



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00157
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel P. O’Reilley, Esq., Department Counsel  
For Applicant: *Pro se*

08/05/2024

**Decision**

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 on August 11, 2022. On March 30, 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 answered the SOR on May 20, 2023, and requested a hearing before an administrative judge. (Answer) Department Counsel was ready to proceed on September 1, 2023, and the case was assigned to me on April 2, 2024. On May 8, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing

was scheduled for July 11, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified but did not offer any evidence or present the testimony of any other witnesses. I kept the record open after the hearing until July 25, 2024, to enable Applicant to submit documentary evidence. He submitted documents from a debt relief company, which were admitted collectively as Applicant Exhibit (AE) A. DOHA received the transcript (Tr.) on July 22, 2024.

### **Findings of Fact**

Applicant admitted the 18 debts alleged in SOR ¶¶ 1.a through 1.r. The debts involve collections and charge-offs. For each allegation, he wrote in his Answer “I admit that this statement is correct and that no payments have been made as of this date.” His admissions are incorporated into the findings of fact.

Applicant is a 49-year-old field engineer. He has worked for his clearance sponsor for over 10 years. He currently earns \$35 an hour. He was granted his first clearance in 2015. He graduated high school and briefly attended community college. He is twice divorced, most recently in 2008. He remarried in 2016 but he and his third spouse have been separated since December 2022. She is filing for divorce. He has an adult son from his first marriage; a teenage daughter, for whom he pays child support from his second marriage, and an 11-year-old daughter from his current marriage. An adult daughter from a prior relationship passed away in 2021. (Tr. at 18-25.)

Applicant pays his current spouse \$200 in child support and pays his \$88 a month in child support for his daughter from his second marriage. He also covers insurance premiums and other items for his children. (Tr. at 23, 26.)

Applicant testified consistent with his Answer that he had done nothing to reduce the debts alleged on the SOR. He offered that he had been in contact with various debt-relief companies. He contacted one debt-relief company the night before the hearing. GE 2 shows a screenshot of another debt-relief company he has contacted. He testified his current spouse was responsible for paying the bills because he would take 18-month assignments in another state. He was at a loss for how to pay his bills when his wife was ill for a month. (Tr. at 16, 27-30, 33, 36.)

GE 5, a credit report obtained the day before the hearing, showed Applicant’s debt had increased from the over \$34,000 alleged to over \$45,000. AE A shows he enrolled \$46,007 in debt with a debt relief company on July 25, 2024 (the day the record closed) with a \$299.50 monthly payment. The majority of the debts became delinquent in mid-2022. (GE 5; Tr. 32-34.)

### **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 documentary evidence establish 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 under AG ¶ 20 are 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; and

(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), 20(b), and 20(d) are not applicable. Applicant's financial difficulties may have resulted in part because of his marital difficulties, which were a circumstances beyond his control. However, by his own admission, he has not taken tangible steps to

address and resolve his delinquent accounts, and he has not demonstrated that he acted responsibly under the circumstances. Enrollment with a debt relief company on the day the record closed does not demonstrate that Applicant has adhered to a good-faith effort to resolve his debts. An applicant must initiate and adhere “to a good faith effort to repay overdue creditors or otherwise resolve debts” to receive full credit under AG ¶ 20(d). See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009)

### **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.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns based on financial considerations.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.r:	Against Applicant

## **Conclusion**

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

Charles C. Hale  
Administrative Judge