



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 19-03607  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

02/03/2021

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 27, 2019. On February 5, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (Exec. Or.) 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), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on March 24, 2020, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 3, 2020, and the case was assigned to me on November 12, 2020. On December 4, 2020,

the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 22, 2020. I convened the hearing as scheduled. Applicant's answer to the SOR consisted of 20 pages, including 18 enclosures, which were admitted without objection and marked as Answer 1 through 20. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I held the record open until January 8, 2021, to enable him to submit additional documentary evidence. At his request, I extended the deadline to January 29, 2021. He timely submitted AX G, H, and I, which were admitted without objection. DOHA received the transcript (Tr.) on January 6, 2021.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations, with explanations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old engineering technician employed by a defense contractor since February 2009. He was unemployed for about three months before being hired for his current position. He attended various educational institutions from August 2007 to September 2018 but did not receive a degree. He has never married. He has a four-year-old daughter for whom he pays child support. He received a security clearance in December 2014.

The SOR alleges 15 delinquent debts, of which 8 are student loans. The delinquent debts are reflected in credit reports from March 2019 and September 2019. (GX 3; GX 4.) The evidence concerning these debts is summarized below.

**SOR ¶¶ 1.a-1.e, 1.g, 1.n, and 1.o: student loans totaling about \$34,848.** The student loans alleged in SOR ¶¶ 1.b and 1.d were opened in August 2008. The student loan alleged in SOR ¶ 1.g was opened in September 2011. The student loans alleged in SOR ¶¶ 1.a and 1.d were opened in October 2011. The student loan alleged in SOR ¶ 1.e was opened in July 2012. Applicant fell behind on his student loans in April 2017 because he could not afford to pay them and keep up with his child-support payments of \$600 per month. At the time, he was earning about \$41,000 per year. (Tr. 60-61.) His pay was garnished and the loans were brought up to date in November 2017.

The loans alleged in SOR ¶¶ 1.n and 1.o were referred for collection in February 2018. (GX 4 at 1-2.) The loans alleged in SOR ¶¶ 1.a-1.e and 1.g were referred for collection in April 2018. (GX 3 at 5-6.) Applicant stopped attending college courses in September 2018 without obtaining a degree, and he began working full time because he did not want to incur any more student loans. (Tr. 27-28.)

Applicant disclosed his delinquent student loans and the other debts alleged in the SOR when he submitted his SCA in February 2019. He paid \$1,125 in March 2019 to bring one of his loans up to date, and he was questioned about them by a security

investigator in April 2019. (GX 2 at 4.) As of November 2019, he was making payments of about \$150 per month on two consolidated student loans totaling about \$15,714. (Answer at 17.)

In February 2020, Applicant applied for consolidation of all his student loans. All his student loans now have been consolidated into four loans totaling \$33,424, all of which are in forbearance. (Tr. 21-22; AX A.) He anticipates that he will be paying a total of about \$212 per month after the period of forbearance ends. (Tr. 36.) He has received pay raises every year and is financially able to make the payments when the forbearance ends. His annual pay increased to \$55,000 in 2018, and in December 2019, it increased to \$75,000 per year. (Tr. 60-61.)

**SOR ¶ 1.f: charge account charged off for \$627.** Applicant incurred this debt to buy a desk in January 2013. His last payment was in May 2013. (Tr. 38; GX 4 at 2.) In his answer and at the hearing, he stated that he had contacted the collection agency and original creditor, and they informed him that they had charged off the debt and will not accept a payment. (Tr. 22, 39; Answer at 1.) He contacted the original creditor and was informed that an IRS Form 1099-C, reflecting the cancellation of the debt, would be sent within 15 days. At the time of the hearing, he was waiting for the IRS Form 1099-C. (Tr. 67.) After the hearing, he contacted the creditor again and was informed that that he would receive the IRS Form 1099-C by January 16, 2021. When he did not receive it, he contacted the creditor a third time and was informed that the document had not been sent because they could not verify his address. Documentation of his repeated contacts with the creditor is attached to the record as AX I. I am satisfied that the debt was cancelled.

**SOR ¶ 1.h: credit-card account charged off for \$133.** Applicant opened this account in December 2015 to build his credit, and he made payments until August 2016. The debt was charged off in January 2017. (GX 3 at 6; Tr. 40.) In February 2020, he settled the debt for \$80.26. (Answer at 12; Tr. 41.)

**SOR ¶ 1.i: delinquent rent payments referred for collection of \$3,892.** This debt was incurred April 2016, when Applicant moved out of an apartment without giving 60 days' notice. (GX 2 at 4.) His monthly rent had been \$1,000. The landlord increased the rent to \$1,500 and demanded payment for the equivalent of two months' rent at the increased rate. The debt was referred for collection in June 2016. (GX 3 at 11.) Applicant made monthly payments of \$252 for about a year and then settled the debt in January 2020 for \$1,557. (Answer at 13; GX 2 at 4; AX E; Tr. 45.)

**SOR ¶ 1.j: debt to insurance company referred for collection of \$984.** This debt was incurred when Applicant sold a vehicle but neglected to cancel the insurance. The debt was referred for collection in January 2016. (GX 3 at 11.) In February 2020, he made an agreement to pay \$984 in four installments. (Answer at 15.) He complied with his agreement, and the debt has been resolved. (Tr. 22; AX B and C.)

**SOR ¶ 1.k: delinquent medical debt for \$636.** In Applicant's answer to the SOR, he stated that he was unaware of this debt and was not sure of its origin. The March 2019

credit report reflects that it was referred for collection in February 2013, but it does not identify the original creditor or the collection agency. (GX 3 at 12; Answer at 5.) Applicant believes that this debt may have been for treatment after an automobile accident. He contacted the hospital where he was treated, but the hospital was unable to provide him any information about the debt. (Tr. 23.) I have resolved this debt for Applicant, because the SOR does not provide the specificity required by Directive ¶ E3.1.3. It does not provide the name of the original creditor or the collection agency, making it virtually impossible for him to investigate or resolve the debt.

**SOR ¶ 1.l: telecommunications account referred for collection of \$595.** This was incurred when Applicant failed to return cable equipment in 2014. (Tr. 48.) The debt is reflected in the March 2019 credit report (GX 3 at 12) but not the November 2019 credit report. (GX 4.) Applicant contacted the original creditor and the collection agency in an effort to resolve the debt. The collection agency informed him that they had returned the debt to the original creditor. He testified that he tried to contact the original creditor but could not get beyond the telephone menus and talk to a “live person.” (Tr. 49.)

**SOR ¶ 1.m: debt to insurance company referred for collection of \$260.** Applicant testified that this debt was incurred after an insured vehicle was totaled, but he could not remember the specific circumstances that caused this delinquent debt. (Tr. 51.) It was referred for collection in November 2017. (GX 3 at 12.) He paid it in February 2020. (Answer at 16; AX D.)

Applicant has enrolled in a financial management course through his church. (AX H.) He now has a budget, which reflects his net monthly income of \$3,920, expenses of \$3,275, projected student-loan payments of \$200 per month, payments on a credit-union loan of \$105 per month, and a net monthly remainder of \$340. (AX G.)

Applicant’s branch chief for the past five years, a retired Army non-commissioned officer, testified that he has watched Applicant mature over the years into a reliable, dependable, and trustworthy electronic technician. (Tr. 72-73.) One of Applicant’s co-workers for the past three years, a former Army Green Beret, submitted a statement attesting to Applicant’s growth in his personal and professional life. He considers Applicant a loyal, reliable, talented employee, with a unique ability to solve problems with an “outside-the-box” approach. (AX F.)

### **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:

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

Applicant's admissions and the evidence submitted at the hearing establish the two disqualifying conditions under this guideline: 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;

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; and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant has not established any conditions that were largely beyond his control. The debts alleged in SOR ¶¶ 1.h-1.j, 1.l, and 1.m were incurred because of his lack of attention to his financial obligations.

AG ¶ 20(c) is established. Applicant has enrolled in a financial counseling program sponsored by his church, he has adopted a reasonable budget, and his financial problems are under control.

AG ¶ 20(d) is established. Applicant dropped out of college in September 2018, when he realized that he could not afford any more student loans. He brought one of his loans up to date in March 2019, consolidated some of his student loans, and was making monthly \$150 payments as of November 2019. In February 2020, he consolidated all his student loans, which are now in forbearance. He has settled the credit-card debt alleged in SOR ¶ 1.h. He made monthly payments on the delinquent rent debt alleged in SOR ¶ 1.i for about a year and has settled it. He negotiated a payment plan for the insurance debt alleged in SOR ¶ 1.j and has resolved it. He tried to locate the creditor for the debt alleged in SOR ¶ 1.k, but was hampered by inadequate specificity of the SOR. He has made good-faith efforts to resolve the debts alleged in SOR ¶¶ 1.f and 1.l. He has resolved the insurance debt alleged in SOR ¶ 1.m.

### **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): (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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant prudently dropped out of college in September 2018 when he realized that he could not afford any more student loans. However, the debts alleged in SOR ¶¶ 1.f, 1.h, 1.i, 1.j, 1.l, and 1.m were already delinquent because he had not paid attention to his financial obligations. He has since matured and has taken significant steps to right his financial ship. His supervisor, an experienced military retiree, has watched him mature and is now confident that he has the reliability, trustworthiness, and good judgment expected of those who are entrusted with 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 delinquent debts.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.o:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge