



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 20-01353  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*  
11/05/2021

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the Guideline F (Financial Considerations) concerns raised by his unresolved delinquent debts. Access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on July 24, 2019. On December 7, 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 on December 18, 2020, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 17, 2021. On February 22, 2021, a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 6, 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 February 5, 2021, and Applicant's receipt is

dated February 16, 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 May 4, 2021.

After receiving a copy of my decision, Applicant appealed and filed a supporting brief. In his brief, Applicant stated that he did not file a response to the FORM because he was diagnosed with a serious illness during the 30-day period in which he was permitted to respond, and provided a supporting document from a doctor. Based on this evidence, the DOHA Appeal Board determined that the new evidence raised due process concerns. The record does not contain a copy of the supporting document from the doctor.

On August 11, 2021, I received an order from the DOHA Appeal Board remanding the case and requiring me to reopen the record to permit Applicant an opportunity to submit additional evidence. On August 31, 2021, I notified Applicant and Department Counsel of the remand and attached an order in which I reopened the record until September 17, 2021. (Admin. EX 2.) Applicant timely submitted Applicant's Exhibits (AX) A through F, to which the Government had no objections.

In its order, the DOHA Appeal Board also noted that Applicant contends that I erred in my finding of facts about the dates of his unemployment and the dates when the four debts alleged in SOR ¶¶ 1.a through 1.d went into collection. These two issues are addressed in my Findings of Facts, below.

### **Findings of Fact**

Applicant, 50, is a network administrator working for a defense contractor since July 2019. He graduated from high school in 1989 and then briefly attended a community college. He married in 2004 and he and his wife have four children. He has worked primarily as a federal contractor and held a security clearance from 1997 until at least 2016. (GX 3; GX 4; AX A.)

Under Guideline F, the SOR alleges that Applicant is indebted on six delinquent credit-card accounts totaling \$46,309. Applicant admitted each of these allegations in his answer to the SOR and provided an explanation for the debts. His admissions are incorporated in my findings of fact.

In my original decision, I erred in the following findings of fact:

The debts alleged in SOR ¶¶ 1.a through 1.d totaling \$25,533 went into collection in or before March 2017, prior to when Applicant began construction of his house and prior to his car accident. (GX 5.)

In reviewing the August 2019 credit bureau report (CBR) (GX 5), I found the SOR debts alleged under the "Collections Section" beginning on page 10. Under the entry of each account, there is a line item of "Date Assigned" followed by a date, which I

understood to be the date that the account was assigned to collections. However, in cross-referencing the April 2020 CBR (GX 6), these dates correlated to the dates that the accounts were opened, not the dates assigned to collections.

According to the April 2020 CBR (GX 6), the most recent record evidence regarding the status of Applicant's delinquent accounts, the dates of the first noted delinquencies on Applicant's credit-card debts are as follows:

SOR ¶ 1.a - \$3,117: March 2018;  
SOR ¶ 1.b - \$3,156: April 2018;  
SOR ¶ 1.c - \$14,405: June 2018;  
SOR ¶ 1.d - \$4,855: March 2018;  
SOR ¶ 1.e - \$5,674: May 2018; and  
SOR ¶ 1.f - \$15,102: June 2018.

The \$5,674 debt (SOR ¶ 1.e) and the \$15,102 debt (SOR ¶ 1.f) have accumulated \$1,726 in interest bringing the total of the two delinquent debts to \$21,692 and the total of Applicant's delinquent debt to \$48,035 as of April 2020.

In responding to the questions on his e-QIP under Section 26 - Financial Considerations, Applicant listed SOR debts 1.e and 1.f under "Delinquencies Involving Enforcement." He listed the reason for the financial issue as "Medical (car accident), short-term disability, Family Medical Leave Act." He explained that he had been unemployed since February 2019 and had no current means to pay the debts. He asserted that he would pay off the debts from the proceeds of the sale of his house, stating that he would have enough money to "settle all debt." Applicant listed SOR debts 1.b through 1.d as delinquent routine accounts. In response to the query of what action he had taken to resolve the debts or an explanation for why he had not, he entered "property sale" for two of the debts and "house sale" for the third. (GX 3.)

On September 5, 2019, Applicant underwent a personal subject interview (PSI). In discussing each of his delinquent credit-card debts with the investigator, Applicant stated that the circumstances that led to the delinquency of all of his credit-card accounts were that he was in a car accident on June 1, 2018, and out of work under the Family Medical Leave Act and receiving short-term disability which was less than his regular income. He stated that the debts alleged in SOR ¶¶ 1.d through 1.f became delinquent in July 2018. However, he stated that the debts alleged in SOR ¶¶ 1.a and 1.c became delinquent in May 2018 but did not offer an additional explanation for why these accounts were delinquent prior to the car accident. He further stated that the debt alleged in SOR ¶ 1.b became delinquent in June 2018. Applicant stated that the debts were unresolved and he had not made any arrangements for their resolution. He asserted that he was selling his house on September 24, 2019, and planned to pay all his outstanding debts with the proceeds from the sale. (GX 4.)

In his answer to the SOR, Applicant offered another explanation for the genesis of his credit-card debt. He stated that he had qualified as a homeowner/builder to construct a house in another state. Applicant asserted that his credit was in good standing at that time and that he had budgeted for all construction expenses. He was approved for a construction loan, moved himself and his family, and broke ground on the house in the winter of 2017. However, the 2017 date was inaccurate. Applicant's response to the FORM included a detailed timeline (AX A) submitted when I reopened the record. In the timeline, Applicant states that he broke ground on his home in December 2016 and had one year to complete the custom-home build in accordance with the loan agreement. On his e-QIP, he listed January 2018 as his first date of residency in the house. Based on the totality of the record evidence, Applicant began construction on his house in December 2016, not 2017.

In November 2017, despite his budgeting, Applicant contacted the lending bank to request an additional \$40,000 be added to the original construction loan to cover construction-cost overruns. According to Applicant's answer to the SOR, the lending bank denied this request but advised him to use his credit cards to pay the cost overruns and to then apply for a home-equity line-of-credit (HELOC) to pay off the credit-card debt. Applicant used his credit cards for the construction costs, but was denied a HELOC because his credit score was too low. (AX A.) In his answer to the SOR, Applicant stated that, "this is the only reason I have the credit-card debt, it was all construction materials."

In his response to the FORM, Applicant stated that the lending bank informed him that it could not add to the loan but that once the loan was closed, the bank could "easily offer [him] a HELOC to pay off the credit cards at a much lower interest rate" than the existing loan. He further stated that the bank "encouraged" him to use his credit cards to pay the cost overruns to complete the construction. Applicant stated that in February 2018, the bank denied his HELOC due to his extensive credit-card debt. He further stated that following the bank's advice put him in a "terrible position."

As a result, in February 2018 Applicant started immediately working with a law firm to settle his debts. According to Applicant, the law firm advised him to close all his credit-card accounts, stop making payments on the accounts, and work through the law firm to resolve the debts. (AX A.) In his answer to the SOR, Applicant stated "We have an attorney and have a workout plan for repayment with banking institutions for [the] unforeseen credit-card debt." The contract with the law firm states that the law firm will attempt to settle the debts for less than 50% of the balances owed. The law firm charged a monthly fee, not shown in the portion of the document provided by Applicant, as well as a percentage fee based on the difference between the balance owed and the amount paid to the creditor. The law firm stated that it was therefore motivated to settle the accounts for the least amount of money giving the law firm a higher payout. The contract gives the following example: "Your debt balance is \$15,000 and is settled for \$8,000 saving you \$7,000, 20% of which, or \$1,400, is paid to the [law firm] leaving your total cost at \$9,400." The contract further states that debts with balances below \$10,000 will be charged a 30% fee upon settlement. (Answer.) In August 2018, Applicant signed

another agreement with the law firm because he was confident it would settle his debts. (AX A.)

According to Applicant's response to the FORM, in December 2018, he determined that it was necessary to sell the home he had constructed and move back to his previous state of residence where he could earn more money working in a position where he utilized his security clearance. In January 2019, Applicant was told by a friend that Applicant's security clearance was "in a state of inactivity," and that the friend had a project at his company that Applicant could work on. Applicant quit his job, listed the house for sale, and moved back to his previous state of residence. On February 24, 2019, Applicant submitted an e-QIP, apparently with the expectation of reactivating his security clearance. However, he subsequently learned that his clearance was "considered archived" and that he would need to undergo a new investigation. Applicant states that this required him to find a sponsor which did not occur until May 2019. However, that employment was contingent upon Applicant's ability to hold a security clearance. In July 2019, he accepted a job offer in a third state, where he moved to an extended-stay hotel in August 2019. (AX A.)

On September 24, 2019, Applicant finalized the sale of his house. He was offered a different position and in October 2019, he moved his family to his current state of residence. He stated that at that time he was steadily employed and had the equity from the sale of his house. He decided to fire the law firm that he had hired in February 2018 because it had done "nothing in a year's time to help us with our debt consolidation." He started looking for another lawyer to hire to address his debt.

In November 2019, he hired a credit-repair company with whom he had briefly met in August 2019. (AX A.) The November 30, 2019, invoice provided by Applicant shows the amount owed to the credit-repair company as \$7,000 with a balance due of \$0.00. The contract states that the payment schedule is to be determined, that the purposes of the services provided by the credit-repair company are credit enhancement and the removal of negative items, and that the estimated time for "repair" is 30 to 60 days. (AX B.) In March 2021, three months after the SOR was issued, Applicant fired this credit-repair company because it had not done anything to resolve Applicant's debts. (AX A.)

In his answer to the SOR, Applicant attributes his ongoing financial difficulties to his periods of unemployment. Applicant listed his dates of unemployment on his e-QIP as February 2019 until June 2019, and confirmed this during his PSI. In his December 2020 answer to the SOR, he stated that he was currently unemployed as a result of the COVID-19 pandemic but did not give a date when the unemployment began. In his response to the FORM, Applicant stated that he worked steadily from July 2019 until March 2020. He then worked as a private contractor for fewer hours and no benefits and ultimately became unemployed in June 2020. He remained unemployed until January 2021, and received his first paycheck in February 2021. He also contracted COVID-19 in February 2021, which caused him to miss DOHA's deadline to respond to the FORM. He does not state whether or not his illness had any impact on his employment or his income. (AX A.)

On his July 2019 e-QIP and during his September 2019 PSI, Applicant asserted that on September 24, 2019, he was selling the house he constructed and would pay all his delinquent accounts from the proceeds of that sale. Applicant sold his house, as confirmed by a popular online real-estate website. He did not pay his delinquent accounts. (Admin. Ex. 2.)

Applicant stated that in March 2021, he began paying the \$3,156 debt alleged in SOR ¶ 1.b and that by May 2021, the debt was “completely paid off.” He further stated that “after 2 ½ years of trying to get my clearance resolved so I could make enough money to pay off my debts completely,” his clearance was denied. In August 2021, he started working with the creditor of the \$3,117 debt alleged in SOR ¶ 1.a to develop a payment plan. (AX A.) Applicant did not submit any documentary evidence to support his assertion that he paid the debt alleged in SOR ¶ 1.b.

Applicant states that he hopes that “the effort I have put forth to get my finances in order” will be acknowledged. He further states that everything that could go wrong went wrong: when he decided to sell his house, it was a buyer’s market; he had not one, but two lawyers who were “incapable of helping me resolve my credit-card issues;” when he decided to “go back to cleared work, my clearance was archived” and the paper work was lost for over one year without a reasonable explanation; “COVID hits and once again we are slammed on every side – living during a pandemic with no health insurance for our children.” (AX A.)

In both his answer to the SOR and his response to the FORM, Applicant asserts that he and his family have learned valuable lessons as a result of their financial issues. He states that they will never again over leverage themselves financially and that he has “spent the last year truly studying finances and budgets.” He has “grown much more knowledgeable in regards to finances, mortgages, investments, etc.” He has downsized to a much smaller home that he rents and he and his family have realized that they “don’t need as much as we used to think we needed.” (AX A.) Applicant did not submit any documentary evidence, such as a budget, recent credit-bureau report, or bank statements to demonstrate his current financial status.

### **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 forth 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 apply:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; 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;

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; and

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

Initially, on his July 2019 e-QIP and during his September 2019, Applicant stated that his inability to meet his financial obligations originated in June 2018 following a car



accident that resulted in his inability to work and his decreased income from short-term disability. He was also unemployed from February until June 2019, and unable to make any efforts to resolve his debts at the time of his background investigation. However, on his e-QIP, he stated that he would resolve all his debts with the proceeds from the sale of his house. During his PSI, he reiterated this assertion and gave the date of the sale as September 24, 2019.

Applicant did not tell the investigator that the origin of his delinquent credit-card debt was construction-cost overruns for the house he was selling. He did not state that he had hired a law firm in February 2018 that would attempt to settle his debts for less than 50% of the balances Applicant owed. He did not disclose that he had voluntarily closed the credit-card accounts and stopped making payments on them in February 2018. The only reference made to the home in both the PSI and the e-QIP was that Applicant would pay all of his delinquent accounts with the proceeds from its sale.

Applicant did in fact finalize the sale of his house on September 24, 2019. However, he did not pay his delinquent credit-card debts from the proceeds. He did not pay even one of the accounts. He did not offer any explanation, or even make any reference to the proceeds of the sale in his answer to the SOR. The only reference he made in his response to the FORM was that in October 2019 he had a “steady job, and the equity from our home” and he had to fire the law firm he hired in 2018 and look for a new one.

Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. The appeal board has regularly held that “applicants who only begin to address their security-significant conduct when their personal interests are at stake may be lacking in judgment and reliability. See, e.g., ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017.)

Applicant’s first effort to resolve his credit-card debts was to hire a law firm that would offer less than 50% of what Applicant owed. He immediately benefitted from this arrangement because in February 2018 he stopped making payments on the more than \$40,000 that he owed. Applicant claims that all of the debt he accrued on these credit cards was for the construction-cost overruns in completing the house he constructed. He realized the return on his investment in the cost overruns when he sold his house for a profit in September 2019. Yet he did not make good with his creditors. Instead, in November 2019, he hired a credit-repair company to assist him in settling his debts for less than what he owed.

However, according to Applicant, it was not until March 2021, three months after he received the SOR, that he began paying the \$3,156 credit-card debt alleged in SOR ¶ 1.b, and not until May 2021 that it was paid off, although there is no documentary evidence supporting the payment. He states that he is negotiating with the creditor of the \$3,117 debt alleged in SOR ¶ 1.a. He has not made any payments on any of the other debts.

However, he paid a monthly fee to the law firm and \$7,000 to the credit-repair company in an effort to not have to fully pay the debts he incurred while completing construction of a house he later sold for a profit. Even excluding the one debt that Applicant has allegedly paid, as of April 2020, Applicant's delinquent debt totals \$44,879.

I have considered the potential mitigating conditions in light of the negative impact that Applicant's car accident, periods of unemployment, archiving of his security clearance, and the COVID-19 pandemic has had on his overall financial circumstances. I have also considered Applicant's assertions that he and his family have changed their approach to finances and budgeting and have adopted a lifestyle of living within their means. While he did not specifically state this, I can reasonably infer that Applicant used the proceeds from the sale of his house for living expenses while he was unemployed. However, the actual origin of Applicant's financial issues arose when he became overextended in a speculative real estate investment. While he hired two separate entities in an effort to settle his debts, no substantive action was taken to resolve the debts between 2018 and March 2021. When he sold his house in September 2019, he financially benefitted from the credit extended to him. Yet not only did he did not pay all of his creditors from the proceeds as he asserted that he would, he did not pay even a single one.

Applicant's delinquent debts are recent and ongoing and were incurred under circumstances that cast doubt on his current reliability and judgment. Applicant became financially overextended on a speculative investment. While conditions largely beyond his control had an adverse impact on his ongoing financial issues, he has not acted responsibly under the circumstances. He has not made a good-faith effort to repay or otherwise resolve his delinquent debts. None of the mitigating conditions 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 was first granted a security clearance in 1997. However, his recent and ongoing failure to honor his financial obligations by resolving his delinquent debts leaves me with doubts about his security worthiness. He did not resolve any of his debts until five months after the SOR was issued and remains indebted for over \$44,000. He had the opportunity to resolve his delinquent accounts upon the sale of his house in September 2019, but failed to do so.

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 failed to demonstrate 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 not mitigated the security concerns raised by his significant delinquent debt. Accordingly, I conclude he has not 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): AGAINST APPLICANT

Subparagraphs 1.a through 1.f:

Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess  
Administrative Judge