



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00912
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeffrey Kent, Esq., Department Counsel  
 For Applicant: *Pro se*  
 11/23/2022

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**Decision**

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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 4, 2017. On July 27, 2021, 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 December 18, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 19, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 27, 2022, scheduling the hearing for October 17, 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 exhibits at the hearing. The record was held open until October 21, 2022, for Applicant to supplement the record. He timely submitted exhibits collectively marked as Applicant Exhibit (AE) A, which were admitted without objection. DOHA received the hearing transcript on October 27, 2022.

### **Findings of Fact**

Applicant is a 59-year-old packaging engineer for a Government contractor, employed since 1984. He earned an associate's degree in 2016. He married in 1993 and divorced nine months later. He remarried in 2001, and has one adult child. He has held security clearances since 1985.

The SOR alleges under Guideline F that Applicant has seven delinquent debts including loans and credit card accounts, totaling about \$42,971 (SOR ¶¶ 1.a to 1.g); three Federal student loans in collections, totaling about \$1,908 (SOR ¶¶ 1.h to 1.j); and three medical debts in collections, totaling \$238 (SOR ¶¶ 1.k-1.m). Applicant admitted all of the debts except for the student loans, claiming the IRS captured his refunds and applied them to his debts. The evidence submitted by the Government supports all of the SOR allegations.

SOR ¶¶ 1.a to 1.g and 1.k to 1.m are bank loans, credit card accounts, and medical debts that have been charged off or are in collections. Applicant admitted the debts and testified that he has not taken action to resolve them. He stated that he became overextended on loans and credit while supporting his daughter, who suffered from alcoholism and homelessness, and her two children. His debts occurred largely between 2015 and 2016, where he used one account to pay on other accounts. He argues that he has not accumulated new debt since 2018 or 2019, but he has no payment plans nor has he made payments toward his delinquent accounts.

SOR ¶¶ 1.h to 1.j are student loans in collections. He testified that the IRS has recaptured \$2,616 and applied it to his student loans, and he had a garnishment order from March 2018 to April 2019. When he answered the SOR, he believed the loans were paid, but after inquiring with the Department of Education after his hearing, he discovered that he still owed \$1,909. He initiated a payment plan and made one payment of \$59.21 on October 26, 2022.

Applicant testified that he currently cannot afford to pay any debts and he had not contacted any creditors. He began working with a credit repair service in February or March 2022, and opened a secured credit card. He hopes to improve his credit rating. He lives paycheck-to-paycheck, does not have a budget, and has not had financial counseling. He has about \$1,350 in cash, a 401k retirement fund, and claims to have about \$500 to \$600 in net monthly remainder after paying expenses.

## 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 his financial obligations. 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).

Applicant incurred debts while caring for his adult daughter needing special attention, and his grandchildren. His debts began to accumulate in about 2015, but he said that he has not accumulated new debts since about 2018. This was an unplanned life event, but Applicant has not acted responsibly toward his financial obligations under the circumstances. As of the date of the hearing, he had done nothing to address his delinquent debts. When he answered the SOR, he believed his student loans were paid via garnishment or IRS recapture of his tax refunds, but learned differently after the hearing. He contacted the Department of Education, and made his first payment toward resolving his student loan debts. He is credited for working to resolve the student loans. The remaining debts remain unresolved.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))).

Applicant presented no documentary evidence of substantive financial counseling to assist him with meeting financial obligations or budgeting. His failure to address his delinquent accounts puts into question his reliability, trustworthiness, and good judgment. Although Applicant's current financial position may have improved since 2018, he has done very little to address his debts despite a long work history. Except for the student loans being resolved, mitigating conditions in AG ¶¶ 20(a) - 20(e) do not apply to the remaining debts.

### **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 life circumstances, however, 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.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

### **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.g; 1.k – 1.m:	Against Applicant
Subparagraphs 1.h – 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