



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01464
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro Se*

05/01/2024

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**Decision**

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HOGAN, Erin 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 June 23, 2022. On August 16, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on August 30, 2023, and requested a decision based on the written record in lieu of a hearing. On December 20, 2023, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 6. He was given an

opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on December 21, 2023. He was given 30 days to submit a Response to the FORM. He did not submit a response. The case was forwarded to the Defense Office of Hearings and Appeals (DOHA) Hearing Office on March 5, 2024, and assigned to me on April 2, 2024.

### **Evidentiary Matters**

Items 1 and 2 contain the pleadings in the case and are part of the record. Items 3 through 6 are admitted into evidence.

### **Findings of Fact**

Applicant, age 53, is currently unemployed as a result of a serious medical issue. He is being sponsored for a security clearance by a DOD contractor. Between 1987 and 2000, he served on active duty and in the Army National Guard. He received honorable discharges for both his active duty and Army National Guard service. He first received a security clearance in 1988 while on active duty. He currently holds a secret security clearance which was granted in 2010. He has a high school diploma and is currently taking college courses. He has been married to his current wife since 2012. He has three children ages 10, 29 and 30. (Item 3)

Applicant submitted an SCA on June 23, 2022. (Item 3) A subsequent background investigation revealed Applicant had 12 delinquent accounts, totaling approximately \$296,620. The SOR debts include: a \$103,921 automobile loan placed for collection (SOR ¶ 1.a: Item 4 at 1; Item 5 at 1); a \$101,039 automobile loan that was placed for collection (SOR ¶ 1.b: Item 4 at 2; Item 5 at 2); a \$61,808 delinquent automobile loan that was placed for collection (SOR ¶ 1.c: Item 5 at 2); and a \$14,333 delinquent credit card account placed for collection (SOR ¶ 1.d: Item 5 at 2).

Additional delinquent debts include: a \$14,100 delinquent account that was placed for collection (SOR ¶ 1.e: Item 4 at 1; Item 5 at 3); a \$10,806 delinquent credit card account placed for collection (SOR ¶ 1.f: Item 4 at 1; Item 5 at 3); a \$7,012 delinquent credit card account placed for collection (SOR ¶ 1.g: Item 4 at 1; Item 5 at 3); a \$2,459 delinquent credit card account placed for collection (SOR ¶ 1.h: Item 5 at 3); a \$1,326 delinquent credit card account placed for collection (SOR ¶ 1.i: Item 4 at 1; Item 5 at 3); an \$870 delinquent credit card account placed for collection (SOR ¶ 1.j: Item 5 at 4); a \$1,991 delinquent credit card account placed for collection (SOR ¶ 1.k: Item 4 at 2; Item 5 at 4); and a \$659 delinquent credit card account placed for collection. (SOR ¶ 1.l: Item 4 at 1; Item 5 at 4)

In his response to the SOR, Applicant admits all the SOR allegations. He said most of the financial issues occurred after the loss of his job in 2021. His annual income dropped from \$165,000 to \$70,000. He indicates he has initiated a structured repayment for the debt alleged in SOR ¶ 1.i. He returned the two vehicles whose loans are alleged in SOR ¶¶ 1.a and 1.b to the dealer and he is aware that he may be liable for a deficiency judgment on both loans. He is working on structured payment plans with all of his

creditors. He did not provide any documentation showing the status of the structured payment programs. (Item 2)

In June 2023, he was diagnosed with a serious medical condition. As a result, he was laid off from his job at an overseas location. He is receiving treatment through the Department of Veterans Affairs (VA). He has held a Secret security clearance for over 30 years without issues. His security clearance is vital for him to address his debts. He is committing to clearing these debts within a year. (Item 2)

During his January 2023 background investigation interview, Applicant mentioned that he had several periods of unemployment to include from November 2020 to May 2022, and January 2013 to April 2014. He has worked consistently in overseas locations over the past 12 years. His current unemployment was health-related. He has been unable to make payments towards his debts because of his health. (Item 6 at 2-3)

### **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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

## **Analysis**

### **Guideline F: Financial Considerations**

The 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. 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.

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant’s case include:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

AG ¶ 19(a) and AG ¶ 19(c) apply to Applicant's delinquent debts alleged in SOR ¶¶ 1.a – 1.l. The total approximate balance of the delinquent debt is over \$296,620.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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 in 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;

(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 under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply, because Applicant's financial issues are recent and are unlikely to be resolved in the near future.

AG ¶ 20(b) applies, in part, related to Applicant's periods of unemployment. In particular, his unemployment related to a serious health issue was a circumstance beyond Applicant's control. However, the mitigating condition is given less weight because I cannot conclude he acted responsibly under the circumstances since the bulk of debt involved the purchase of three luxury cars, which total \$266,768. While he voluntarily turned in the two cars alleged in SOR ¶¶ 1.a and 1.b, which totaled \$204,960, he is still responsible for the deficiency remaining after each car is sold. He also had another car loan in the amount of \$61,808 which was written off as a profit and loss in a credit report dated April 2023. (SOR ¶ 1.c) After purchasing three expensive cars around the same time, it was inevitable that he would run into repayment problems because his highest annual salary was \$165,000 when he was employed.

AG ¶ 20(c) does not apply because Applicant has not attended financial counseling and it is unlikely that his financial problems will be resolved or under control in the near future.

AG ¶ 20(d) does not apply because Applicant has not demonstrated a good-faith effort to repay his delinquent debts.

Overall, he failed to meet his burden of proof to mitigate the concerns raised under Financial Considerations.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). I considered Applicant's honorable military service. I considered his periods of unemployment and his health issues. I also considered that Applicant incurred significant debt which over-extended him financially. He is currently unable to repay his delinquent accounts. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised under financial considerations.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.l:	Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is denied.

Erin C. Hogan  
Administrative Judge