



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03097
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brian L. Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

03/13/2023

**Decision**

HALE, Charles C., 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 October 16, 2017. On December 1, 2020, 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; Department of Defense (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 January 4, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's File of relevant material (FORM) dated July 5, 2022, including documents identified as Items

1 through 7. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He received the FORM on October 6, 2022, but did not file a response. The case was assigned to me on January 26, 2023.

The SOR and the Answer (Items 1 and 2) are the pleadings in the case. FORM Items 3 through 7 are admitted into evidence without objection.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a-1.m and denied SOR ¶ 1.n. 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 46 years old. He married his current spouse in February 2013 and divorced his first spouse in May 2013. (Item 3 at 17 and 18.) He served on active duty in the U.S. Navy from 1996 to 2016 and retired with an honorable discharge. (Item 3 at 14.) He noted he had not attended schools in the last ten years and had not received a degree or diploma going back more than ten years. In July 2016, after retiring from the military he became a boat driver for his sponsor. He was granted a Secret clearance while in the military. He currently does not hold a clearance.

Applicant's fourteen delinquent debts total over \$54,346. The debts are established by three credit reports, and his response to DOHA interrogatories. (Items 4-7.) None of the debts are reflected on his SCA. (Item 3.) The specific debts in the SOR are as follows:

SOR ¶¶ 1.a-1.b: past-due accounts charged-off for \$14,309 and \$13,390 respectively from the same lender. Applicant notes in his Answer that he was in the progress of resolving SOR ¶ 1.a. In his response to interrogatories, he marked that both debts were paid but then marked that no documentation was provided to show that either debt was paid. (Item 7 at 1.) FORM Item 4, a June 30, 2022 credit report, does not show either debt. A July 1, 2020 credit report shows the status of both debts as closed and charged off, with a last activity date of December 2013. (Item 5 at 2.)

SOR ¶ 1.c: past-due account placed for collection in the amount of \$616. The June 30, 2022 credit report shows the last activity was in February 2017. (Item 4 at 3 and Item 5 at 2.) Applicant admits the debt and notes "corrected" without explanation in his SOR Answer.

SOR ¶ 1.d: past-due account placed for collection in the amount of \$567. The June 2022 credit report and the July 2020 credit report show the last activity was in December 2016. (Item 4 at 4 and Item 5 at 2.) Applicant admits the debt and notes "corrected" without explanation in his SOR Answer. In his response to DOHA interrogatories, he marked that the debt had not been paid but that pay arrangements had been made and that he was

making payments but did not provide documentation to show proof of payment or the current status of the debt. (Item 7 at 3-4.)

SOR ¶ 1.e: past-due account placed for collection in the amount of \$315. The June 2022 credit report and the July 2020 credit report show the last activity was in December 2016. (Item 4 at 4 and Item 5 at 3.) Applicant admits the debt and notes “corrected” without explanation in his SOR Answer. In his response to DOHA interrogatories, he noted that the debt had been paid but did not provide documentation showing it was paid. (Item 7 at 4.)

SOR ¶ 1.f: past-due medical account placed for collection in the amount of \$220. The July 2020 credit report shows the last activity was in December 2016. (Item 5 at 3.) Applicant did not admit or deny the debt in his SOR Answer. In his response to interrogatories, he noted that the debt had been paid but marked no documentation of proof of payment was provided. (Item 7 at 4.)

SOR ¶ 1.g: past-due account placed for collection in the amount of \$315. The July 2020 credit report shows the last activity was in June 2017. (Item 5 at 3.) Applicant admits the debt and notes “corrected” without explanation in his SOR Answer. In his response to interrogatories, he marked that the debt had been paid but marked no documentation of proof of payment was provided. (Item 7 at 5.)

SOR ¶ 1.h: past-due account charged-off for \$9,483. The April 2019 credit report shows the account charged-off. (Item 6 at 2.) The debt is not reflected on the most recent credit report, Item 4. Applicant admits the debt and notes “progress” without explanation in his SOR Answer. In his response to interrogatories, he did not mark either “paid” or “not paid” but marked that payment arrangements had been made and that he was making payments. He also marked “no” to whether documentation of proof of payment was provided. (Item 7 at 2.)

SOR ¶ 1.i: past-due account charged-off for \$7,754. The April 2019 credit report shows the account charged-off. (Item 6 at 2.) The debt is not reflected on the most recent credit report. (Item 4.) Applicant admitted the debt and noted “corrected” without explanation on the SOR. In his response to interrogatories, he did not mark anything regarding the debt. (Item 7 at 2.)

SOR ¶ 1.j: past-due account charged-off for \$5,194. The April 2019 credit report shows the account charged-off. (Item 6 at 2.) The debt is not reflected on the most recent credit report. (Item 4.) Applicant admitted the debt and noted “progress” without explanation in his SOR Answer. The debt was not listed in the interrogatories. (Item 7.)

SOR ¶ 1.k: past-due account placed for collection in the amount of \$857. The April 2019 credit report shows the last activity was in 2016. (Item 6 at 2.) Applicant admitted the debt and noted “corrected” without explanation in his SOR Answer. In his response to interrogatories, he marked that the debt had not been paid and marked “no” to the remaining questions about taking any actions pertaining to the debt. (Item 7 at 2.)

SOR ¶ 1.l: past-due account placed for collection in the amount of \$781. The April 2019 credit report shows the last activity was in 2018. (Item 6 at 2.) Applicant admits the debt and notes “corrected” without explanation in his SOR Answer. In his response to DOHA interrogatories, he marked that the debt had not been paid and marked “no” to the remaining questions about taking any actions pertaining to the debt. (Item 7 at 3.)

SOR ¶ 1.m: past-due account placed for collection in the amount of \$755. The April 2019 credit report shows the last activity was in 2016. (Item 6 at 2.) Applicant admitted the debt and noted “corrected” without explanation in his SOR Answer. In his response to interrogatories, he marked that the debt had not been paid but that pay arrangements had been made and that he was making payments. He also marked no documentation of proof of payment was provided. (Item 7 at 3.)

SOR ¶ 1.n: past-due communications account placed for collection in the amount of \$75. The April 2019 credit report shows the last activity was in 2018. (Item 6 at 2.) Applicant denied the debt and noted “never used this company” in his SOR Answer. In his response to interrogatories, he marked that the debt had been paid but no documentation of payment was submitted. (Item 7 at 4.) He also marked payment arrangement had been made and he was making payments, but again marked no documentation of proof of payment was provided. (Item 7 at 4-5.)

Applicant argues he has resolved SOR ¶¶ 1.a-1.c by tax withholding. He also argues he is doing this during a move and an adoption. He provides no further explanation and provides no substantiating documentation showing any action he had taken to resolve or address his 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.

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).

This case involves an Applicant's inability to pay debts, arising from a series of investment decisions. His 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;

(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;

(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.

AG ¶ 20(a) is partially established. The most recent credit report does not reflect many of the debts which arose around his 2016 retirement. However, he provided no substantiating documentation showing any action to resolve or address his debts.

AG ¶ 20(b) is partially established. Applicant retired from the military and cites being unable to devote time due to a move and an adoption. His interrogatory responses show he affirmatively marked the debts were paid but then did not provide documentation to support his interrogatory response. He does not support his Answer with substantiating documentation showing any action to resolve or address his debts or to show that he acted responsibly under the circumstances to resolve his financial obligations.

AG ¶ 20(d) and AG ¶ 20(d) are not established. Applicant failed to provide evidence that debts were paid, otherwise being resolved, or disputed.

## **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). 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 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.n:

Against 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