



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



In the matter of: )  
)  
) ISCR Case No. 22-01923  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

07/24/2023

**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 December 20, 2021. On November 18, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, financial considerations and G, alcohol consumption. 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 21, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on April 12, 2023. At this time the Government withdrew

the Guideline G allegations. On April 13, 2023, a complete copy of the FORM was sent to Applicant. He received the FORM on April 18, 2023. His Response to the FORM, which included three exhibits, was received on April 28, 2023. The case was assigned to me on June 28, 2023.

The SOR and the Answer are the pleadings in the case. FORM Items 2 through 8 and the documents submitted with Applicant's Response, marked as Applicant exhibits (AE) A (receipt), B (four character letters), and C (May 2023 credit report), are admitted into evidence without objection.

### **Findings of Fact**

Applicant admitted allegations SOR ¶¶ 1.b-1.d and 1.f-1.g and denied SOR ¶¶ 1.a and 1.e. His admissions and statements in his Answer and Response 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 44 years old. After serving honorably in the U.S. Navy from 1997 until September 2017, he was hired by his sponsor immediately upon retirement. He received an associate degree in 2005. He was married to his first spouse from 1999 until 2013. His second marriage was from 2014 until 2021. He married again in 2022. He has two elementary school age children. (Item 3 at 10, 11, 17-18, 20-21; Item 4 at 22.)

The SOR alleges six delinquent debts totaling \$14,441, reflected in three credit reports from the government from October 2022 (Item 5), March 2022 (Item 6), and November 2020 (Item 7). Two government credit reports show a charged-off automobile loan for over \$13,000, which was not alleged. (Item 5 at 7; Item 6 at 4.) In his subject interview, he acknowledges the charged-off automobile loan and stated because of the divorce he stopped making payments after his former spouse hid the keys. (Item 4 at 8.) The SOR did not allege this debt. The evidence concerning these debts is summarized below. The May 2023 credit report he provided with his Response shows just one SOR debt, SOR ¶ 1.a. (AE C.)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. However, it may be considered in the application of mitigating conditions and in a whole-person analysis.

### **Guideline F**

SOR ¶ 1.a: **retail account placed for collection in the amount of \$2,652.** Applicant denies the debt. He reported the account to the Federal Trade Commission as a fraud. He stated the account had been opened by his former spouse after their separation in late 2019. (Answer at 1, 3 and Item 4 at 8.) The account fraud began in November 2019, and he did not discover it until June 2022. (Answer at 3.) The May 2023 credit report reflects in the comment section that he disputes the account. (AE C at 87.) The account went into delinquency in January 2020. During his June 2022 subject

interview, he discussed his marital accounts. He stated that he did not dispute these accounts and because he was still legally married at the time the accounts were opened, he is ultimately responsible. (Item 4 at 8.)

**SOR ¶ 1.b: account placed for collection in amount of \$7,853.** Applicant admits the debt, but he has refused to pay on the basis that his landlord never repaired the leak which caused the damage. (Answer at 2.) During his June 2022 subject interview, he said that he would contact the creditor to set up a payment plan, so the debt would not negatively impact his ability to obtain a security clearance. (Item 4 at 9.) In his Response, he still disputes the debt but has initiated a payment plan with the collection agency. He offered an April 2023 customer receipt showing a payment of \$100. (AE A.)

**SOR ¶ 1.c: telecommunication account placed for collection in amount of \$904.** Applicant admits the debt but disputes who holds the debt. The account went into collection in July 2021 (Item 6 at 4.) He provided a statement with his Answer showing the account paid as of December 6, 2022, and closed with the creditor. (Answer at 6.)

**SOR ¶ 1.d: telecommunications account placed for collection in amount of \$528.** Applicant admits the debt and states it has been paid in full. He provided a payment receipt with his Answer showing a zero balance as of December 10, 2022. (Answer at 3-6.)

**SOR ¶ 1.e: telecommunications account placed for collection in amount - of \$2,000.** Applicant denies the debt on the basis he has a current account with multiple lines with the company, which is not delinquent. He argues how could the account be past due when he has a current account with the company. (Answer at 2.) The account was opened in December 2019 and was delinquent in November 2020. (Item 7 at 6.) The account does not appear on the May 2023 credit report. (AE C.)

**SOR ¶ 1.f: utility account charged off in the amount of \$504.** Applicant admits the debt. He states he has contacted the utility company, but the company could not give him any details. The account was opened in March 2020 and was delinquent in October 2020. (Item 7 at 6.)

**SOR ¶ 1.g:** Applicant filed Chapter 7 bankruptcy in 2016. The bankruptcy discharged \$73,156 in debt. (Item 8 at 8.) He admits the action. He cites in his Answer the unexpected passing of his mother that triggered his financial issues. (Answer at 2.) He told the investigator the bankruptcy was caused by travel costs to visit his mother and her funeral costs, as well as his then-wife's medical discharge from the military, which reduced their income. (Item 4 at 25.)

Applicant detailed his expenses in his subject interview, which left him approximately \$3,200 per month in disposable income. (Item 4 at 10.) The credit report he submitted shows three accounts with negative information, SOR ¶ 1.a, the previously referenced vehicle loan, and an April 2022 charge off for a credit card. (AE C at 11-12, 53, and 85.) He addressed the charged-off credit card during his subject interview and

provided the settlement information. (Item 4 at 12-14; Item 7 at 4.) In his Response he blamed his financial situation on his last divorce and notes he held a clearance while in the Navy without incident. He includes four character letters attesting to his trustworthiness, dependability, and good character. (AE B.)

### **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 relating to the guideline for financial considerations 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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)

After filing for bankruptcy in 2016 Applicant accrued delinquent consumer debts. His admissions and the evidence in the FORM 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 under AG ¶ 20 are potentially applicable:

(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, or 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) and 20(d) do not fully apply. Applicant's financial delinquencies are ongoing and unresolved. He discharged in bankruptcy over \$73,000 in debt in 2016 and has accrued over \$14,000 in new debt. He was employed immediately after his retirement in 2017 by his sponsor. His second divorce was in 2020. He formally disputed one marital debt based on fraud. In December 2022 he resolved \$1,432 of the alleged debt. It is well-established that the timing of debt payments is a relevant consideration for a judge in deciding whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. To receive full credit under Mitigating Condition AG ¶ 20(d), an applicant must initiate and adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts." His recent action after receiving the FORM showing a \$100 payment on one debt and resolving two debts only after the SOR was issued is insufficient for the application of this mitigating condition does not receive this mitigating credit. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). He did not establish that he has made a good-faith effort to pay or resolve his debts.

Applicant attributes his debts to his second divorce. The first prong of AG ¶ 20(b) therefore applies. For full consideration under AG ¶ 20(b), however, Applicant must establish that he acted responsibly under the circumstances. He has not done so. He completed his SCA in December 2021. The most recent record evidence (May 2023 credit report) shows only one alleged debt on the credit report. He addressed two debts, SOR ¶¶ 1.c and 1.d, approximately two weeks after the SOR was issued. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. See ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). The mere evidence that debts no longer appear on a credit report is not a reason to believe that they are not legitimate or that they have been paid. See, e.g., ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). He did not provide sufficient evidence that he acted responsibly under the circumstances to resolve them. AG ¶ 20(b) does not fully apply.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. While Applicant's financial delinquencies after his divorce are largely attributable to circumstances beyond his control, they remain largely unresolved. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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 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.b and 1.e-1.g:

Against Applicant

Subparagraphs 1.c and 1.d:

For Applicant

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale  
Administrative Judge