



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



In the matter of: )  
)  
) ISCR Case No. 20-03762  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Karen A. Moreno-Sayles, Esq., Department Counsel  
For Applicant: *Pro se*

05/12/2023

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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). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on May 1, 2020. On February 5, 2021, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 SOR on March 23, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 27, 2022, and the case was assigned to me on February 15, 2023. On February 28, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for April 11, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant Exhibits (AE) A through K were admitted into evidence without objection. Applicant testified but did not present the testimony of any other witnesses. DOHA received the transcript (Tr.) on April 18, 2023.

I kept the record open after the hearing to enable Applicant to submit documentary evidence. He timely submitted AE-L (218 Closing Disclosure), AE-M (AC Repair Breakdown), AX-N (Character References), AE-O (Child Support Documents), AE-P (Correspondence to Insurance Company), AE-Q (Father's death certificate), AE-R (Debt resolution documents), AE-S (Invoice for compressor install), and AE-T (Bank Documents), AE-U (closing statement), and AE-V (hardship letter) which were admitted without objection. The record closed on April 25, 2023.

### **Findings of Fact**

Applicant admits the five debts alleged in SOR ¶¶ 1.a through 1.e, totaling \$20,600. The debts consist of four consumer debts and a small medical debt. His admissions are incorporated into the findings of fact.

Applicant is 53 years old. He has worked as a security guard since 2009. He has held security clearances for over a decade. (Tr. at 15-16 and GE-2 at 13.) He divorced in 2006 after seven years of marriage and has two adult children. He married his current spouse in 2018. His spouse is employed.

Applicant worked full time as a corrections officer from 1998 until 2013. He was terminated from the position for fraternization with an inmate by providing the inmate additional food. He has maintained a side business in the entertainment and events industry since 2000. In 2012, he was required to obtain a business license, and he lists 2012 on his security clearance application as the year he started this business. After his termination, his security guard company took him on full time. He relied primarily on his security guard income during this five-year period. (Tr. at 49.) In 2018 and 2019 he worked as an armed security officer. He has worked with a correctional facility since July 2019. His income from working the two jobs was less than \$100,000 annually. (Tr. at 40.)

Applicant testified his side business required him to use credit cards to obtain equipment. He has spent about \$20,000 over the years for equipment, and now must pay "a lot of taxes, personal property taxes every year, based on all of that equipment" that he owns. (Tr. at 101-102, 105.) Prior to COVID, he typically did 25 to 30 events and would charge anywhere from \$200 to \$300 per event. Since COVID he has done approximately 10 to 15 events. He testified he spent more on the business than what he made. (Tr. at 107.)

Applicant moved in with his father after his 2006 divorce. His father did not charge him rent, and he would give his father money every month. The amount of support he gave his father "varied between anywhere from \$100 to \$500. . . ." (Tr. at 86.) He

remained in the house after his father passed away in 2017. (AE-Q.) He sold his father's house in 2018 as part of the settlement of his father's estate. Prior to the sale of his father's home, he bought a home in 2017. (AE-M.) He provided \$7,858 in cash to close. His monthly mortgage payment was estimated to be \$1,326. (Tr. at 91-92 and AE-L.) His new home also required repairs. (Tr. at 92 and AE-M.) He is the only person listed on the mortgage paperwork. He testified that he and his wife split the mortgage on the new home. (Tr. at 43.)

In his 2020 security clearance interview, Applicant stated multiple times that his financial issues started in 2013 and 2014 after his father passed away, when his father actually passed away in 2017. He had no explanation for why he said his father's death was in 2013. (Tr. at 48 and GE-2 at 5.) He cited using his own credit card to do some home repairs on the house for his father while his father was sick. (Tr. at 47, 60.)

Applicant provided evidence that in 2018 he engaged a law firm to assist him in resolving his debts. On the intake forms for the firm, under the "Reason for Hardship" section he marked "Company Reduced Hours" and "Other (Death in the family (Father))" and completed a budget analysis. (AE-R at 6.) The law firm explained their debt resolution strategy as a negotiation and settlement approach. He initialed the page that explained the "debt resolution strategy" consisted of stopping payment to his creditors to allow the law firm to negotiate and settle his debts from these saved funds. (AE-R at 10.) This action was not discussed in his 2020 security clearance interview or raised during the hearing. He engaged another law firm in May 2020 to help him resolve his debts and repair his credit. (Tr. at 28, 51-52, GE-2 at 36, and AE-J.) He released the second law firm and has been resolving the remaining debts on his own. (Tr. at 66.)

**SOR ¶ 1.a: past-due account referred for collection for \$9,651.** Applicant admitted he took a loan for about \$11,000 at a 25.26 percent interest rate. (Tr. at 54.) He could not state when he made his last payment. (Tr. at 56.) He ultimately settled the account in August 2021 for \$4,727, in ten payments from September 2021 through June 2022. (Tr. at 27, 56 and AE-H.) He cited other obligations, such as child support, for why he stopped making payments on the loan. (Tr. at 57-58.) He did not mention child support or alimony in his security clearance interview and raised it for the first time at the hearing. (Tr. at 58.) In his post-hearing submission, he provided the creditor's letter dated June 28, 2022, stating the "account has been Settled in Full and closed." (AE-R at 14.)

**SOR ¶ 1.b: past-due account referred for collection for \$5,935.** Applicant used this credit card, when his father was living, for repairs to his father's home in 2016. (Tr. at 60.) The credit card became delinquent in 2018. (GE-4 and Tr. at 60.) The law firm contacted the creditor and as a result the creditor placed a block on the account. He had to get the block released in order to settle the account. (Tr. 28-29 and 61.) In his post-hearing submission, he provided a letter to the creditor summarizing his \$2,700 settlement agreement, that he had reached with the company's agent. The letter stated: "On April 11, 2023[,] I have agreed to make payments in the amount of \$112.50 every 28th of the month starting on April 28, 2023[,] for 24 months. No interest and no late fees." (AE-R at 18.)

**SOR ¶ 1.c: past-due account referred for collection for \$3,639.** Applicant incurred the debt from online purchases during COVID. (Tr. at 62.) In August 2021, he settled the account in the amount of \$1,970.76 by agreeing to a payment plan of \$164.23 a month. (Tr. at 62 and AE-C.) Applicant Exhibit E shows the debt was resolved on September 2, 2022. (Tr. at 63.)

**SOR ¶ 1.d: past-due account referred for collection for \$1,208.** Applicant opened the account in September 2015, and it first became delinquent 2018. He took action to resolve the debt in September 2020, with payments of \$69.56 a month. He defaulted on the agreement but reestablished a payment plan to pay off the debt. Applicant Exhibit D shows that on January 24, 2022, he made a payment of \$268.56, which satisfied the account. (Tr. at 63, 64.)

**SOR ¶ 1.e: past-due account referred for collection for \$166.** The account became delinquent in May 2020. Applicant provided Applicant Exhibit F showing he paid the debt off on March 24, 2022. (Tr. at 29.)

As noted above, Applicant has resolved four of the five accounts, and has provided evidence of an agreement to resolve the remaining debt. He has a plan to keep his debts current.

Applicant submitted reference letters, promotion emails, and certificates of accomplishment covering his career from 1997 through 2022. Collectively, these items describe him as reliable, trustworthy, calm, pleasant, courteous, conscientious, family oriented, and an asset to their respective organizations. (AE-N.)

### **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:

(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(b) and 20(d) are fully applicable. The expenses associated with the passing of Applicant's father and personal business expenses incurred during a period of under employment for himself, were circumstances beyond his control. Prior to the security application process Applicant sought out assistance to address financial situation through a law firm handling delinquent debt. During the security clearance application process, he obtained another law firm to assist him in negotiating a resolution and repair his credit. He has resolved four of his SOR debts. He has demonstrated through his actions that he is determined to overcome his indebtedness. He knows that regaining financial responsibility is essential to qualify for a security clearance and has taken reasonable and measured steps to resolve his debts.

### **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.

After weighing the disqualifying and mitigating conditions under Guideline F 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 mitigated the security concerns about financial considerations. Accordingly, I conclude he has 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: FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale  
Administrative Judge