



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 12-07408
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

11/15/2015

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**Decision**

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FOREMAN, LeRoy F., 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 February 28, 2012. On April 22, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on May 11, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 29, 2015, and the case was assigned to me on August 31, 2015. On September 8, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 23, 2015. I convened the hearing as scheduled. Government

Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AX) A through N, which were admitted without objection. I kept the record open until October 9, 2015, to enable him to submit additional documentary evidence. He timely submitted AX O through U. DOHA received the transcript (Tr.) on October 1, 2015.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations except SOR ¶¶ 1.l and 1.q. He did not respond to SOR ¶ 1.l, and he denied SOR ¶ 1.q. I have treated his lack of response to SOR ¶ 1.l as a denial. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 44-year-old electronics technician. He has worked for defense contractors and held a security clearance since February 2001. He was laid off in June 2014. (AX B) He received unemployment benefits of \$378 per week until he found another job in August 2014. (AX G; AX H.) He was laid off again on September 30, 2015, a week after the hearing. (AX O.)

One of Applicant's colleagues has known him for about ten years. He considers Applicant trustworthy, honest, candid, and devoted to his children. (AX T.)

Applicant graduated from high school in June 1990. He served on active duty in the U.S. Navy from February 1991 to January 1993, and received an honorable discharge. (Tr. 17.)

Applicant married in May 2004, separated in August 2009, and divorced in September 2012. (Tr. 36.). He and his wife have three children, a nine-year-old boy and six-year-old twin boys. At the time of the divorce, all marital debts were in Applicant's name. (Tr. 39.)

Applicant's wife was employed before they divorced, but he could not remember her annual income. His annual income during the year of their divorce was around \$73,000, but it has remained steady in the \$65,000 to \$66,000 range since then. (Tr. 38-39.)

When Applicant submitted his SCA in February 2012, he disclosed numerous delinquent debts. The SOR alleges 17 delinquent debts totaling about \$26,379. The debts include a \$7,438 deficiency after an automobile repossession (SOR ¶ 1.a); cable and telecommunications bills for \$322, \$776, and \$100 (SOR ¶¶ 1.c, 1.m, and 1.n); ten medical debts ranging from \$4 to \$871 (SOR ¶¶ 1.b, 1.e-1.j, 1.l, and 1.p); two consumer credit accounts for \$99 and \$5,698 (SOR ¶¶ 1.d and 1.k); and a child-support arrearage of \$9,110 (SOR ¶ 1.q). The debts are reflected on his credit bureau reports (CBRs) dated March 10, 2012, and November 7, 2014. (GX 2; GX 3.).

Applicant's divorce decree obligated him to pay all uninsured medical bills that were incurred in 2012 for their children. (AX L.) Applicant paid \$2,003 in medical bills in accordance with this provision. (AX M.) The ten medical bills alleged in the SOR were incurred and had become delinquent before 2012, and they had not been resolved as of the date of the hearing.

The debts alleged in the SOR were incurred between the time Applicant and his wife separated and the date of their divorce, except for the \$95 medical bill alleged in SOR ¶ 1.i, which became delinquent in 2007. The judgment for the \$871 medical bill in SOR ¶ 1.j was entered against Applicant in October 2012, shortly after the divorce. Applicant did not disclose any of the medical bills in his SCA, although he indicated in the SCA that he had reviewed his CBR, which would have reflected them. (GX 1 at 38.)

Applicant testified that he voluntarily paid child support to his wife after they separated, before any court orders were entered. In June 2010, a child-support order was entered requiring Applicant to pay \$1,854 per month, but he received no credit for what he had informally paid his wife, and the court determined that he owed an arrearage of about \$10,000. (AX K; Tr. 45-46.)

Applicant's divorce decree ordered him to pay child support of \$2,145 per month, which was withheld from his pay. (AX I; AX L.) An additional \$50 was withheld to pay the arrearage. (Tr. 47.) In February 2013, his federal income tax refund of \$6,119 was intercepted and applied to his child-support arrearage, and the arrearage was reduced to \$7,732. (AX I.) In June 2015, his unemployment benefits were intercepted and applied to his child-support arrearage. (AX C.) Until September 2015, about \$2,025 per month was deducted from his pay for child support, including payments on the arrearage. (AX N.)

In September 2015, Applicant's monthly child-support payments were reduced to \$1,245. (AX J.) The effect of the child-support reduction was to increase his monthly income from \$1,500 per month to \$2,376 per month. (AX A; Tr. 22.) After paying his living expenses and child support, he now has a net monthly remainder of about \$549. Before the child support was reduced, he was living paycheck to paycheck. (AX A.) As of September 9, 2015, he had reduced his child-support arrearage to \$410. (AX K.)

After the hearing, Applicant paid the \$58 medical bill alleged in SOR ¶ 1.e and the \$44 medical bill alleged in SOR ¶ 1.f. In his post-hearing submission, he claimed that the \$38 medical bill alleged in SOR ¶ 1.g and the \$27 medical bill in SOR ¶ 1.h were no longer on his CBRs. However, they still are reflected in his March 2015 CBR. The \$4 medical bill in SOR ¶ 1.i and the \$95 medical bill in SOR ¶ 1.l are unresolved. With the exception of the child-support arrearage and the two medical bills in SOR ¶ 1.e and 1.f, he has not contacted his creditors. (Tr. 41-45.) He has not sought or received financial counseling. (Tr. 55.)

## 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 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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).

Applicant's CBRs and his testimony at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions under this guideline are potentially applicable:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated 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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, frequent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is partially established. The child-support arrearage was incurred as a result of several conditions beyond Applicant's control: his marital breakup; the child-support order adjudged in July 2010 that did not give him credit for the informal support payments that preceded it; and his unemployment from June to August 2014. The medical bills alleged in the SOR were caused by the uninsured medical expenses incurred by his children, also a condition beyond his control. Applicant acted responsibly regarding the child-support arrearage by making payments when he was financially able and seeking readjustment of the amount of child support when his income declined. He did not act responsibly regarding the medical bills, which he ignored until after the hearing.

AG ¶ 20(d) is established for the child-support debt. Applicant has made good-faith efforts to pay the required child support, and he has reduced the arrearage from almost \$10,000 to \$410. It is not established for the other debts alleged in the SOR.

AG ¶¶ 20(c) and 20(e) are not established. Applicant has not sought or received financial counseling, and he has not disputed any of the debts.

### **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):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was candid and sincere at the hearing. He is financially unsophisticated and likely would have benefited from financial counseling. His focus since 2009 has been on his child-support obligation. Other than the child-support arrearage, he did not attempt to resolve any of his debts until after the hearing, even though six of his ten medical debts were for less than \$100. 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 problems. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **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
Subparagraphs 1.e-1.f:	For Applicant
Subparagraphs 1.g-1.p:	Against Applicant
Subparagraphs 1.q:	For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge