



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 22-00567  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2023

**Decision**

FOREMAN, LeRoy F., 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**

On April 18, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) sent Applicant 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; 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 May 10, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on August 29, 2022. On September 2, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections

and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on September 13, 2022, and did not respond. The case was assigned to me on August 16, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.a and denied the allegation in SOR 1.b. His admission is incorporated in my findings of fact.

Applicant is a 54-year-old employee of a defense contractor. He married in August 1996 and has four children, ages 15, 16, 23, and 24. He served on active duty in the U.S. Army from September 1990 until he retired on a date not reflected in the record. He received a security clearance around 1994. (FORM Item 1 at 34) He submitted a security clearance application in April 2013, and his clearance was revalidated in July 2014. His clearance was apparently carried over when he began working for a defense contractor on a date not reflected in the record.

In April 2021, the DOD Continuous Vetting Program discovered the two debts alleged in the SOR and reflected in a credit report from April 2021. (Form Item 6) SOR ¶ 1.a alleges a home mortgage loan that is past due for \$82,044, with a total loan balance of \$261,516. The last payment on the debt was in November 2020. (FORM Items 4 and 6) Applicant purchased the home in April 2005. When he was reassigned to another location, he was unable to sell the house because of market conditions, and he decided to rent it. In August 2017, a broken water pipe on the second floor of the house severely damaged the house and made it uninhabitable. As a result, his tenants moved out and his rental income stopped, making it impossible for him to make the payments on the rental property as well as his current residence. Using \$25,000 from his insurance company, he hired a contractor to repair the home, but the contractor did not finish the job. Applicant obtained a second mortgage loan to hire a new contractor, who completed the repairs. He remained in contact with the primary mortgage lender, who advised him to sell the property. He attached a sales contract to his answer to the SOR, signed by the parties on April 27, 2022, reflecting an agreement to buy the home for \$279,900, which is more than sufficient to pay the debt. (FORM Item 2 at 3) However, the record does not contain evidence of a final sale and resolution of the debt.

SOR ¶ 1.b alleges a cellphone account charged off for \$529. Applicant contracted for cellphone service while he was stationed overseas. In his answer to the SOR, he denied the debt on the ground that the sales agent told him he could terminate the contract if he was reassigned back to the United States. He did not provide any documentation of a contract with a provision for termination due to military orders. He claimed that he disputed this debt, but he provided no documentation of the dispute. However, he provided documentation that he paid the debt in full on May 4, 2022. (FORM Item 2 at 2)

The credit report from March 2022 reflects 27 accounts. All the accounts are current except for the debt alleged in SOR ¶ 1.a.

## 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 evidence in the FORM establish the 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 are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 established. Applicant's debts are infrequent and were incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is established for the debt alleged in SOR ¶ 1.a. The damage to Applicant's home, the non-performance by a contractor, and the depressed real estate market were conditions largely beyond his control. He acted responsibly by repairing his home, staying in contact with the mortgage loan lender, and following the advice of the lender by selling his home for an amount that was more than sufficient to pay the debt.

AG ¶ 20(b) is not established for the debt alleged in SOR ¶ 1.b. Applicant submitted no evidence of predatory marketing by the sales agent for the cellphone service.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.a. Applicant maintained contact with his mortgage lender, found a buyer, and negotiated a contract for enough money to satisfy the debt. The failure of Applicant to submit evidence that the sale was completed does not preclude mitigation. An applicant is not required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Applicant's evidence reflects a reasonable plan and concomitant conduct.

AG ¶ 20(d) is also established for the debt alleged in SOR ¶ 1.b. It is well established that an applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). However, in this case, Applicant believed that he was misled by a sales agent. It is not uncommon for military members to be confronted with an unexpected termination fee for telecommunications and other services when they are reassigned. Applicant's explanation for his delayed payment of the debt was plausible and credible. When he was unable to successfully dispute the debt, he paid it.

AG ¶ 20(e) is not fully established. Applicant articulated a reasonable basis for disputing the cellphone debt, but he failed to provide documentary evidence of his efforts to dispute it.

## **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). However, I have noted that Applicant has held a security clearance since 2007, apparently without incident until the two debts alleged in the SOR were discovered. Applicant's credit reports reflect that he pays his bills on time. The two debts alleged in the SOR arose under unusual circumstances, and Applicant has responsibly addressed them.

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 mitigated the security concerns raised by the two debts alleged in the SOR.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

## **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge