



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



In the matter of: )  
)  
) ISCR Case No. 20-02775  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2023

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**Decision**

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HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on November 16, 2018. On May 9, 2022, the Department of Defense 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 June 20, 2022. Because of conflicting statements in the record regarding whether he wanted a hearing or a decision on the administrative record, he responded on June 24, 2022, that he “[did] not need a hearing regardless of the situation.” On August 5, 2022, a complete copy of the file of relevant material (FORM)

containing information in support of the SOR 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 August 30, 2022, and did not respond. The case was assigned to me on December 1, 2022.

The SOR and the answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 6 are admitted into evidence without objection.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a-i. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 33 years old. He has been working full time as an apprentice for a federal contractor since September 2018. He experienced a brief period of unemployment in 2012, but otherwise has maintained continuous employment since 2011. He was awarded an associate's degree in 2014. He is not married and has no children. He has never held a security clearance. (Item 3 at 7, 16, 14, 23, and 23-26.)

Applicant in his SCA listed the reason why his student loans were delinquent as: "Don't have the conditions to pay for the loans." (Item 3 at 36.) The SOR alleges eight delinquent student loans. The August 2022 credit report, Item 4, documents the student loans. The February 2022 credit report, Item 5, documents a charged-off credit-card debt. His student loans total about \$49,670. (Item 4 at 5-7.) In 2018, he stated on his SCA that: "I plan on letting the collection agencies (within a week) know that I will begin making payments on my loans. I will inform them on wanting to join the late payment forgiveness plan. Then, eventually setting up a consolidation plan." (Item 3 at 36.)

The evidence concerning these debts is summarized below.

SOR ¶ 1.a: education loan placed for collection of \$12,102. (Item 4 at 5.)

SOR ¶ 1.b: education loan placed for collection of \$11,431. (Item 4 at 5.)

SOR ¶ 1.c: education loan placed for collection of \$6,956. (Item 4 at 6.)

SOR ¶ 1.d: education loan placed for collection of \$4,496. (Item 4 at 6.)

SOR ¶ 1.e: education loan placed for collection of \$4,419. (Item 4 at 5.)

SOR ¶ 1.f: credit card charged-off for \$4,252. (Item 5 at 3.)

SOR ¶ 1.g: education loan placed for collection of \$3,952. (Item 4 at 6.)

SOR ¶ 1.h: education loan placed for collection of \$3,181. (Item 4 at 7.)

SOR ¶ 1.i: education loan placed for collection of \$3,133. (Item 4 at 7.)

### **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 relating to the guideline for financial considerations 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 admission and statement in his 2018 SCA along with the credit reports establish 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, or 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 recent, numerous and ongoing. He listed the delinquent student loans in his SCA and provided no evidence to support the plan he stated in his SCA.

AG ¶ 20(b) is not established. Applicant's period of unemployment in 2012 was brief and there is no other evidence of circumstances beyond his control. He did not provide sufficient evidence that he acted responsibly under the circumstances to resolve them.

Applicant's financial delinquencies are ongoing and unresolved. He did not establish that his financial problems are in the past and are unlikely to recur. He has not established a plan to resolve his financial problems. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). He has failed to establish that he has made a good-faith effort to pay or resolve his debts. AG ¶ 20(d) does not apply.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 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 Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by Guideline F.

### **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 (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.i:

Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale  
Administrative Judge