



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



In the matter of: )  
)  
) ISCR Case No. 22-02200  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2023

**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 7, 2021. On December 1, 2022, 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 December 26, 2022 (Answer), and he requested a decision on the written record without a hearing. His Answer included a letter apparently from the company holding the debt alleged in SOR ¶ 1.c, stating the debt had been paid in full, which is marked as Applicant’s Exhibit (AE) A. Department Counsel submitted the

Government's file of relevant material (FORM) on January 12, 2023, 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 January 28, 2023. He provided two letters, which appear to be duplicates, as a Response. They are marked as AE-B and AE-C. The case was assigned to me on April 3, 2023.

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

### **Findings of Fact**

In Applicant's Answer, he admitted SOR ¶¶ 1.a through 1.d. His admissions are incorporated into my 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 31 years old. He married in February 2013 and divorced in July 2014. (Item 3 at 7 and 22.) He pays monthly child support for a child from a previous relationship. (Item 4 at 3.)

Applicant served honorably in the U.S. Navy from 2011 to 2015. He attended a state university from August 2014 to May 2016 and earned an associate degree. From June 2017 to present, he has been a full-time student. While in school, he worked part time jobs. In his November 2021 security clearance interview he cited his child support obligation; a one-year period that he did not work while a student; and working low paying jobs after leaving the military for his financial difficulties. (Item 4.) He has been employed full time since October 2022 by a non-government employer. He received an interim clearance in November 2021.

Applicant's four delinquent debts total over \$56,165. The debts are established by two credit reports, and November 2021 security clearance interview. (Items 3-6.) He did not disclose any of his debts on his SCA. (Item 3.) The specific debts in the SOR are as follows:

**SOR ¶ 1.a: past-due auto loan placed for collection in the amount of \$47,650.** This debt was charged off in 2016. (Item 5 at 2 and Item 6 at 2.) Applicant notes in his Answer that he is in the progress of resolving this debt. The most recent credit report dated July 15, 2022, shows the loan amount as \$65,969, with a balance of \$47,650. (Item 5 at 2.) The November 18, 2021 credit report shows a balance of \$43,788. (Item 6 at 2.) In his Answer, Applicant states he was not able to continue to pay the loan because of his responsibilities at the time to his schoolwork, and that he did not have the financial resources to support himself and pay the loan. He declares, without corroboration, that he is currently working with the creditor to settle the debt and that it will be paid off in a timely manner (Answer at 1.) In his November 2021 security clearance interview, he told the investigator he did not have any knowledge of the debt and would have to investigate to see if he was responsible for the debt. (Item 4 at 7.)

**SOR ¶ 1.b: past-due credit card account charged off in the approximate amount of \$7,700.** This debt was charged off in 2016. (Item 5 at 2 and Item 6 at 3.) Applicant in his Answer states he has been making payments on the account for the past year. In his Response, he included AE-B and AE-C, both dated January 20, 2023, which show he is following a payment arrangement for the debt. The payment arrangement was established in April 2022 and requires him to make monthly payments of \$150. He has paid \$1,500 towards the debt and has a remaining balance of \$6,500. In his security clearance interview, he cited periods of unemployment and low paying jobs for why he could not pay this debt. (Item 4 at 7.)

**SOR ¶ 1.c: past-due utility account placed for collection in the amount of \$462.** (Item 5 at 2-3.) Applicant states in his Answer the debt has been paid in full. He included an undated letter with no letterhead, which appears to be from the collection agent representing the creditor, which states: “Due to extenuating circumstances, a request is being sent to delete the report(s) issued by our office to Credit Reporting Agencies (CRAs). Although at this time we are requesting a deletion, please understand our client(s) owns the account(s).” The letter lists the current balance of the debt as zero. (AE-A.) The fact the letter is undated and is not on official letterhead identifying who issued it raises questions about its timing and validity.

**SOR ¶ 1.d: past-due account placed for collection in the amount of \$353.** The July 2022 credit report shows the debt as delinquent and assigned to collection in March 2022. (Item 5 at 2-3.) Applicant asserts this account is paid and that proof of payments is included with his Answer. The Government noted his assertion and stated he failed to submit documentary evidence to support that the account had been settled. After the Government asserted he had not submitted the documentary evidence he did not challenge the Government’s statement or submit the documentary evidence in his Response. The documentary evidence he provided in his Response addressed a different debt alleged on the SOR.

Applicant provides no further explanation and provides no further 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. 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:

(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) is not established. Applicant's financial difficulties developed in 2016 while he was student. He did not have the financial resources to support the financial choices he made, and he failed to pay his debts. Even if I were to find that ¶ 20(b) partially applies, in that he incurred his debts while he was a student earning a minimal income through his part-time jobs, he did not provide substantiating documentation with his Answer demonstrating that he has taken any action to resolve or address SOR ¶¶ 1.a, 1.c, or 1.d, or that he acted responsibly under the circumstances to resolve his financial obligations on these debts.

AG ¶ 20(d) is partially established, as Applicant initiated repayment plan on one debt, SOR ¶ 1.b. Although AE-A appears to indicate that he disputed SOR ¶ 1.c, the letter is undated and is not on official letterhead, which raises questions about its validity. He failed to provide evidence that the other debts were paid, otherwise being resolved, or disputed. An applicant who "promises to pay or otherwise resolve delinquent debts in the

future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner." ISCR Case No. 17-04110 at 4 (App. Bd. Sep.26, 2019).

### **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.c, and 1.d: **Against Applicant**

Subparagraph 1.b: **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