



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



In the matter of: )  
)  
) ISCR Case No. 23-00920  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2024

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**Decision**

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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 September 14, 2022. On May 16, 2023, 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 requested a decision on the written record without a hearing on July 18, 2023, and answered the SOR on July 20, 2023. Department Counsel submitted the Government’s written case on August 29, 2023. On August 29, 2023, 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 12, 2023, and did not respond. The case was assigned to me on January 3, 2024.

### **Evidentiary Issue**

FORM Item 6 is a summary of an enhanced subject interview (ESI) conducted on December 5, 2022. The ESI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the ESI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and he was entitled to comment on the accuracy of the ESI; make any corrections, additions, deletions, and updates necessary to make the summaries clear and accurate; and object on the ground that the reports are unauthenticated. I conclude that Applicant waived any objections to the ESI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

In Applicant's Answer to the SOR he admitted the allegations in SOR ¶¶ 1.a-h. He owes \$24,647 in delinquent debt. His admissions are incorporated in my findings of fact.

Applicant is a 33-year-old network engineer. He has worked for his sponsor since August 2022. He earned his high school diploma in June 2008 and joined the Navy in September 2008. He was honorably discharged in September 2018. He was unemployed for approximately five months before being employed full-time by a federal contractor in February 2019. He was employed from February 2019 through August 2019 but resigned because the position required him to work away from his wife. He was unemployed until October 2019. He worked full-time for three different federal contractors between October 2019 and July 2021. He was terminated twice "for calling out" too often and being unable to work the required hours for the job. He was unemployed from July 2021 through November 2021, but has since been employed full-time. He was married from November 2011 to November 2015. He married again in December 2016 but has been separated from his spouse since October 2021. He has no children. He held a security clearance while in the Navy. (Item 5; Item 6 at 3.)

**SOR ¶ 1.a: a delinquent bank account placed for collection in amount of \$632.** Applicant admits the debt. (Item 9 at 3.) He states his current spouse opened the account in his name with his permission but was unaware that it was in collection status until it was raised in his ESI. (Item 6 at 6.) He offered no evidence of any action on this debt.

**SOR ¶ 1.b: past-due consumer account charged off in the amount of \$404.** Applicant admits the debt. The credit reports in the record reflect the account has not been paid since May 2018, when it was opened. (Item 8 at 4; Item 9 at 4.) He states he

was unaware that it had been charged off until it was raised in his personal subject interview. He explained his current spouse opened the account in his name with his permission. (Item 6 at 6.) He offered no evidence of any action this debt.

**SOR ¶ 1.c: a delinquent bank account placed for collection in amount of \$2,697.** Applicant admits the debt. (Item 9 at 4.) He offered no evidence of any action on this debt.

**SOR ¶ 1.d: a vehicle repossession with a balance due of \$5,423.** Applicant admits the debt. The credit reports reflect the vehicle was purchased in July 2018 and payments have not been made since May 2019. (Item 8 at 4; Item 9 at 4.) He states he was unaware that it had been charged off until it was raised in his ESI. He indicated that he intended to resolve the past-due amount by December 2023. (Item 6 at 7.) He offered no evidence of any action on this debt.

**SOR ¶ 1.e: past-due consumer account charged off in the amount of \$9,897.** Applicant admits the debt. He states he had forgotten about the debt until it was raised in his ESI. He explained his former spouse had jointly opened this account in 2015 for a home improvement purchase for the house that was foreclosed on in 2017. (Item 6 at 5.) The last payment was made in April 2016. (Item 8 at 5.) The creditor obtained a judgment in 2019. (Item 10.) He states he was unaware that it had been charged off until it was raised in his ESI. He indicated that he intended to resolve the past-due amount by December 2023. (Item 6 at 5.) He offered no evidence of any action on this debt.

**SOR ¶ 1.f: past-due consumer account placed for collection in amount of \$1,955.** Applicant admits the debt. He states he could not recall the nature of the debt when it was raised in his personal subject interview. He indicated that he intended to resolve the past-due amount by December 2023. (Item 6 at 6-7.) The account is identified as charged off on his November 2022 credit report. The later credit reports do not identify the account. (Item 7 at 2.)

**SOR ¶ 1.g: past-due cellular account charged off in the amount of \$411.** Applicant admits the debt. He states he was unaware that it had been charged off until it was raised in his personal subject interview. He told the investigator he intended to contact the creditor by January 2023 and to resolve the debt by December 2023. (Item 6 at 6.) He offered no evidence of any action on this debt.

**SOR ¶ 1.h: a judgment in the amount of \$3,228.** Applicant admits the debt. (Item 12.) He offered no evidence of any action on this debt.

Applicant cited insufficient income to meet all of his obligations due to periods of unemployment that he and his current spouse experienced. After his discharge from the Navy, he was unemployed from September 2018 through February 2019 and from August 2019 to October 2019. He also cites being unemployed from July 2021 through November 2021, after he was terminated for being unable to work the required hours for the job due

to him calling in sick too often. Since November 2021, he has been employed full-time. (Item 6 at 2.)

### **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. . . .

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).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are established by the evidence:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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, 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 apply. Applicant's financial delinquencies are ongoing and unresolved. He has been employed since November 2021. It is well-established that the timing of debt payments is a relevant consideration for a judge to deliberate whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere "to a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). He has stated his intentions to act but has not resolved any debts. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). He has not provided documentary evidence of payments or other action on the debts alleged in the SOR. He has not established that he has made a good-faith effort to pay or resolve his debts or shown that he has acted in a reasonable and responsible manner in addressing these financial problems.

Applicant attributes his debts to a period of unemployment and 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. Even if Applicant's debts occurred largely due to circumstances beyond his control, he did not provide sufficient evidence that he acted responsibly under the circumstances to resolve them. AG ¶ 20(b) does not apply.

### **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 and applying the adjudicative factors in 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). Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security

