



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



In the matter of: )  
)  
) ISCR Case No. 20-01756  
)  
Applicant for Security Clearance )

**Appearances**

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

03/29/2023

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**Decision**

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HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline K (Handling Protected Information). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on November 12, 2019. On April 15, 2021, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The SOR was amended on September 17, 2021, to add an additional allegation under Guideline F and allegation under Guideline K. The DoD 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 original SOR on June 16, 2021, and requested a hearing before an administrative judge. He answered the SOR amendment on October 6, 2021. Department Counsel was ready to proceed on October 14, 2021, and the case was assigned to me on October 12, 2022. On January 18, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 1, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or any documentary evidence. DOHA received the transcript (Tr.) on March 8, 2023.

I kept the record open after the hearing to enable Applicant to submit documentary evidence. He timely submitted AE-A (certificate of completion), AE-B (Derivative Classification), AX-C (Cybersecurity Awareness), AE-D (DoD Annual Awareness Refresher), and AE-E (Initial Orientation and Awareness Training), which were admitted without objection. The record closed on March 15, 2023.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted SOR ¶¶ 1.a-1.d, 1.f-1.g, and 1.j. He denied SOR ¶¶ 1.e and 1.h-1.i. He admitted SOR ¶ 2.a. His admissions are incorporated into the findings of fact.

Applicant is 43 years old. He is divorced with four children ranging in ages from 12 to 5. Two of the children are from a prior relationship. Applicant retired honorably from the Navy in 2018 after 20 years of service. He first held a security in 1998 while on active duty. After retiring, he attended college and worked for a defense contractor from September 2019 until around July 2020. He was out of work for about two months. (Tr. at 24-25.) He found a new position in September 2020 that paid about \$10,000 less than his previous position. (Tr. at 25.) He held the position from September 2020 until October 2022. (Tr. at 25.) He left his position for a higher paying position with his sponsor in October 2022. His new salary is approximately \$15,000 more than his previous salary. (Tr. at 25-26.)

Applicant testified he is the subject of two separate court orders. One order is for \$2,000 for his children from a prior relationship. (Tr. at 22 and GE-5 at 7.) The other order for \$5,040 covers his children from his marriage and alimony. (GE-7.) He was not represented by counsel at his divorce. (Tr. at 74.) His former spouse was awarded half of his retired pay in their divorce. (Tr. 25-26.) He receives approximately \$631 a month in military retired pay after withholdings. (Tr. at 27.) He also receives a \$2,500 monthly veteran disability payment. (Tr. at 27.) He has been working side jobs to add an additional \$2,000 a month to his income. He acknowledged he had about \$8,600 in monthly income and had to pay \$7,000 in child support and alimony each month before expenses. (Tr. at 63.) He makes payments on his other debts when he has a little extra money. (Tr. at 53.)

**SOR ¶ 1.a: past-due account charged off in the amount of \$22,180.** Applicant admitted this credit card became delinquent in 2019. The credit card was used by both

him and his wife. The credit card was used mostly for household items, but he admitted he used it to help another woman out. He gave the woman \$10,000, but her check did not clear which resulted in “this debt.” (Tr. at 36.) When he was “hit with this debt,” he was paying \$2,000 in child support. He admitted he hadn’t taken any actions yet on the debt. (Tr. at 40 and GE-8 at 6.) This debt is not resolved.

**SOR ¶ 1.b: past-due account referred for collection for \$8,521.** Applicant took out a personal loan in 2016-2017 for \$10,000, when he fell behind on his finances. He testified he tried to pay it back. (Tr. at 44.) He stopped making payments sometime in 2017. Since 2017 he has not taken any action. (Tr. at 47 and GE-8 at 8.) This debt is not resolved.

**SOR ¶ 1.c: past-due account charged off in the amount of \$4,263.** Applicant took out a personal loan in 2016–2017 after he fell behind on his rent. (Tr. at 49.) He could not recall when he stopped making payments, because “it’s been that long.” (Tr. at 50.) He acknowledged receiving notices but not taking any action (Tr. at 50 and GE-8 at 7.) This debt is not resolved.

**SOR ¶ 1.d: past-due account charged off the amount of \$3,195.** Applicant’s credit card became delinquent in 2019 after he became “overextended slightly.” (Tr. at 51.) He admitted he had not taken action on this debt since 2019. (Tr. at 51 and GE-8 at 8.) This debt is not resolved.

**SOR ¶ 1.e: past-due account charged off the amount of \$906.** Applicant denied this account, testifying he had paid it off in 2019. He did not have documentation to support his testimony, but Department Counsel noted the account was not on the most recent credit report, GX8. (Tr. at 52.) I have resolved this debt in Applicant’s favor because the absence of this debt from his recent credit report, corroborated in part by Applicant’s testimony that he paid it. This debt is resolved.

**SOR ¶ 1.f: past-due account charged off the amount of \$611.** Applicant admitted this debt but testified he paid when he got his first job in 2019. He identified the specific branch he went to and paid it with a check. (Tr. at 52.) He explained he paid the smaller debts whenever he had a little bit of extra money. The most recent credit report shows the same outstanding balance and a last payment date of December 2019. (Tr. at 53 and GE-8 at 7.) This debt is not resolved.

**SOR ¶ 1.g: past-due account charged off the amount of \$446.** Applicant could not recall what the debt was for. (Tr. at 53 and GE-3 at 2.) This debt is not resolved.

**SOR ¶ 1.h: past-due cellular service account referred for collection for \$1,090.** Applicant offered nothing to support his denial. (GE-4 at 6 and GE-5 at 6.) This debt is not resolved.

**SOR ¶ 1.i: past-due account referred for collection for \$632.** Applicant denied this allegation; however, it is supported by the Government’s information. Applicant did

not offer any information to refute or mitigate this allegation. (GE-4 at 6 and GE-5 at 6.) This debt is not resolved.

**SOR ¶ 1.j: wage garnishment of \$5,040 for child support, past-due child support, spousal support, and past-due spousal support.** Applicant's child support garnishment was triggered when his wage withholding stopped after he moved and changed jobs. He has since coordinated with his employers to avoid payments being interrupted. (Tr. at 42-43 and GE-7 at 1.)

**SOR ¶ 2.a.** Applicant admitted in his Answer to being counseled in August 2021 for leaving overnight an unsecured a binder containing a password to a classified system. (GE-6 at 1.) He provided the training certificates he completed to mitigate his error. (AE-A through AE-E.) After the incident, Applicant stayed on with the company for almost a year before leaving to take a higher paying position. (Tr. at 25-26.)

Applicant testified he filed his 2021 taxes and owed \$14,000. He could not afford to pay the tax bill. (Tr. at 66.) He was not aware of his tax withholding or reporting requirements for the side jobs he held as an independent contractor. He has not contacted the IRS to establish a payment plan. (Tr. at 69, 74.) He testified he was in a car accident and his car was severely damaged. He stopped making payments on the auto loan when he could not afford the \$2,500 insurance deductible. The account was charged off for \$11,815 in April 2022. (Tr. at 53 and GE-8 at 10.) None of these debts were alleged in the SOR. I have considered the evidence of these delinquent debts for the limited purposes of deciding which adjudicative guidelines are applicable, evaluating evidence of mitigation, and as part of my whole-person analysis.

### **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 admitted into evidence 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; 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 debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is partially established. Applicant's divorce and subsequent support orders have placed him in a very difficult financial situation. He does not support his testimony that he paid the debts he denied. He has stopped making payments on his outstanding debts in order to comply with his child support orders and spousal support order. AG ¶ 20(b) requires that "the individual acted responsibly under the circumstances." His intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

AG ¶ 20(d) is partially established. Applicant has complied with the court orders and coordinated with his employer's payroll office to insure no further disruptions in support payments. He did not provide evidence to support his denial or assertions that he had paid the debts alleged at SOR ¶ 1.f, SOR ¶ 1.h, or SOR ¶ 1.i. He has not entered into payment plans for the remaining debts, and he only makes payments when he has a little extra money. 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 ISCR Case No. 99-9020 at 5-6 (App. Bd.

Jun. 4, 2001).

### **Guideline K: Handling Protected Information**

The security concern under this guideline is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

The disqualifying condition relevant to this case is:

AG ¶ 34(g): any failure to comply with rules for the protection of classified or other sensitive information.

The relevant mitigating conditions under AG ¶ 35 are:

(a): "so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.

I conclude that these mitigating conditions are established. This was an isolated incident and unlikely to recur. Applicant responded favorably to counseling and remedial security training and remained employed with the company until he left to take a higher paying position.

### **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.

Applicant was very credible in his testimony and demonstrated initiative by taking on additional work to improve his financial situation as well as meeting his training requirements after his mishandling of a classified item. After weighing the disqualifying and mitigating conditions under Guidelines F and K and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns about financial considerations. I conclude Applicant has mitigated the security concerns about handling protected information. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline K:	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