



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



In the matter of: )  
)  
) ISCR Case No. 23-00761  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro Se*

03/25/2024

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**Decision**

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HESS, Stephanie C., Administrative Judge

Applicant has not mitigated the security concerns raised by his ongoing financial issues. Access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on August 8, 2022. On April 5, 2023, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; and the adjudicative guidelines (AG) effective June 8, 2017.

Applicant answered the allegations in the SOR on May 11, 2023, and requested a decision on the written record without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's written case on June 20, 2023. On June 28, 2023, a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 6, was sent to Applicant. He received the FORM on July 10, 2023. The DOHA transmittal letter, dated June 28, 2023, informed Applicant that

he had 30 days after receiving it to file objections and to submit material to refute, extenuate, or mitigate the Government's evidence. He did not submit a response.

The case was assigned to me on November 6, 2023. On January 30, 2024, I reopened the record, via email to both parties, until February 16, 2024, to permit the parties to submit any additional evidence. Department Counsel timely submitted Government's Exhibit (GX) 7. Applicant did not respond. I admitted Government's Exhibits (GX) 1 through 7 without objection. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1.

### **Findings of Fact**

Under Guideline F, the SOR alleges that Applicant is indebted for 10 delinquent accounts totaling \$39,817. The debts are comprised of six credit-card debts totaling \$32,546, three medical debts totaling \$3,600, and a debt in the amount of \$3,670 owed to an apartment complex where Applicant lived from 2015 until 2017. Applicant admits each of the SOR allegations. His admissions are incorporated in my findings of fact.

Applicant, 43, is a software engineer currently employed with a defense contractor since March 2022. He has been employed by defense contractors since 2015. He married in 2001 and divorced in 2015. He married again in 2016 and divorced in 2018. He was first granted a security clearance in 2016. (GX 3.)

In his answer to the SOR, Applicant listed the following, "Mitigating Factors: divorce; two surgeries; work loss due to medical issues; accounts on default are now paid or in a payment plan." He did not provide any supporting documentation.

In response to the financial questions on his August 2022 e-QIP, Applicant listed the credit-card debts and balances of the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. He stated that he is in a payment plan with each of the creditors and listed the reason for the debts as "divorce." (GX 3.)

During his December 2022 personal subject interview (PSI), Applicant stated that his financial issues arose in 2015 when he and his first wife divorced. They had been living in an apartment and the lease was in Applicant's name. When they split, his former wife remained in the apartment for the duration of the one-year lease. However, the apartment complex required 90 days' notice before moving out, which she did not provide, and the apartment complex charged Applicant \$3,670 (SOR 1.c.). Applicant learned of this debt in 2019 when he was attempting to get a mortgage loan. The apartment complex is owned by a different company that has not contacted Applicant. As of December 2022, he had not paid the debt. He has not provided any evidence that he paid or otherwise resolved this debt, although it does not appear on his February 2024 credit bureau report (CBR). (GX 4; GX 7.)

Applicant paid his wife \$3,200 in alimony for one year from 2015 until 2016. Additionally, he had three surgeries during 2016 and accumulated medical bills that he was unable to pay. He stated in his December 2022 PSI that he was between jobs, did not have insurance, and did not realize that he was eligible to continue his health

insurance through his previous provider. These debts caused him to fall behind on his other financial obligations, to include his credit cards. For a period of approximately three years, he was only able to manage his day-to-day expenses. Concerning the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c, he stated that these credit cards were charged off and therefore he had not made any attempt to pay them because he did not think he had to. Additionally, because the accounts were between five and six years old, Applicant believed they would "just go away." He told the investigator that he did not plan on paying the debts at that time. (GX 4.)

Applicant purchased a vehicle in approximately July 2022 with an initial loan amount of \$46,463 and a monthly payment of \$865. In approximately November 2022 he purchased a vehicle with an initial loan amount of \$39,924 and a monthly payment in the amount of \$916. Applicant stated during his PSI that he was within a 30-day return period for the vehicle he purchased November 2022 and that he planned to return the vehicle which would free up the money he used for the payments to use to pay other bills. However, both of the vehicle-loan accounts are listed as active on Applicant's February 2024 CBR. (GX 4; GX 7.)

Later in his PSI, Applicant told the investigator that he would contact the creditors to begin making payments on the delinquent accounts. He stated that he "understands the importance of managing his finances and does not want to jeopardize his job or his clearance." He further stated that he would provide the investigator with a payment plan within the next 10 days. He did not do so. (GX 4.)

Applicant's February 2024 CBR lists the four credit-card debts totaling \$32,546, alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e as unpaid. The three medical accounts totaling \$3,600, the debt to the apartment complex in the amount of \$3,670, and two additional credit-card debts totaling \$1,315 are no longer listed. Despite his assertion in his answer to the SOR that the accounts are paid or being paid, there is no record evidence to support this statement.

## **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's 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." See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 record evidence establishes the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable under this guideline:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Applicant's financial issues arose around 2015 when he and his first wife divorced. He incurred the \$3,670 debt owed to the apartment complex at that time. However, he

was unaware of the debt until 2019, so it did not have any impact on his overall financial circumstances. He did pay \$3,200 a month in alimony between 2015 and 2016.

Applicant also underwent three surgeries in 2016 at time when he had no medical insurance. He incurred medical debt and was unable to maintain his other financial obligations. He stated that for a period of approximately three years following the surgeries he was only able to pay his day-to-day expenses.

Applicant was initially put on notice that the Government considers a person's financial circumstances during its security-worthiness assessment when he answered questions about his finances during his first background investigation in 2016. More recently, he was asked about his finances on his August 2002 e-QIP and during his December 2022 PSI. At one point during his interview, Applicant stated that he would resolve his debts because he knew that failure to manage his finances properly could jeopardize his job and his security clearance. In April 2023, DOHA issued an SOR to Applicant citing security concerns about his delinquent accounts. Yet, there is no record evidence that Applicant has made any effort to pay or otherwise resolve any of the debts alleged in the SOR.

Applicant also stated during his PSI that he was planning to return his recently purchased vehicle, with monthly payments of \$916, in order to use that money to pay other bills. The evidence indicates he did not return the vehicle.

During his December 2022 PSI, Applicant stated that because the credit-card debts of over \$32,000 (SOR ¶¶ 1.a, 1.b, 1.d, and 1.e) were five or six years old and charged off he did not think he was required to pay them. The Appeal Board has repeatedly stated that merely waiting for a debt to become legally uncollectible is not a substitute for repayment. See ISCR Case No. 07-06841 at 4. Bd. Dec. 19, 2008, "[R]eliance upon the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive." However, there is no record evidence that these debts are legally uncollectible.

Applicant's financial issues are recent and ongoing and his failure to resolve his delinquent debts, despite an apparent ability to do so, casts doubt on his current reliability, trustworthiness, and judgment. While his financial issues may have arisen due to his 2015 divorce and subsequent alimony payments and were exacerbated by his three surgeries and the accompanying medical bills, he has not paid or otherwise attempted to resolve any of the outstanding delinquent accounts alleged in the SOR. Despite his awareness of the Government's concerns, it is clear that Applicant has no intention of repaying his delinquent debts. None of the mitigating conditions 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(a).

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial issues. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a through 1.j: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Stephanie C. Hess  
Administrative Judge