



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 21-01286  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2022

**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 on February 11, 2020. On September 14, 2021, 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), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on October 16, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on December 10, 2021. On December 14, 2021, a complete copy of the file

of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 30, 2021, and submitted a multi-paged response, which is included in the record as Applicant's Exhibits (AX) A through N) and admitted without objection. The case was assigned to me on February 15, 2022.

### **Evidentiary Issue**

The FORM included a summary of a personal subject interview (PSI) conducted on April 28, 2020 (FORM Item 7). The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.d, and 1.e. He denied the allegations in SOR ¶¶ 1.b and 1.c. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old cyber security intelligence engineer employed by a federal contractor since October 2019. He has also worked full time as an analyst for a software company since April 2018 and part time as a rural mail carrier since September 2018. He earned a bachelor's degree in December 2011 and a master's degree in May 2015.

Applicant served on active duty in the U.S. Army from 2008 to 2016, received an honorable discharge, and has served in the U.S. Army Reserve from 2016 to the present. He received a secret clearance in 2008, and has held eligibility for sensitive compartmented information (SCI) from 2012 to the present.

Applicant married in May 2002 and separated in February 2018 after an incident in which he admittedly punched his wife in the face after she tried to stab him with a pen, scratched his throat, and tried to strangle him. (FORM Item 7 at 6.) The domestic relations court granted him first-offender status, he completed a domestic violence training program in February 2020, and the charges against him were dismissed in March 2020. (FORM Item 3 at 69; AX B.) He has four minor children, ages 17, 16, 14, and 10. His wife has primary custody and he pays child support. They divorced on a date not reflected in the record. Applicant was the plaintiff in the divorce proceedings.

Applicant reported the domestic violence incident to his security manager and was terminated because of it in March 2018. (FORM Item 3 at 26; FORM Item 7 at 3.) In April 2018, he was hired by the software company that is one of his two current full-time employers. He also worked as a self-employed ride-share driver from January to May 2019.

The SOR alleges five delinquent debts, which are reflected in credit reports from December 2021, April 2021, and April 2020. The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: bank debt charged off for \$27,497.** This debt was incurred jointly by Applicant and his wife to buy a recreational vehicle. The account was opened in November 2015. The last payment was in May 2019. (FORM Item 4 at 4.) In Applicant's answer to the SOR, he stated that the vehicle was surrendered to the bank because his wife would not agree to sell it. The divorce decree provides that each party is responsible for 50% of this debt. (AX E.) In Applicant's response to the FORM, he stated that he had contacted the bank about a settlement. The debt is not resolved.

**SOR ¶ 1.b: child-support arrearage of \$22,018.** Based on Applicant's response to the SOR and the evidence in the December 2021 credit report, Department Counsel conceded that the security concerns raised by this debt have been mitigated.

**SOR ¶ 1.c: car loan charged off for \$8,428.** In Applicant's answer to the SOR, he stated that the car was surrendered to the bank because his ex-wife would not agree to sell it. The divorce decree provides that each party is responsible for 50% of this debt. In Applicant's response to the FORM, he stated that he had agreed to start making payments on his portion of the debt in January 2022. He submitted some handwritten notes pertaining to his promise and reflecting an agreed amount to settle the debt, but no documentary evidence of a payment agreement or any payments. (AX F.)

**SOR ¶ 1.d: credit-card account charged off for \$1,776.** In Applicant's answer to the SOR, he stated that he was making monthly payments on this debt. In his response to the FORM, he submitted evidence of monthly payments of \$66 from January to December 10, 2021, shortly before he answered the SOR. (AX C.)

**SOR ¶ 1.e: home mortgage loan past due for \$58,377, with an outstanding balance of \$723,607.** Applicant's ex-wife lived in the marital home for about a year but did not make any payments on the mortgage loan. Applicant lived in a recreational vehicle campground during this time. (FORM Item 3 at 12.) The divorce decree required Applicant's ex-wife to sign a quitclaim deed for her interest in the home, but she has not complied with this requirement. (AX L.) Applicant began making monthly loan payments of \$3,800 when he reoccupied the home, which are being applied to the past-due balance. (Response to FORM; AX N; FORM Item 7 at 8.) He is seeking a modification of the loan. (AX M.)

Applicant did not provide any information about his income and expenses. However, his most recent credit report, dated December 7, 2021, reflects 39 accounts, all of which are current or paid off, except for the accounts alleged in the SOR.

## **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 documentary evidence in the FORM establish two following 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; 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 established. Applicant's marital breakup was a condition largely beyond his control. He has acted responsibly by working multiple jobs and negotiating resolution of the delinquent debts that resulted from his marital breakup.

Ag ¶ 20(d) is established for the child-support arrearage alleged in SOR ¶ 1.b, which is resolved. Applicant is making regular payments on the car loan alleged in SOR ¶ 1.c, the credit-card account alleged in SOR ¶ 1.d, and the delinquent home mortgage alleged in SOR ¶ 1.e. The loan alleged in SOR ¶ 1.a is not resolved, but Applicant has been in contact with the creditor and proposed a settlement. The creditor in SOR ¶ 1.a is the same creditor as the creditor in SOR ¶ 1.c, with whom he has an ongoing relationship and has successfully negotiated a settlement.

Contrary to the assertion of Department Counsel in her submission, the adjudicative guidelines do not require that an individual establish resolution of every debt alleged in the SOR, make payments on all delinquent debts simultaneously, or pay the debts alleged in the SOR first. An applicant is not required to be debt-free. All that is required is that an applicant act responsibly to develop a reasonable plan for repayment, accompanied by concomitant conduct, *i.e.*, actions which evidence a serious intent to carry out the plan. ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Applicant has a plan and has taken significant steps to execute it.

### **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. 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant served honorably in the U.S. Army for many years, including a deployment to a combat zone. He continues to serve in the U.S. Army Reserve. He has held a security clearance and SCI eligibility for many years, apparently without incident. He is working multiple jobs to generate sufficient income to fully resolve his delinquent debts. 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.e:

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 and SCI. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge