



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01382
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeffrey T. Kent, Esq., Department Counsel  
For Applicant: *Pro se*

09/08/2023

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Applicant has not mitigated the security concerns raised by his ongoing financial issues. Access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on August 19, 2021. On August 11, 2022, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; and the adjudicative guidelines (AG) effective June 8, 2017.

On December 30, 2022, Applicant requested a decision on the record without a hearing. He answered the allegations in the SOR on January 2, 2023. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government’s written case on January 24, 2023, and a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 7, was sent to Applicant on that same

date. He received the FORM on January 26, 2023. The DOHA transmittal letter, dated January 24, 2023, informed Applicant that he had 30 days after receiving it to file objections and to submit material to refute, extenuate, or mitigate the Government's evidence. He did not submit a response. I admitted GX 1 through 7 without objection. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on April 27, 2023.

### **Findings of Fact**

Under Guideline F, the SOR alleges that Applicant is indebted for seven delinquent accounts totaling \$55,357. He admits SOR ¶ 1.a through 1.d and denies 1.e and 1.f, stating that the debts are no longer on his credit bureau report (CBR). He also denies SOR ¶ 1.g, stating that he does not recognize the debt. His admissions are incorporated in my findings of fact.

Applicant, 40, has been sponsored by a defense contractor for a position as a logistics specialist since November 2021, pending the adjudication of his security clearance. He previously worked for the same contractor from July 2021 to November 2021, when he was terminated for erroneous child support arrears. He has been self-employed as an online personal trainer since 2015. In August 2021, he and his wife began creating and posting videos on a social media platform for which they receive compensation. He served honorably on active duty in the U.S. Marine Corps from February 2003 until May 2015. He received his personal trainer certificate in 2016 and his bachelor's degree in 2020. He married in 2003 and divorced in 2018. He married again in 2018. He has two adult children, a 16-year-old, and a 7-year-old stepchild. He was granted his first security clearance while on active duty. (GX 3.)

Applicant was unemployed for approximately two weeks in November 2021. His personal trainer income was significantly reduced in 2020 due to the COVID-19 pandemic. (GX 7.)

SOR ¶ 1.a - \$40,308 – charged off. During his January 2022 personal subject interview (PSI) conducted as part of his background investigation, Applicant stated that he had his vehicle repossessed due to his loss of income in spring 2020. He has not paid this debt nor has he made any payment arrangements. He stated on his August 2021 e-QIP, "I have not taken any actions. When I called they said that they could no longer access my account and had no information on it." This debt is listed on Applicant's January 2023 CBR (GX 6) and it remains unresolved. (GX 7; GX 6; GX 3.)

Applicant also had a vehicle repossessed in 2018, but he stated during his PSI that he thinks the creditor resold the vehicle for more than he owed on it and he therefore has no financial obligation to the creditor. His October 2021 CBR states, "Merchandise taken back by Grantor/possible balance due . . . Involuntary repossession/obligation satisfied." (GX 7; GX 5.)

SOR ¶ 1.b - \$4,203 – collection. In his answer to the SOR, Applicant stated that he was never late on his rent and that when he moved out, he was overcharged for cleaning and repairs. He also stated, “Due to my low income, I was unable to pay for my new place and make a payment for \$4,000.” This debt is listed as disputed on Applicant’s April 2022 CBR. This debt is not listed on the January 2023 CBR. (GX 6.)

SOR ¶ 1.c - \$3,908. During his PSI, Applicant stated that he had braces put on his teeth that were causing him issues. He contacted the dental clinic which refused to address the issues. He then asked for the dental clinic to remove the braces, but the clinic would not do so until Applicant paid his balance in full. He removed the braces himself and did not pay the balance. He believes that he disputed this account. This debt is not listed on the January 2023 CBR. (GX 7.)

SOR ¶ 1.d - \$3,764. Applicant explained during his PSI that the creditor of this debt is the apartment complex where Applicant currently resides. His former spouse was supposed to move out of their previously shared apartment in the complex on a specific date but did not do so. The apartment complex charged Applicant instead of his former spouse for the additional rent. This debt is listed as disputed on Applicant’s April 2022 CBR. This debt is not listed on the January 2023 CBR. (GX 7.)

SOR ¶ 1.e - \$2,343. During his PSI, Applicant stated that the creditor of this debt is a housing complex where Applicant was stationed. When he moved out, he was current on the rent and was cleared by the housing office. He does not understand why he was charged an additional fee. This debt is listed as disputed on Applicant’s April 2022 CBR. This debt is not listed on the January 2023 CBR. (GX 7; GX 5.)

SOR ¶ 1.f - \$686. This debt is owed to a cellular telephone carrier. Applicant stated during his PSI that he changed carriers and received a bill for approximately \$300 for one month of service. He contacted the company and asked what plan he was on that cost \$600 for two months. The carrier was not able to provide information on any plan that cost that amount. Applicant terminated the service and to the best of his recollection has disputed this account. He currently has a cellular telephone account with the creditor of this debt. This debt is not listed on the January 2023 CBR. (GX 7.)

SOR ¶ 1.g - \$145. During his PSI, Applicant stated that this medical account should have been covered by the U.S. Department of Veterans Affairs (VA). Applicant believed that the debt had been satisfied but stated that he would contact the creditor to confirm that it had been paid. This debt is not listed on the January 2023 CBR. (GX 7.)

Applicant did not provide any documentation regarding the status of the debts he disputed. In his January 2022 PSI, Applicant stated that he was currently financially stable and did not anticipate any financial difficulties in the future. He stated that he had “no problem with paying his creditors as agreed.” (GX 7.)

## **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal or otherwise questionable acts to generate funds.

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).

The record evidence establishes 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 are potentially applicable under this guideline:

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; 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.

Applicant experienced a significant decrease in income in 2020 due to the COVID-19 pandemic and a brief period of unemployment in November 2021. He primarily attributes his delinquent debts to his decreased income, which was a circumstance beyond his control.

The debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e are listed as disputed on Applicant's April 2022 CBR and do not appear on his January 2023 CBR. His bases for his disputes are legitimate. These debts are resolved. The \$145 medical debt alleged in SOR ¶ 1.g has been paid.

There is no record evidence that Applicant formally disputed the \$3,908 debt (SOR ¶ 1.c), owed to the dental clinic for his braces, with the creditor or with the credit reporting agencies. While he may have had a legitimate dispute with the application of his braces and the dental clinic's refusal to address the issues he was having with them, simply refusing to pay a contractual obligation due to dissatisfaction is not a valid legal remedy.

Applicant has not paid or otherwise resolved the \$686 cellular-telephone service debt alleged in SOR ¶ 1.f. He explained his dissatisfaction with the billing and that he terminated his service as a result, but that does not relieve him of his obligation to pay the debt.

While the debts alleged in SOR ¶¶ 1.c and 1.f are not listed on Applicant's January 2023 CBR, there is no record evidence that they have been resolved. Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

Applicant has not paid or otherwise addressed the \$40,308 balance due on a repossessed vehicle (SOR ¶ 1.a). While his loss of income due to the COVID-19 pandemic may have been the cause of his inability to pay his vehicle-loan payments which resulted in the repossession, a circumstance largely beyond his control, he has not acted responsibly. His one telephone call to the creditor, which no longer had access to Applicant's account information, does not constitute a good-faith effort to resolve this debt. This debt comprises more than 72% of the total SOR debt. Applicant was put on

notice in August 2022 when he received the SOR, if not earlier, that the Government had concerns about his security worthiness due to his financial issues. Yet, he has not taken any action to address this significant debt.

Applicant's financial issues are recent and ongoing. He has not paid or otherwise made any measurable effort to resolve his over \$40,000 delinquent vehicle-loan debt. His refusal to pay his \$3,908 dental-clinic debt due to his dissatisfaction with his braces and his refusal to pay the \$686 cellular-telephone service debt due to his dissatisfaction with the company's billing practices does not resolve these debts. None of the mitigating conditions apply to the unresolved SOR 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the Marine Corps from 2003 until 2015 and was first granted a security clearance while on active duty. He also experienced an unforeseen reduction in income in 2020. However, his lack of any identifiable action to resolve the majority of his delinquent debt outweighs the positive information in his background.

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 ongoing financial issues. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, 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.f: **Against Applicant**

Subparagraphs 1.b, 1.d, 1.e, and 1.g: **For Applicant**

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess  
Administrative Judge