



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-00469
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

10/29/2024

**Decision**

CERVI, Gregg A., 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 9, 2022. On March 21, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) (now known as the DCSA Adjudication and Vetting Services (AVS)), sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA CAS 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 (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on May

14, 2024. On May 16, 2024, 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 June 6, 2024, but did not submit a response or object to the Government's exhibits. The case was assigned to me on September 9, 2024. The FORM identified the SOR and Applicant's Answer to the SOR as GE 1 and 2. Government Exhibits (GE) 3-7 are admitted into evidence without objection.

### **Findings of Fact**

Applicant is a 53-year-old network installation team lead, employed by a defense contractor since August 2020. He was previously employed continuously with various companies since 2017. He graduated from high school in 1989. He served in the U.S. Army from 1989 to 1993 and was released with an Other than Honorable discharge. He married in 1994 and divorced in 2021. He remarried in 2022 and has two adult children and an adult stepchild.

The SOR alleges under Guideline F that Applicant filed Chapter 7 bankruptcy in 2001 that was discharged. Also, it alleges three debts, including a collection account for \$3,919; and two charged-off credit union debts for \$10,671 and \$29,557 respectively. Applicant admitted all of the SOR allegations with explanations.

Applicant stated in his Answer to the SOR, that his ex-spouse filed the Chapter 7 bankruptcy without his knowledge. He also stated that the collection account is an old telephone account that went into collections because of his ex-spouse. He stated that he tried "numerous times" to call the [telephone company] and [collection company] to resolve the account, but he has no written record to submit in support. With regard to the two credit union accounts, Applicant stated that they resulted from repossession of two vehicles that he could no longer afford "due to COVID."

Applicant was interviewed by a government investigator in May 2023, and stated that he purchased two vehicles, in 2017 and 2018. One vehicle was a truck, and the other a car for his stepdaughter. He claimed that he was "never really delinquent on the vehicles until the creditor said they were coming to get" them. GE 11. He also said he could not afford payments on the vehicles, and they were both repossessed. Applicant claimed that he attempted to work with the collection agent but could not reach a deal. *Id.* Applicant's credit report shows the credit union accounts for the vehicle loans were charged off in June and July 2020, respectively. GE 8. In his Answer to the SOR, Applicant said the repossessed vehicles were a result of COVID, and his attempts to resolve the debts were not unsuccessful.

Applicant stated that the remaining collection account was "an old [phone company] bill that was turned into collections due to my ex-wife." He tried to call the phone company and the collection agent to resolve the account. Ans. With reference to Applicant's Chapter 7 bankruptcy, he stated in his answer that it was done by his ex-spouse "without his knowledge at the time." *Id.* The bankruptcy documents included with

the FORM show that Applicant and his ex-spouse were joint debtors, and that the bankruptcy petitions were filed by both parties. Applicant's debts were discharged on August 16, 2001. GE 6.

Applicant presented no documentary evidence to show his efforts to resolve his debts, nor did he provide an explanation for his Chapter 7 bankruptcy filing, the amount and type of debts discharged, and support for his claim that his ex-spouse filed the petition without his knowledge. In response to Government interrogatories in October 2023, Applicant again claimed that he was trying to resolve the SOR debts, and that after COVID, he was unable to afford his vehicle payments. His personal financial statement shows he has a \$4,000 net monthly remainder after paying his expenses, and he and his spouse earn a net salary of \$108,000. Finally, Applicant's SCA shows that he was steadily employed since 2017, and his current position started in August 2020. I am not aware of any financial counseling Applicant may have received or professional assistance with debt resolution.

### **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 a 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

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

Applicant filed Chapter 7 bankruptcy in 2001 and subsequently incurred delinquent debts totaling about \$44,000. The documentary evidence in the record and Applicant’s admissions are sufficient to establish the disqualifying conditions in AG ¶¶ 19(a) and (c).

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;

(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;

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

(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.

None of the above mitigating conditions are established. Applicant accumulated delinquent debts but has not shown with specificity that they resulted from circumstances outside of his control. His claims that his ex-spouse filed bankruptcy without his knowledge and that COVID prevented him from paying his vehicle loans were not supported by sufficient evidence. He has neither taken adequate action to address his debts nor has he shown that they have been resolved or are in the process of being resolved.

The Appeal Board has often stated that a security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. *E.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). The scope of Guideline F encompasses not only an Applicant's current financial situation, but also extends to his or her financial history. As a general rule, an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. *E.g.*, ISCR Case No. 09-08462 at 4 (App. Bd. May 31, 2011). However, an applicant must act responsibly given his or her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct even if it may only provide for the payment of debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). Moreover, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Although debts may have been paid or discharged in bankruptcy, a Judge may still consider the underlying circumstances for what they may reveal about an applicant's judgment and reliability. See, e.g., ISCR Case No. 14-02394 at 3-4 (App. Bd. Aug. 17, 2015). A discharge in bankruptcy may give a person a financial fresh start, but it does not substitute for evidence of a demonstrated track record of financial reform, a track record that is necessary to satisfy Applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue access to classified information for him. ISCR Case No. 98-0445 (App. Bd. Apr. 2, 1999). No such track record has been established in this case.

Applicant's Chapter 7 bankruptcy filing and his subsequent indebtedness and inability or reluctance to address his past-due debts raise questions about his overall financial responsibility. There is insufficient evidence to determine that Applicant's financial problems are being resolved or that he can obtain and maintain a measure of financial responsibility. No evidence of formal financial counseling was submitted. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. No mitigating conditions fully 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. 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 applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's claims that he did not consent to a bankruptcy filing and that he was impacted by COVID but find them unsupported by persuasive evidence. Because he requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor, or to question him about the circumstances that led to his financial issues and any action he may have taken to address them. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person, including exceptions available under Appendix C of SEAD 4. I conclude Applicant has not mitigated the security concerns raised by his delinquencies and apparent financial irresponsibility.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.d: Against Applicant

### **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge