



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



In the matter of: )  
)  
) ISCR Case No. 20-02853  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro Se*  
06/10/2021

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his delinquent debts. He failed to demonstrate that he initiated or made a consistent good-faith effort to repay his creditors or resolve his alleged debts. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application on July 31, 2019. On December 10, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. The 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 submitted an undated answer to the SOR and requested a decision on the written record without a hearing. On January 25, 2021, the Government sent Applicant a complete copy of its written case, a File of Relevant Material (FORM), including pleadings and evidentiary documents identified as Items 1 through 6. He received the

FORM on February 15, 2021. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted a one-page personal summary and a copy of his SOR with handwritten notes, which I labeled as Applicant Exhibits (AE) A and B. The case was assigned to me on March 25, 2021. All of the documents are admitted into evidence without objection.

### **Findings of Fact**

Applicant is 36 years old. In 2013, he married his wife and acts as a father to his 14-year-old stepdaughter. He has worked for a Federal contractor since July 2019 as a missile mechanic. He was recently placed on unpaid administrative leave after his interim security clearance was withdrawn. Applicant served on active duty in the U.S. Marine Corp from 2006 to 2010. He was honorably discharged from Reserve duties in September 2014. His highest rank was E-5. (Item 3)

Applicant admitted SOR ¶¶ 1.a through 1.g, with the SOR alleged delinquent debts totaling \$21,192. (Items 1 – 6)

According to Applicant, his financial issues worsened in approximately 2016, following loss of supplemental income, presumably the GI Bill, however, the record is unclear. There is no information as to how much supplemental income was lost, or the amount of his current income with his employer. During his background interview in September 2019, Applicant stated that he was making larger monthly payments on his delinquent accounts and he planned to accept settlement offers. He was also trying to be a better manager of his finances. He had not received or sought any financial counseling. The credit report from August 2019 validates the debts alleged in the SOR totaling \$21,192. Applicant's credit report from October 2020 reflected delinquent accounts totaling \$20,834. None of the accounts alleged in the SOR (except SOR ¶ 1.b) had been reduced or resolved as reported in the current credit report. The debt alleged in SOR ¶ 1.b for \$359 from Sprint was not reflected in the current credit report. (Item 4, Item 5, Item 6)

SOR ¶ 1.a alleges Applicant is indebted to T-Mobile for an account placed for collection in the amount of \$1,002. Applicant's response to the FORM submitted by the Government, was that he settled this account for \$646. He did not provide any supporting documentation. The most recent credit report reflected this account as outstanding and unpaid. There is insufficient information to show that this debt is resolved. (Item 5, AE A)

SOR ¶ 1.b alleges a delinquent account in the amount of \$359 placed for collection by Sprint. Applicant's FORM response was that he paid this account in full last year, but he failed to provide supporting documentation. The current credit report does not reflect this account. I have credited Applicant with the resolution of this account. (Item 5, AE A)

SOR ¶¶ 1.c, 1.d, and 1.e allege medical accounts placed for collection in the total amount of \$686. Applicant admitted he owed these debts but as of the date of his FORM

response, he had not resolved these delinquent accounts. His finances have worsened after he was placed on unpaid administrative leave from his employer. The most recent credit report reflected these accounts as outstanding and unpaid. The three medical accounts are unpaid and unresolved. (Item 5, AE A)

SOR ¶ 1.f alleges Applicant is indebted to Navy Federal Credit Union in the approximate amount of \$8,230. In his FORM response he stated that he spoke with an account representative to arrange a settlement and informed them that he had recently lost his job. He intended to submit proof of settlement payment arrangements with the creditor once he is financially capable of making the monthly payments. The most recent credit report reflected this account as outstanding and unpaid. This debt has not been resolved. (Item 5, AE A)

SOR ¶ 1.g alleges a Flagship Credit Accept collection account in the amount of \$10,915. In his FORM response he stated that he spoke with an account representative to arrange a settlement and informed them that he had recently lost his job. He intended to submit proof of settlement payment arrangements with the creditor once he is financially capable of making the monthly payments. The most recent credit report reflected this account as outstanding and unpaid. This debt has not been resolved. (Item 5, AE A)

Applicant provided no proof of account settlements or payments for any of the alleged SOR debts. In September 2019, he was placed on notice during his background interview that his outstanding debts were a security concern to the Government. He told the investigator that he planned to resolve many of his debts by accepting settlement offers from his creditors. He had over a year to contact creditors and initiate payment arrangements, but the record shows he ignored all but one of his delinquent financial obligations. He has been credited with the resolution of one account in the amount of \$359 that is no longer listed on his most recent credit report. (Item 4, Item 5, Item 6)

Applicant's SOR response indicated that he had "worked with a financial advisor," but he did not provide additional details or submit supporting documentation. He submitted a partial credit report which showed he disputed most of the delinquent credit accounts, but he did not provide a rationale or legitimate basis for his disputes. The record shows that Applicant made an effort to contact his creditors and arrange future payment plans only after he was placed on unpaid administrative leave by his employer. He also informed his creditors that he could not yet pay on any established payment plans due to his current lack of income. (Item 1; Item 2, Item 4, Item 5, Item 6; FORM response)

### **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. 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. (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)). “Security 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 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. 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. . . .

AG ¶ 19 describes conditions that are disqualifying. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the record evidence establish AG ¶¶ 19(a) and 19(c).

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

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

The evidence in the record is unclear as to whether Applicant's financial issues were, in part, due to the loss of supplemental income from the GI Bill. Without additional factual information, I cannot determine whether this was a circumstance beyond his control. Additionally, the record lacks evidence that Applicant acted responsibly under the circumstances to resolve his financial delinquencies despite being put on notice over a year ago that his financial issues were a security concern to the Government. He did not provide supporting documentation or a legitimate basis for any of his credit disputes.

Applicant is credited with the resolution of the debt alleged in SOR ¶ 1.b. The most recent credit report showed that the remaining six SOR debts totaling \$20,834 are unpaid and unresolved. Applicant failed to demonstrate that he initiated or made a consistent good-faith effort to repay his creditors or resolve his alleged debts. The vast majority of the alleged debts are still outstanding, large and small, and Applicant did not provide a plan of how he intends to resolve any the debts, especially now that his financial situation has worsened after being placed on unpaid leave. Under the current circumstances, there is insufficient evidence to show that Applicant's financial problems are under control and unlikely to recur. None of the mitigating conditions apply as Appellant failed to rebut or mitigate the Government's security concerns under Guideline F.

### **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 applicable 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 this guideline, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the financial considerations security concerns raised by his delinquent debts. The record lacks sufficient evidence to demonstrate that he is reliable, trustworthy, and exercises good judgment. Accordingly, Applicant has not carried his burden of showing that it is clearly

consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

**Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.g:	Against Applicant

**Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant’s eligibility for access to classified information. National security eligibility is denied.

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Pamela C. Benson  
Administrative Judge