



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01585
	)	
Applicant for Security Clearance	)	

**Appearances**

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

09/21/2023

\_\_\_\_\_

**Decision**

\_\_\_\_\_

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application on December 15, 2020. On October 26, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS 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 November 20, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 30, 2022, and the case was assigned to me on June 30, 2023. On July 21, 2023, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 15, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until September 15, 2023, to enable him to submit additional documentary evidence. He timely submitted AX D, E, F and G, which were admitted without objection. Both Applicant and Department Counsel submitted comments regarding the additional evidence. Their comments are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on August 25, 2023. The record closed on September 15, 2023.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations in the SOR with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 52-year-old engineer employed by defense contractors since October 2016. He served on active duty in the U.S. Navy from July 1989 to July 2009 and retired as a senior chief petty officer (pay grade E-8). He was employed by the Navy after retiring until January 2011. He was employed by federal contractors until April 2020, when he was fired after he was arrested for driving under the influence. He was hired by a defense contractor in February 2021 and hired by his current employer in August 2021. He contracted COVID-19 in September, was hospitalized until October 2021, and returned to work in November 2021. He received 80% of his regular pay while he was recovering. (GX 3 at 2) He held a security clearance in the Navy and continued to hold it as a civilian employee and as an employee of a federal contractor.

Applicant married in December 1992, divorced in April 2014, and remarried in November 2014. He adopted his current wife's three children, twins born in October 2002 and a daughter born in September 2000, to remove them from an abusive relationship, and he incurred substantial legal expenses to do so. (Answer; Tr. 20; GX 1 at 26-29) He received a bachelor's degree in May 2020 and is working toward a master's degree.

The SOR alleges ten delinquent debts, reflected in credit reports from October 2022 (GX 4), December 2021 (GX 5), and January 2021 (GX 6). Applicant told a security investigator that his ex-wife had opened many credit accounts in his name and without his knowledge and accumulated more debt than they could manage. (GX 2 at 8) The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: Credit-card debt charged off for \$30,071.** This debt was a joint account with Applicant's ex-wife. When they divorced, they agreed to divide the marital assets outside the court action, but they could not come to an agreement about some of the debts. Applicant testified that this creditor agreed to consolidate the mortgage loan on his home, this credit-card account, and the loan alleged in SOR ¶ 1.b. He testified that he believed that after the mortgage loan was foreclosed and the home was sold, the proceeds of the sale would be used to pay the debts alleged in SOR ¶¶ 1.a and 1.b. (Tr.

30-31, 67) He testified that he received a letter from the mortgage lender informing him that everything was paid. (Tr. 34) He submitted no documentation to support his testimony about the debt-consolidation plan.

The debts alleged in SOR ¶¶ 1.a and 1.b are reflected a credit report dated October 11, 2022, as charged off. (GX 4 at 5) Applicant submitted a credit report dated August 4, 2023, which lists three old accounts with this creditor that were closed in 2015, but it does not reflect the debts alleged in SOR ¶¶ 1.a and 1.b. (AX B). He testified that the debts were removed from his credit report “because of the paperwork.” (Tr. 29)

**SOR ¶ 1.b: Loan charged off for \$72,694.** Applicant testified that this debt was for the purchase of a boat. (Tr. 34) He testified that he sold the boat in 2015 for \$25,000 and received a certificate of title showing that the loan was paid. (Tr. 35-36) He provided no documentation to support his testimony.

**SOR ¶ 1.c: Credit-card account placed for collection of \$519.** Applicant testified that he paid this debt with a loan obtained through his employer. (Tr. 41-42) He provided no documentation to support his testimony. The credit reports submitted by Applicant reflect that the account was referred for collection and is unresolved. (AX B at 107; AX C at 13)

**SOR ¶ 1.d: Credit-card account charged off for \$1,406.** Applicant testified that he paid this debt, but the credit report he submitted reflects that the account was closed and \$1,406 was written off. (AX C) The debt is not resolved.

**SOR ¶ 1.e: Credit-card account charged off for \$1,090.** Applicant testified that he had paid this debt, and the credit report he submitted reflects a paid charge-off. (Tr. 45; AX B at 19). It is resolved.

**SOR ¶ 1.f: Credit-card account charged off for \$945.** Applicant testified that he had paid this debt and he submitted a credit report reflecting a paid charge-off. (Tr. 46; AX B at 16) The debt is resolved.

**SOR ¶ 1.g: Cellphone account placed for collection of \$2,035.** Applicant disputes this debt. He testified that, when he switched service providers, a representative of the new provider promised that they would transfer the account and pay the amount due on the old account. (Tr. 47) He submitted a credit report reflecting that the account is disputed. (AX B at 106) He provided no evidence that the dispute has been resolved.

**SOR ¶ 1.h: Credit-card account charged off for \$390.** Applicant testified that he paid this debt, but the credit report he submitted reflects that the account was charged off. (Tr. 51; GX 4; AX B at 21) It is not resolved.

**SOR ¶ 1.i: Credit-card account charged off for \$439.** A credit report submitted by Applicant reflects that the debt was charged off. (AX B at 38; AX C at 29) It is not resolved.

**SOR ¶ 1.j: Federal tax debt of \$32,948 for tax year 2016.** This debt was incurred when Applicant withdrew funds from his 401(k) account, but did not report the withdrawal on his return for 2016. In September 2019, the IRS assessed additional tax of \$4,573, a penalty of \$3,995, and interest of \$2,909. Applicant made a \$100 payment in January 2020, which was dishonored. He made a \$125 payment in March 2020. He made no payments after he was fired in April 2020. He established an installment agreement in August 2020, but it was terminated in May 2021. He made another installment agreement in March 2022, but he made no payments because he disputed the amount due. (GX 3a at 3, 4; Tr. 55) He provided no explanation or evidence of the basis for the dispute.

Applicant recently hired a debt-relief company to help him. On June 21, 2023, the IRS informed him that it was contacted on June 23, 2023, by him or his authorized third party (probably the debt-relief company). The IRS informed him that it would respond within 90 days. (AX A) As of the date the record closed, the debt was not resolved. Applicant provided no evidence of a response from the IRS and did not request additional time to obtain it.

Applicant submitted evidence of a Consumer Financial Protection Bureau consent order applicable to the creditor alleged in SOR ¶¶ 1.a and 1.b. The Bureau found that the creditor violated the Consumer Financial Protection Act of 2010 by making deceptive representations to consumers in connection with its debt collection practices and unfairly restricting consumers' electronic account access. (AX G) Applicant has not asserted that he was the victim of any of the deceptive representations or unfair restrictions on his account access. Instead, he testified that he asked the creditor to consolidate his home mortgage loan and two credit card accounts into a single loan. He testified that he erroneously thought that the consolidation had occurred, that the mortgage on the home had been foreclosed, and that the proceeds of the foreclosure sale had been used to pay the debts alleged in SOR ¶¶ 1.a and 1.b. (Tr. 30-31)

Applicant's total monthly income is about \$6,500. (Tr. 61) He testified that his monthly net remainder after paying all household expenses is between \$200 and \$500 per month, depending on how much he earns in the summer as a baseball umpire. (Tr. 64)

A colleague of Applicant who has worked with him for about 19 months regards him as a superb leader who assumed the role of a chief engineer and turned around what had been a very dysfunctional operation. He considers Applicant a person of integrity, holding himself accountable for the work of his team and treating everyone with dignity and respect. (AX D)

Another colleague also observed how Applicant reformed a dysfunctional operation and instilled "inspired work habits and quality work deliverables." He considers Applicant "a man of integrity, a man of strength, a family man, a man of honor, that can be counted on when times are good and when times are not so good." (AX E)

A third colleague describes Applicant as “a high-minded individual of exceptional character and integrity.” He states that there have been countless occasions when Applicant has proven to be “a class apart, in terms of possessing an impeccable character.” (AX F)

## **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 submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure . . . to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are relevant:

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(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely

AG ¶ 20(b) is not established. Applicant encountered several conditions largely beyond his control: a divorce, excessive spending by an ex-wife, and reduced income during hospitalization for COVID-19. His loss of employment after an arrest for driving under the influence was due to his own conduct and not a condition largely beyond his control. He described some actions that would constitute responsible conduct, but he did not provide documentary evidence of those actions.

AG ¶ 20(c) is not established. Applicant employed a debt-relief company to assist him with his federal tax debt, but the company did not provide the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.e and 1.f, which have been paid off. It is not established for the other debts alleged in the SOR. Although Applicant claimed that several debts had been resolved, he did not provide documentary evidence to support his claims. When an applicant claims that debts have been resolved, it is reasonable for an administrative judge to expect him or her to present documentary

evidence supporting those claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

Applicant testified that the debts alleged in SOR ¶¶ 1.a and 1.b were removed from his credit reports “because of the paperwork.” However, the fact that debts are no longer reflected on a credit report “is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016). The fact that a creditor is no longer actively seeking payment or that a debt is not otherwise collectable does not establish that the debt has been resolved within the meaning of the Directive. ISCR Case No. 10-03656 (App. Bd. Jan. 19, 2011).

AG ¶ 20(e) is not fully established. Applicant submitted documentary evidence that he had disputed the debt alleged in SOR ¶ 1.g, but he provided no evidence that the dispute had been resolved in his favor or that the debt was otherwise resolved.

AG ¶ 20(g) is not established. Although Applicant has corresponded with the IRS regarding his tax debt, he had not resolved it as of the date the record closed.

### **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). I have considered Applicant’s long and honorable service on active duty in the U.S. Navy, as a civilian employee of the Navy, and as a respected employee of a defense contractor. He was candid and sincere at the hearing. However, he has not overcome the security concerns raised by his delinquent debts. In several instances, he described reasonable actions to resolve his debts, but he failed to provide documentary evidence to support his testimony, even after being given additional time to obtain and provide it. 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.d: Against Applicant

Subparagraphs 1.e and 1.f: For Applicant

Subparagraphs 1.g-1.j: Against 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.

LeRoy F. Foreman  
Administrative Judge