



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 23-01680
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: *Pro Se*

05/14/2024

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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 November 2, 2022. On September 11, 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 September 27, 2023, and requested a decision based on the written record in lieu of a hearing. On October 23, 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 9. 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 8, 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 January 23, 2024, and assigned to me on March 7, 2024.

### **Evidentiary Matters**

Items 1 and 2 contain the pleadings in the case and are part of the record. Items 3 through 9 are admitted into evidence.

### **Findings of Fact**

Applicant, age 61, is currently employed with a Department of Defense (DOD) contractor since May 2017. His highest level of education is a bachelor's degree. He is married and has five children who are grown. His next to youngest child still lives at home. (Item 3)

Applicant listed that he had delinquent accounts on his June 2022 SCA. (Item 3) A subsequent background investigation revealed Applicant had five delinquent accounts, totaling approximately \$61,667. The SOR debts include: a \$10,928 delinquent credit card account that was charged off (SOR ¶ 1.a: Item 7 at 3; Item 8 at 3; Item 9 at 3); an \$18,024 delinquent credit account that was charged off (SOR ¶ 1.b: Item 8 at 2; Item 9 at 3); an \$11,379 delinquent credit card account that was charged off (SOR ¶ 1.c: Item 7 at 3; Item 8 at 3; Item 9 at 3); a \$21,173 delinquent credit card account that was charged off (SOR ¶ 1.d: Item 7 at 3); and a \$23 delinquent utility account that was placed for collection. (SOR ¶ 1.e: Item 8 at 3)

In his response to the SOR, Applicant admits all the SOR allegations. He said most of the debt was incurred after he accepted his current position. He moved from State A to State B. His employer did not pay moving expenses. He estimates he spent about \$11,000 on the move. He moved earlier than his family who remained in State A. He rented an apartment in State B and had to purchase furniture. (Item 2)

When Applicant lived in State A, he purchased a five-acre lot and built the family home on the lot. Ten years after purchasing the house, he and his wife purchased another five-acre lot adjacent to their property. They purchased the lot as an investment and to prevent someone else buying and building a home next to their property. When they put the property on the market, an appraiser advised the value of their home was approximately \$470,000 and the adjacent five-acre lot would sell between \$50,000 and \$90,000. They assumed they would receive \$535,000 from the sale. They purchased a townhome in State B for \$370,000. They made a \$10,000 down payment. The home in State A remained on the market for six months with no offers. Applicant switched realtors and the new realtor was also an appraiser. He told them their house was appraised incorrectly. The new appraisal came in at \$370,000. It was also discovered that the adjacent five-acre property had issues that prevented anything from being built on it. They ended up selling the house and the adjacent property for \$370,000. (Item 2)

During this time, Applicant's wife was laid off from her job in State A. As a result, they relied on his income to pay bills. Eventually, he was unable to pay all of the bills and several debts became delinquent. (Item 2)

In his response to the SOR, Applicant indicated that all of the delinquent debts alleged in the SOR would be paid the week of October 3, 2023. He was waiting for some money being transferred to him from an investment firm he had an account with. He claimed once the SOR debts were paid off, he would be debt free. His new home is paid off. His automobile loans are paid off, and there are no other outstanding loans. (Item 2)

Applicant did not provide receipts or other documentation showing the debts alleged in the SOR were resolved. They remain outstanding.

### **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 case. The SOR alleges five delinquent debts. The total approximate balance of the delinquent debt is over \$61,667.

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; 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 based on the record appear to be on-going.

AG ¶ 20(b) applies, in part, related to Applicant's move to a job in another state, his wife's unexpected lay-off, and the reduced value of his home in State A. These were circumstances beyond his control. However, the mitigating condition is given less weight because I cannot conclude he acted responsibly under the circumstances because of his failure to provide documentation such as receipts showing that each debt alleged in the SOR was resolved.

AG ¶ 20(d) does not apply because Applicant has not demonstrated a good-faith effort to repay his delinquent debts. He mentioned in his response to the SOR that he expects each SOR debt would be paid off the week of October 3, 2023. He did not provide documentation that these debts were paid off. He had the opportunity to do so in response to the FORM dated October 23, 2023. A promise to pay one's debts or statements that a debt is paid needs to be corroborated by documentation such as receipts, statements from the creditor, etc. Applicant did not provide documentary proof that he paid all of the debts alleged in the SOR.

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 employment with a DOD contractor since May 2017. I considered that he was not able to sell his house in State A for as much as he anticipated. I considered his wife's unexpected lay-off. I also considered that Applicant incurred significant debt which over-extended him financially. While Applicant indicated he would be able to pay all of the delinquent debts alleged in the SOR by early October 2023, he did not provide proof that he actually paid the debts. Lacking documentation, I cannot conclude Applicant resolved his financial situation. 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.e:	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