



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03479
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

08/18/2022

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**Decision**  
\_\_\_\_\_

CERVI, Gregg A., 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 May 30, 2019. On February 14, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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) effective on June 8, 2017.

Applicant responded to the SOR on March 16, 2020, and requested a hearing before an administrative judge. The case was assigned to me on March 31, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 3,

2022, scheduling the hearing for May 24, 2022. The hearing was held via video teleconference as scheduled.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant testified but did not submit any exhibits at the hearing. The record was held open until June 10, 2022, for Applicant to supplement the record. He timely submitted exhibits collectively marked as Applicant Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript on June 9, 2022.

### **Findings of Fact**

Applicant is a 43-year-old aircraft fuels mechanic for a government contractor, employed since June 2019. He graduated from high school in 1998 and attended some college. He honorably served in the U.S. Air Force from 1998 until he retired in 2018 with the rank of technical sergeant (E-6). He served two deployments in Afghanistan, and was awarded the Air Force Achievement Medal. He married in 2005 and divorced in 2010. He is not currently married. He has two children, ages 13 and 16. The oldest child lives with him. He currently holds a secret level clearance.

The SOR alleges under Guideline F that Applicant has 10 delinquent debts totaling about \$59,043. His debts include three repossessed vehicle loans; credit cards; internet and satellite television providers; and an attorney collection account. Applicant admitted to all of the debts, and stated that he was working with a finance specialist/credit repair agent. During his testimony, Applicant claimed that he employed a credit repair company, but provided no documentary evidence of such service or results. He stated that he is also working with a family friend to help resolve debts, but he has not provided any funds to the friend for such purposes. The evidence submitted by the Government supports all of the SOR allegations.

SOR ¶¶ 1.a - 1.c are vehicle loan accounts. Applicant bought a BMW while stationed in Germany, that was repossessed in less than one year from its purchase. Another vehicle, a GMC Yukon, was also repossessed in less than one year of ownership. A third vehicle, a Chrysler 300 purchased in 2017, was defaulted in 2018 and repossessed in 2019. All three bank loans were charged off in 2015, 2017, and 2018. Applicant has taken no action to address these debts. Applicant used a hardship loan to purchase his current vehicle.

SOR ¶ 1.d is a military star card account. Applicant testified that he has been paying the account through an involuntary garnishment from his military retirement pay. He did not provide evidence of such garnishment, and his 2022 credit bureau report (CBR) shows the collection account as active, but does not reflect the garnishment.

SOR ¶¶ 1.e and 1.f are credit card accounts that have been charged off and remain in a collection status. Applicant is not familiar with these accounts and has not established efforts to investigate or resolve these debts.

SOR ¶¶ 1.g – 1.j include a credit card debt, two internet/satellite television accounts, and an attorney collection account. Applicant testified that he paid the satellite television account, but did not present documentary evidence of such payment. The account last appeared in Applicant’s 2019 CBR as a collection account, but it has since been removed from his credit report. The remaining credit card and internet accounts were paid on June 9, 2022, as supported by post-hearing documentation provided by Applicant, and the attorney collection account is annotated as paid on June 12, 2020, on his May 2022 CBR. These accounts are resolved.

Applicant testified that he made poor financial decisions like buying cars without sufficient funds to pay for them, and he was financially challenged by his divorce and child support obligations. He took a financial management class when he retired from the Air Force, but has not provided evidence that a financial counselor was used to help him address his SOR debts or financial affairs. No budget or documentation of current financial status was submitted. He owns a home with \$75,000 in equity, and retirement accounts valued at about \$4,700. He has about \$3,200 in bank accounts.

### **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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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 ¶ 1(d).

## 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

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

Applicant’s admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (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;
- (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.

Applicant has a history of not responsibly meeting financial obligations. He has done little to address his habit of incurring debts for which he cannot pay, or to take appropriate action to investigate and resolve delinquent debts. The guideline 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).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period and that he can obtain and maintain a measure of financial responsibility. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Overall, Applicant's financial responsibility is questionable. He has been slow to respond to the financial issues raised in the SOR, only showing payment of two minor debts after his hearing. Applicant's meager efforts were too late to establish financial responsibility and a reliable track record of debt resolution. No mitigation credit fully applies except for SOR debts ¶¶ 1.g – 1.j, that have been resolved.

## Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I also considered Applicant's military service, divorce, and child-support responsibilities. I remain unconvinced of his overall financial responsibility, efforts to resolve delinquent debts, and his ability, intent, and desire to meet his financial obligations in the future.

## Formal Findings

Formal findings for or against Applicant 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.f:	Against Applicant
Subparagraphs 1.g - 1.j:	For Applicant

## Conclusion

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

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Gregg A. Cervi  
Administrative Judge