to object to the admissibility of this document as unauthenticated. Department Counsel also informed Applicant that he could provide corrections and updates to the summary of his interview and that if he failed to object, he may be determined to have waived any objections he has to the admissibility of the interview summary. Applicant did not object to the summary. I conclude that Applicant has waived any objections to the summary of his background interview. Accordingly, I have included this document in the written record in this case. I have marked Items 1 through 6 attached to the FORM as Government Exhibits (GE) 1-6, respectively, and they are admitted without objection. The case was assigned to me on September 22, 2020.

### **Findings of Fact**

I have incorporated Applicant's admissions in his Answer in my findings of fact and have noted therein his comments on the debts. Applicant's personal information is extracted from GE 2, his SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, including all of the documents attached to Applicant's Answer, the Government's FORM, and the Government's documentary evidence in the record, I make the following findings of fact.

Applicant, 49, married in 2010 and separated in 2017. The couple divorced in November 2018. He has a nine-year-old child and a 17-year-old stepchild. He received a GED in 1991 and has been taking courses online on a part-time basis to earn certifications in technology fields. When Applicant was a teenager and a young man, he had some serious difficulties with the criminal justice system, which included a period of imprisonment. He has not repeated that behavior since about 2008 and has become a productive member of society. (GE 1 at 8, 62; GE 3 at 2, 4-10.)

In October 2015, Applicant began to experience financial difficulties after losing his job. He found part-time employment in January 2016 and worked there until October 2016, at which time he was hired to work in a full-time position. In February 2017, he was hired as an assembler by a U.S. Government contractor, which sponsored him for a security clearance. (GE 1 at 4-8; GE 3 at 2-4, 11-12.)

Applicant and his wife began living apart in March 2016. Divorce proceedings were commenced in May 2017. In September 2017, his wife and their children precipitously moved out of the family apartment, breaching the couple's lease on the apartment. Also, Applicant's mother died in April 2017, and he incurred part of the cost of her funeral. All of these setbacks caused Applicant's finances to suffer. The 15 debts alleged in the SOR became delinquent during the period 2015 through 2017. He regained his financial stability in 2017 after he began working for his clearance sponsor. In his Answer, Applicant wrote that he is current on all of his ongoing debts and financial responsibilities, including his child support. (GE 1 at 4-8; GE 3 at 2-4, 11-12; GE 5 at 2-3; GE 6 at 1-6.)

In March 2020, Applicant began working with a credit-counseling firm to consolidate and manage his debts. He also received counseling from a credit union to help him resolve his debts. The 15 debts alleged in the SOR total approximately \$33,460. In his Answer, he wrote that he has settled and paid \$10,284 of these debts, leaving a balance of about \$23,176. He attached to his Answer a number of documents evidencing payments of the following seven debts alleged in SOR ¶¶ 1.d (\$3,191), 1.f (\$2,234), 1.i (\$819), 1.j (\$732), 1.m (\$397), 1.n (\$390), and 1.o (\$1,955). His documentation showed that he paid a total of \$4,875 to settle these debts. All of these payments were made after the date of the SOR in 2020. (GE 1 at 8, 9-19.)

Applicant also provided two credit reports with notations that were made by a credit counselor. These notations indicate that Applicant was "settling" the following five additional debts alleged in SOR ¶¶ 1.b (\$5,601), 1.e (\$2,772), 1.g (\$1,298), 1.h (\$1,165), and 1.l (\$438). The total of the alleged amounts of these debts is \$11,274. A second credit report provided by Applicant contains a notation that the debts alleged in SOR ¶¶ 1.b and 1.g were "Settled." The second credit report also notes that the debt alleged in SOR ¶ 1.h is "Settling." Applicant provided no additional evidence to establish that he had settled the debts set forth in SOR ¶¶ 1.b and 1.g or to reflect what actions he had taken or was planning to take to settle the three other debts in this group of debts. (GE 1 at 101-103, 103-105, 107-108, 111-112, 115-116, 143-144, 151.)

In addition to the above, Applicant has admitted the three additional debts alleged in SOR ¶¶ 1.a (\$6,373), 1.c (\$5,564), and 1.k (\$534). The first debt is the result of Applicant's former wife breaching her apartment lease. The Government's November 26, 2019 credit report indicates that Applicant has disputed this debt. (GE 1 at 7; GE 6 at 1.)

In an April 12, 2017 court order in an action brought by his former wife's landlord, Applicant was ordered to pay an arrearage in their rent of \$4,922 over a period of five months. Applicant paid the entire arrearage. A month after that debt was fully paid, Applicant's then-wife breached the lease by moving out of the apartment with their children. The lease did not expire until February 2018. Applicant was living elsewhere and was unaware of her actions. Her breach resulted in damages of \$6,373 for five months of unpaid rent and other physical damage to the apartment. The court's divorce decree ordered that Applicant and his former wife are both responsible for their debts arising after the date of their separation, which included this debt. His wife failed to pay

her share of this debt. Applicant disputes that he owes more than his one-half share of this debt. (GE 1 at 7, 62, 80.)

Applicant's credit counselor noted on one of the credit reports that "Client needs help" with this debt. The other credit report notes that this debt was "Paid Off Settled." The record evidence is otherwise silent on the current status of this debt, the largest alleged in the SOR. (GE 1 at 7, 34-35, 108-109, 150; GE 6 at 1.)

The two remaining SOR debts are alleged in ¶¶ 1.c (\$5,564) and 1.k (\$534). The debts alleged in SOR ¶ 1.c is listed on one of Applicant's credit reports with the notation that "Client needs help" with this debt. His other credit report contains the notation "DMP," which stands for "Debt Management Plan." The record contains no additional evidence as to whether any payments were made under the terms of a plan arranged by the credit counselor. This debt was the balance due on an auto installment loan. (GE 1 at 109-111, 147; GE 6 at 3-4.)

The remaining debt, SOR ¶ 1.k (\$534) was a delinquent account owed to a communications company. A notation on one of Applicant's credit reports reflects this account was "Settled" and a notation on his second credit report indicated that this account was "Settling." The record contains no additional evidence to support the notation that the account was resolved. (GE 1 at 117-118, 151.)

Applicant provided extensive documentation from his divorce proceeding to demonstrate that he has acted responsibly in the handling of his family responsibilities, even in the middle of a contentious divorce. An order of the court, dated December 13, 2019, established that Applicant had fully paid his child-support arrearage and was current with his ongoing support obligation. (GE 1 at 28.)

### ***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 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. . . . 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.

Applicant's admission in his SOR response and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts") and 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;

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

AG ¶ 20(a) is partially established. All of the debts arose in the last five years and based upon the record evidence, some of the debts remain unresolved. The delinquent debts are not infrequent. The circumstances under which they arose, however, support a conclusion that they are unlikely to recur. The combination of Applicant's unemployment and underemployment, and his separation and divorce, created an unusually difficult and financially stressful period in his life. His mother's death aggravated his financial

problems. Now that Applicant has been employed working for a Government contractor, he has responded to his situation with maturity and responsibility. He has settled several debts and is in the process of settling the remaining debts. His financial problems do not cast doubt upon his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is fully established under the same rationale. Applicant's financial problems arose for reasons beyond his control, and he has acted responsibly under the circumstances. Based upon the information available in the record, Applicant still has a number of outstanding debts. More current information on the state of Applicant's finances might have been useful. On the other hand, he provided an extensive amount of documentation with his Answer demonstrating his steps to repay his debts and regain financial stability. I conclude that Applicant's prior responsible behavior supports a conclusion that he will continue to address his remaining debts and resolve them in a responsible manner.

In support of this conclusion, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time.

ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). When considering the entirety of Applicant's financial situation, I view Applicant's corrective action to be responsible and reasonable. Given his resources, he has initiated a pragmatic approach to the repayment of his SOR debts and has taken significant steps to resolve those debts.

AG ¶ 20(c) is fully established. Prior to the issuance of the SOR, Applicant hired a financial counselor, and received advice and assistance from legitimate and credible sources. The record evidence establishes that he has resolved about half of his debts and has sought help in resolving at least two of his other debts. As noted above, Applicant's responsible steps taken to date, including paying off about half of his debts and his hiring a credit-counseling firm and a credit union, constitute "clear indications" that his financial problems are being resolved.

Applicant has initiated an effort to resolve his debts. Applicant provided evidence that after the issuance of the SOR, he began to repay about his debts. His evidence showed that he paid seven of the 15 debts alleged in the SOR. The timing of his efforts, however, do not fully support a conclusion that the efforts satisfy the “good faith” requirement of this mitigating condition since he waited until he learned that his security clearance and livelihood was in jeopardy as a result of the issuance of the SOR. AG ¶ 20(d) is partially established.

Applicant disputes that he owes all of the debt alleged in SOR ¶ 1.a for rent following his then-wife’s breach of the lease on the family apartment. He has provided appropriate documentation supporting this dispute. AG ¶ 20(e) only partially applies to that debt, however. Applicant has every right to expect his former wife to pay her half of the debt, especially since it was her irresponsible actions that gave rise to the debt. Applicant may be able to enforce that obligation in a post-divorce proceeding. He is, nevertheless, legally obligated to pay the former landlord the entire amount of the debt.

### **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 and applying the adjudicative factors in AG ¶ 2(d). These factors are:

- (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). Some factors warrant additional comments. Applicant is a mature individual, who experienced difficult financial circumstances due to unemployment, underemployment, separation, divorce, and a death in his family. He responded to his financial problems in a responsible manner. His response is particularly impressive in light of his early history of criminal behavior and the many positive steps he has taken as an adult to put that period in his life behind him. It is significant that prior to the issuance of the SOR, Applicant hired a financial counselor to advise him on how to resolve his outstanding debts. Moreover, there is little likelihood that Applicant’s financial problems will recur. 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.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.o: For Applicant

### **Conclusion**

In light of the entire record, I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is granted.

John Bayard Glendon  
Administrative Judge