



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



In the matter of: )  
)  
) ISCR Case No. 22-00825  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

11/28/2022

**Decision**

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 30, 2021. On May 20, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 May 26, 2022, and requested a decision on the written record without a hearing. A duplicate SOR was issued on June 27, 2022, and

receipt was acknowledged by him on July 13, 2022. Department Counsel submitted the Government's written case on August 16, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant on August 17, 2022, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. A response was received from him on November 14, 2022. The case was originally assigned to me on October 14, 2022. The file having been submitted to the Hearing Office prematurely was returned to me on November 17, 2022.

The SOR and the answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 5 are admitted into evidence without objection. Admission of FORM Item 4 is discussed below. Applicant's response, an email statement, marked as AE1, included an Experian credit report generated November 14, 2022, marked as AE2. AE1 and AE2 are admitted into evidence without objection

### **Evidentiary Issue**

The FORM included a summary of a personal subject interview (PSI) conducted on November 22, 2021. (FORM Item 4). 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. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "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." See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Item 4 is therefore admitted.

### **Findings of Fact**

In Applicant's answer to the SOR, in the typed portion, he admitted all 11 allegations under Guideline F, and denied the allegation under Guideline E. His admissions are incorporated in my findings of fact.

Applicant is a 28-year-old cable technician for a defense contractor. He has worked for the company since February 2021. He served honorably in the U.S. Navy from August 2012 to July 2016. He held a security clearance while on active duty. He married in 2015 and divorced in 2016. He has no children. He attended a college for almost a year after the military, but did not earn a degree. (FORM Item 3 at 7, 21-22, 38-38, 24, and 14.)

Applicant's 11 delinquent debts total \$23,356 and have been charged off or referred for collection. The debts are established by an October 2021 credit report; a November 22, 2021 PSI; and his Answer. (FORM Items 5 and 4.) The specific debts in the SOR are as follows:

SOR ¶ 1.a: past-due account referred for collection of \$6,530. AE2 shows the balance as \$6,530.

SOR ¶ 1.b: delinquent rent payments referred for collection of \$3,393. Debt does not appear on AE2.

SOR ¶ 1.c: delinquent auto payments charged off for \$3,354. AE2 shows the balance as \$6,530.

SOR ¶ 1.d: past-due U.S. Government account referred for collection of \$2,705. This debt does not appear on AE2.

SOR ¶ 1.e: past-due U.S. Government account referred for collection of \$3,354. This debt does not appear on AE2.

SOR ¶ 1.f: debt to credit union charged off for \$1,099. AE2 shows the balance as \$1,099.

SOR ¶ 1.g: past-due account charged off for \$925. This debt does not appear on AE2.

SOR ¶ 1.h: debt to insurance company referred for collection of \$900. Debt does not appear on AE2.

SOR ¶ 1.i: telecommunications account referred for collection of \$839. AE2 shows the balance as \$839.

SOR ¶ 1.j: past-due U.S. Government account referred for collection of \$791. This debt does not appear on AE2.

SOR ¶ 1.k: debt to bank referred for collection of \$400. This debt does not appear on AE2.

Applicant stated in his PSI that his financial situation “sucks” and needed improvement. He explained he got into financial trouble while on active duty but had started to improve his financial situation by 2014. He cites his marriage for the decline in his financial situation. (FORM Item 4 at 4.) The offered documented evidence, AE2, shows no evidence of a repayment plan or that he had disputed the debts with his creditors. He expressed hope that he would have his financial situation under control by Spring 2022. (FORM Item 4 at 4.)

The Guideline E allegation stems from his failure to include any of the debts addressed above on his SCA. As noted, Applicant discussed the events in his PSI and disclosed he had several accounts that gone into collection. (FORM Item 4 at 4.) In his Answer he admitted he did not include them but stated it was a mistake. When he submitted his SCA, he answered “No” to all the questions regarding delinquent debts. In his Answer he handwrote: “I failed to fill out the entire credit debit section by accident believing I was done without checking I submitted the application incomplete. I never intended on hiding this information.” He added in a typed section of his Answer that his

failure to disclose his financial information was due to a lack of attention to detail on his part. He stated: “This was a major oversight [sic] on my part, I never intended to withhold or hide any of the information requested from the e-QIP as I also disclosed in my interview.” In AE1 he reiterated he never intended to hide any information and his failure to include his financial debt was “due to a lack of attention” on his part.

## 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 the 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 under AG ¶ 20 are 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; and
- (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 recent, numerous and ongoing.

AG ¶ 20(d) is not established. Applicant did not provide evidence to support his assertions that he had resolved his debts or had established repayment plans to have his financial situation under control by Spring 2022. The credit reports in the record reflect inaction on his part.

The absence of the debts on Applicant's most recent credit report proves nothing about the status of the debts except their age. Furthermore, merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See, e.g, ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on the September 2021 SCA. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for Applicant.

### **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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude personal conduct security concerns were not established, but Applicant did not mitigate the financial considerations security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.k:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a	For Applicant

### **Conclusion**

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

Charles C. Hale  
Administrative Judge