



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



In the matter of: )  
)  
) ISCR Case No. 23-00722  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, 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 July 6, 2020. On May 2, 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 22, 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 14, 2023. On that same day, a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 7, was sent to Applicant. He received the FORM on June 27, 2023. The DOHA transmittal letter dated June 14, 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 January 4, 2024. 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 11 delinquent accounts totaling \$116,400. The debts are comprised of five credit-card debts totaling \$64,342 and six delinquent personal loans totaling \$52,058. Five of the delinquent loans, totaling \$40,517, are owed to the same creditor. Applicant admits each of the SOR debts. The SOR also alleges that Applicant failed to file his 2017 Federal tax return. He denies this allegation, stating that he filed the return in April 2022. His admissions are incorporated in my findings of fact.

Applicant, 59, is a senior analyst currently employed with a defense contractor since August 2014. He has been employed by defense contractors since 2010. He served on active duty in the United States Navy from June 1984 until he retired in February 2005. He earned his bachelor's degree in 1993. He married in 1988 and divorced in 2013. He married again in 2017. He has four adult children from his first marriage and four minor children from his current marriage. He was first granted a security clearance in 1984. (GX 2.)

During his August 2020 personal subject interview (PSI), Applicant stated that his financial issues arose in 2012 due to his divorce. After his house was foreclosed on, he owed \$20,000 in Federal taxes. Each year, the Internal Revenue Service (IRS) withheld his refund and applied it to the debt. At the time of the PSI, he estimated that he had a remaining balance of approximately \$2,300 which he anticipated would be paid off with his 2020 tax refund. In response to DOHA's interrogatories signed by Applicant in April 2022, he provided copies of his IRS transcripts for tax years 2017 through 2021 which show that his tax obligation was satisfied with his 2020 refund. (GX 4.)

In his answer to the SOR, Applicant provided a detailed explanation for why the SOR debts remain delinquent. Specifically, he and his wife had each amassed significant consumer debt prior to their 2017 marriage. They both worked outside the home and it was their plan to pay off their debts in 24 to 36 months. However, several events occurred: due to a difficult pregnancy in 2017, Applicant's wife, a teacher, was unable to return to work when the school year began in August. Their first son was born in December 2017. Applicant made outreach to several of his creditors to try to reorganize his payment dates, but was unsuccessful. In April 2018, Applicant's mother-in-law, who helped care for his new son, died suddenly and unexpectedly. His wife was emotionally devastated, overwhelmed, and unable to return to work. In dealing with their personal loss, Applicant stopped all efforts to resolve his debts and his accounts became delinquent. He also stated that these events caused him to fail to file his 2017 Federal tax return.

Applicant's wife inherited her mother's home valued at approximately \$200,000. The house requires refurbishing. While Applicant and his wife have discussed selling the home to resolve their debts, she is emotionally attached to the home and is unwilling to do so. They attempted to use the equity in the house to get a loan to pay their debts and do the requisite work on the house, but their credit was too poor. (Answer; GX 4.)

Applicant contacted a credit counselor who offered to dispute his delinquent accounts for a \$3,000 fee. Applicant declined the credit counselor's services. He listed several of his delinquent accounts on his 2020 e-QIP and stated that once his mother-in-law's estate was through the probate process, he would "look to resolve all the settlements for each financial delinquency." In his August 2020 PSI, he stated that he had not entered any repayment agreements or contacted the creditors of his delinquent accounts because he knew they would want immediate payments once contacted. He further stated that it was his intention to pay all the accounts in lump sums once his mother-in-law's estate was settled, which he thought would be by December 2020. He also stated that he intended to file his 2017 Federal tax return first, then settle the debts. (GX 2; GX 4.)

Applicant stated in his answer to the SOR:

So why not work to pay off those debts? Well, most advisors say leave it alone. If there is no legal effort to reclaim the funds the best thing to do is to leave it alone because any resolution that is paid resets the credit history of the debt for another seven years .... We have paid a heavy price for a very long time (as we should) and resetting it seems like a poor idea considering we are entering into the sixth year since defaulting .... So what is the bottom line? The debts are more than five years old. We have the means of repaying those debts if ordered by a court if mandated (unlikely), but the best business decision at the present time is to let the debts expire by around the end of next year.

The 2017 IRS transcript, dated April 25, 2022, showed that no tax return had been filed. In his April 2022 responses to DOHA's interrogatories, he stated that he filed it on April 24, 2022, and the transcript was not yet available. In his answer to the SOR, Applicant stated that he filed his 2017 tax return on April 22, 2022. There is no record evidence that corroborates his assertion that he filed his 2017 Federal tax return. (Answer; GX 4.)

Applicant's June 2023 credit bureau report (CBR) shows the following open accounts:

Credit card - opened July 2019 - Credit Line: \$6,000 Balance: \$5,807;

Credit card - opened December 2020 - Credit Line: \$3,200 Balance \$3,183;

Credit card - opened January 2022 - Credit Line: \$1,100 Balance \$1,006;

Personal loan - opened May 2022 - Amount: \$21,000 Balance owed: \$17,970;

Personal loan - opened September 2022 - Amount: \$10,000 Balance owed: \$9,482;

Credit card - opened July 2022 - Credit Line: \$900 Balance: \$893.

Applicant's recent credit-card debt totals \$10,889 and his personal loan debt totals \$27,452. (GX 7.)

## 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; and

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

Applicant's financial issues arose around 2012 when he and his first wife divorced. He incurred \$20,000 in tax debt as a result the foreclosure of his home. By the time he and his wife married in 2017, they had each incurred significant debt. Their plan was to use both of their incomes to resolve all of their debt in 24 to 36 months. However, several circumstances largely beyond Applicant's control occurred. First, due to a difficult pregnancy, Applicant's wife was unable to return to work in August 2017. He made some effort to reschedule the dates his payments were due, but was not successful. In spring 2018, Applicant's mother-in-law died unexpectedly, and it was devastating to his wife. She was unable to return to work. Following his mother-in-law's death, Applicant stopped all efforts to manage his finances, including failing to file his 2017 Federal tax return.

During his 2020 background investigation, Applicant repeatedly stated that he would resolve all of his delinquent accounts with the proceeds from his mother-in-law's estate. Specifically, it was initially Applicant's intention to sell his mother-in-law's house, valued at approximately \$200,000. His wife does not want to sell the house. Applicant also tried to get a home equity loan on the house to pay his delinquent accounts and do the necessary work. He was unable to secure the loan because of his poor credit. He contacted but did not engage the services of a fee-based credit-counselor.

Applicant also stated during his background investigation he would file his 2017 Federal tax return. He stated in his April 2022 responses to interrogatories that he filed the return in April 2022. While he has asserted that he has filed the return, there is no supporting record evidence.

In his answer to the SOR, Applicant affirmatively stated that he is not going to pay the SOR debts. He acknowledged that his credit has suffered from these long-standing delinquencies. He stated that he has been advised that his most beneficial course of action is to let the debts remain unpaid until they are no longer collectible. He anticipates

this will be the end of 2024. He also acknowledges that if he were court ordered to pay the debts he has the resources to do so.

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-collectibility of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive."

Applicant's June 2023 CBR shows four credit-card accounts with a total credit limit of \$11,200 and a balance owed of \$10,889. He has two personal loans with an initial loan amount totaling \$31,000 and an outstanding balance owed of \$27,452. He has used over 97% of his available credit limits.

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 2012 divorce were exacerbated by his wife's 2017 loss of employment and his mother-in-law's 2018 unexpected death, 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the U.S. Army for over 20 years, during which time he was granted his first security clearance in 1984. He sought and achieved higher education. He also experienced significant unforeseen events that had adverse effects on his finances. However, his lack of any identifiable action to resolve his debts in the face of those circumstances far outweighs the positive information in his background.

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 him 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.l: 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