



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 21-00530
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
 For Applicant: *Pro se*  
 12/20/2021

**Decision**

MARINE, Gina L., 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 (SCA) on February 21, 2020. On July 23, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 answered the SOR on August 13, 2021, and requested a decision based on the written record in lieu of a hearing. On September 16, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 4. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on September 20,

2021, and did not respond to the FORM or object to the Government's evidence. The case was assigned to me on December 2, 2021.

### **Evidentiary Matters**

Item 1 contains the pleadings in the case. Items 2 through 4 are admitted into evidence. Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 3. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 3 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 3 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 3 could be considered as evidence in his case. Applicant did not respond to the FORM or object to Item 3.

### **Findings of Fact**

Applicant, age 44, has never been married nor has any children. He has resided with a cohabitant since 2013. He received an associate degree in 1998. He has been employed as a senior test technician by a defense contractor since January 2020. He was previously granted a security clearance in 2010 while employed by another defense contractor. (Item 2; Item 3 at 2)

The SOR alleged 34 delinquent debts totaling \$118,405. In his SOR answer, Applicant admitted each alleged debt. The 2020 credit report upon which the SOR allegations were apparently based contained the following discrepancies: 1) the debt in SOR ¶ 1.r was a duplicate of that in SOR ¶ 1.q; 2) the debts in SOR ¶¶ 1.u and 1.v, as alleged, were not established; and 3) the debt in SOR ¶ 1.z was a duplicate of that in SOR ¶ 1.y. The following five medical debts contained in the credit report were not alleged in the SOR: \$505 (acct # ending in 7854); \$505 (acct # ending in 7911); \$79 (acct # ending in 3508); \$454 (acct # ending in 3197); and \$173 (acct # ending in 4283). Any debts not alleged in the SOR will only be considered to evaluate mitigation and the whole-person concept. According to his 2020 credit report, Applicant incurred 35 delinquent debts totaling \$118,711, including 29 medical accounts totaling \$103,941; three utility accounts totaling \$1,429; two automobile-loan accounts totaling \$13,159; and one \$172 car insurance account. (Items 1, 4)

Applicant attributed his medical debts to expenses he incurred after he was transported via ambulance to hospitals in January 2015 and January 2017 following seizures of unknown origin. The duration of his respective hospital stays was "a couple of days" in 2015 and one day in 2017. He did not have health insurance during either stay. He maintained that he also did not have any other ability to pay those expenses. Applicant does not plan to pay any of the medical debts alleged in the SOR because he believes that he was overcharged. He asserted that he last received a call from a collection company about a medical debt in 2018, but he did not answer. Thereafter, he blocked calls that he received from collection companies. (Item 2 at 31-32; Item 3 at 3-4)

Applicant asserted that his home state does not require employers to provide health insurance to employees, and he chose not to purchase it himself because it was too expensive. He claimed that he was deliberately overcharged by the hospitals so that they could sell his debts to collection agencies and then take the tax write-off. He also asserted that he received limited services during his hospital stays; specifically, that his basic vitals were monitored, but he received no other services because he did not have insurance or other means to pay his bill. Although he could not recall the details of his bills, he believed that the majority of his medical debts related to his 2015 stay. He estimated that he was billed about \$3,000 for his 2017 stay. While he did not recall how much he was billed for his 2015 stay, he believed that he should have only been charged about \$800 because he did not undergo any tests, such as magnetic resonance imaging (MRI) scans. Applicant did not provide any documents corroborating his claims. (Item 2 at 31-32; Item 3 at 3-4)

Applicant did not provide any details about the three utility debts alleged in SOR ¶¶ 1.c through 1.e, nor did he proffer a plan to repay them. According to his 2020 credit report, collection companies were assigned the debts alleged in SOR ¶¶ 1.c. and 1.e in December 2012 and June 2017, respectively. The creditor charged off the account alleged in SOR ¶ 1.d in September 2012. (Item 4 at 10, 16)

Applicant provided details on only one of the two car-loan debts that were alleged in SOR ¶¶ 1.b and 1.hh. He asserted that the debt alleged in SOR ¶ 1.b related to a 2013 Ford Escape that he financed in January 2015. He claimed that he was forced to accept a predatory interest rate for the loan because he needed a car for transportation to work. He explained that, after timely making payments on the loan for about six to eight months, he voluntarily surrendered the car because his girlfriend's family had given him another car for free and he no longer needed the Ford Escape. He also "no longer wanted to continue expensive payments." He does not plan to repay this debt. He stated: "The loan was predatory and there is nothing for me to gain by paying it." According to his 2020 credit report, a collection company was assigned the debt alleged in SOR ¶¶ 1.b in February 2018, and the creditor charged off the debt alleged in SOR ¶ 1.hh in February 2014. He did not address whether he planned to pay the debt alleged in SOR ¶ 1.hh. (Item 2 at 31; Item 3 at 3; Item 4 at 10, 16)

Applicant did not provide any details about the car-insurance debt alleged in SOR ¶ 1.a, nor did he proffer a plan to repay it. According to his 2020 credit report, a collection company was assigned this debt in February 2019. (Item 4 at 9)

Applicant described his financial situation optimistically during his July 2020 security clearance interview. He stated that he was doing very well financially because he was current with all of the bills for which he felt responsible, including his taxes. He attributed his medical and car-loan debts to price gouging and predatory practices, and not to any irresponsibility on his part. He stated that he no longer had a car and, instead, rode a bike to work. At that time, he did not use credit cards or make purchases on credit because of his credit history. He indicated that he planned to try to clean up his credit in the next few years. He also averred that he might file for bankruptcy at some point, but acknowledged that he had not yet taken any steps to do so. (Item 3 at 5)

Applicant did not proffer any details or corroborating documents concerning his relevant income and expense history or his ability to repay his debts. The record did not indicate whether he had any financial counseling. He has been steadily employed since at least October 2009, with the exception of one two-week period of unemployment in November 2016, after he was terminated by his then employer. He denied that he was terminated for cause and is not eligible for rehire. He claimed that, because his work as a graphic designer was boring and repetitive, he requested to be terminated so that he could collect unemployment, which his supervisor obliged. During that period of unemployment, he was supported by unemployment compensation in an amount not specified. (Item 2 at 12-16; Item 3 at 1-2)

### **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. 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. (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; AG ¶ 2(b))

## **Analysis**

### **Guideline F: Financial Considerations**

The 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. 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 . . . .

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

The Government did not proffer evidence sufficient to establish the debts alleged in SOR ¶¶ 1.r, 1.u, 1.v, and 1.z. Thus, I find those allegations in Applicant’s favor. The record evidence establishes the following disqualifying conditions under this guideline as to the remaining debts alleged in the SOR: AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so). The evidence did not establish AG ¶ 19(a) (inability to satisfy debts), as the Government argued in its FORM.

Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

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(d): the individual initiated and is adhering to a good-faith effort to repay overdue 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.

Applicant failed to resolve any of the debts alleged in the SOR, primarily due to an unwillingness rather than an inability to do so. I considered that his indebtedness consists mostly of medical expenses he incurred during periods when he did not have health insurance. However, Applicant did not meet his burden to establish that: 1) his income was insufficient to meet those expenses, either at the time they were incurred or in subsequent years; or 2) his decision to decline health insurance was a circumstance beyond his control. Even assuming *arguendo* that one or more of the medical or other SOR debts were largely attributable to circumstances beyond his control, Applicant also did not meet his burden to establish that he acted responsibly to resolve them.

Although Applicant expressed potential bases to dispute the legitimacy of his medical debts and the car-loan debt alleged in SOR ¶ 1.b, he neither established that those bases were reasonable nor provided sufficient proof to substantiate the bases of the disputes or evidence of actions he has taken to investigate or resolve the issues. Further, he failed to establish that his indebtedness is not likely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment. He has not mitigated the Guideline F concerns. AG ¶¶ 20(a), (b), (d), and (e) are not established.

### **Whole-Person Analysis**

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 adjudicative 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 Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s – 1.t:	Against Applicant
Subparagraphs 1.u – 1.v:	For Applicant
Subparagraphs 1.w – 1.y:	Against Applicant
Subparagraph 1.z:	For Applicant

### **Conclusion**

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

Gina L. Marine  
Administrative Judge