



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 20-03315  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

02/13/2023

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**Decision**

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FOREMAN, LeRoy F., 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 on February 9, 2020. On March 3, 2022, 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) implemented by the and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on April 5, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 22, 2022, and

the case was assigned to an administrative judge on November 1, 2022. On December 15, 2022, the case was reassigned to me due to the original administrative judge's medical inability to travel to the hearing site. On January 4, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 19, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. GX 4, an unauthenticated summary of a personal subject interview, was not admitted. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until February 2, 2023, to enable him to submit documentary evidence. He did not submit any additional evidence. DOHA received the transcript (Tr.) on January 27, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, Applicant admitted all the allegations, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 33-year-old network engineer employed by a defense contractor since November 2017. He served on active duty in the U.S. Navy from November 2009 to November 2017 and received an honorable discharge. He held a security clearance in the Navy.

Applicant married in June 2009 and divorced in October 2012. He married his current spouse recently on a date not reflected in the record. He has taken college courses since August 2019 but has not received a degree.

Applicant testified that his financial problems began around 2016, when his then girlfriend became pregnant, and he felt an obligation to assist her financially. He stopped the financial assistance after she had an abortion in May 2017. (Tr. 21, 31.) He has since married his current spouse and has no further obligations to his ex-girlfriend.

At about the same time, Applicant was involved in an automobile accident in which his vehicle was totaled, but his insurance coverage was insufficient to cover the full cost of replacing it. It appears that he was at fault in the accident, having rear-ended another vehicle. (GX 1 at 37-42; Tr. 31-35.)

Applicant testified that he has been unable to deploy for the past 15 months because his security clearance was suspended. Previously, about one-third of his income, about \$30,000, was from extra pay during deployments. In addition, his wife, who is a barber, had reduced income during COVID-19. (Tr. 23-25.)

Applicant testified that he hired a debt-consolidation company to help him resolve his delinquent debts. He paid the company about \$300 per month for more than two years, until a judgment was entered against him and he realized that it had not provided any services. (Tr. 19.) He did not provide any documentation of his contract with the debt-consolidation company or payments to them.

The debts alleged in SOR ¶¶ 1.a-1.f are delinquent credit-card accounts totaling about \$26,976. The debts alleged in SOR ¶¶ 1.g-1.j are medical debts totaling about \$718. The debts are reflected in credit reports from April 2020 and December 2021 (GX 2 and 3.). I granted Department Counsel's motion to withdraw SOR ¶ 1.k. (Tr. 14.)

Applicant testified that he contacted the creditor alleged in SOR ¶ 1.a, but the creditor would not discuss the debt with him because he was represented by the debt-consolidation company. (Tr. 39.) He made no further attempts to resolve this debt. As of the date of the hearing, he had not contacted any of the other creditors alleged in the SOR. (Tr. 52.)

Applicant currently earns about \$5,200 per month, and his spouse works four days a week and earns \$100 to \$150 per day. He described his financial situation as "living paycheck to paycheck." (Tr. 44.)

### **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 evidence submitted at the hearing 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 relevant:

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;

AG ¶ 20(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; 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 were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. The unexpected pregnancy of Applicant's ex-girlfriend, the loss of his motor vehicle in an accident, and the apparent fraud perpetrated by a debt-resolution company were conditions largely beyond his control. (I have given him the benefit of the doubt on his level of responsibility for the motor vehicle accident.) However, he has not acted responsibly. He admitted that, except for one unsuccessful contact with one creditor, he has not contacted any of his creditors or otherwise attempted to resolve his delinquent debts.

AG ¶ 20(c) is not established. The debt-resolution company was not "a legitimate and credible source" of financial counseling, and Applicant's financial problems are not under control.

AG ¶ 20(d) is not established. Applicant submitted no evidence of good-faith efforts to resolve his debts. He was given additional time after the hearing to submit evidence, but he submitted no evidence of efforts to contact his creditors or resolve the debts alleged in the SOR.

### **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 and applied the adjudicative factors in AG ¶ 2(d). 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 his delinquent debts.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.j: **Against Applicant**

Subparagraph 1.k: **Withdrawn**

### **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.

LeRoy F. Foreman  
Administrative Judge