



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



In the matter of: )  
)  
) ISCR Case No. 12-09286  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

08/25/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On January 15, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to continue Applicant's security clearance. On February 3, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on March 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 27, 2015, and the hearing was convened as scheduled on May 14, 2015.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 6. Applicant testified and offered Applicant's Exhibits (AE) A through D. The record of the proceeding was left open until June 15, 2015, to provide Applicant the opportunity to submit additional matters. He submitted additional documents that were marked as AE E through L. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 21, 2015.

### **Findings of Fact**

Applicant is a 45-year-old employee of a federal contractor. He has been working for that contractor since April 2012. He graduated from high school in 1988. He served on active duty in the Navy from 1989 to 2009, attained the grade of petty officer first class (E-6), and retired with an honorable discharge. He married in 1994 and divorced in 2009. He has two children, ages 3 and 21. He held a security clearance in the Navy for about 20 years.<sup>1</sup>

The SOR alleged that Applicant had 26 delinquent debts, totaling about \$73,065 (SOR ¶¶ 1.a-1.z). In his Answer to the SOR, Applicant admitted seven allegations (SOR ¶¶ 1.a, 1.b, 1.d, 1.p, 1.r, 1.s, and 1.w), totaling about \$9,946. His admissions are incorporated as findings of fact.<sup>2</sup>

Applicant attributed his financial problems to his divorce and his ex-wife's financial irresponsibility. Because he spent a significant amount of time at sea while in the Navy, he gave his then wife a power of attorney and she handled their finances. She opened a number of accounts in his name without his knowledge, but he acknowledged that he was responsible for those accounts. During his Office of Personnel Management (OPM) interview in June 2012, Appellant indicated that he was not aware of most of the delinquent debts when he completed his security clearance application and only became aware of them when he later applied for a car loan. In about 2012, he started disputing many of the debts on his credit report because he had no knowledge of them. He was also unemployed for about a year after he retired from the Navy.<sup>3</sup>

SOR ¶ 1.a – charged-off account in the amount of \$6,367. This was a vehicle loan that was opened in May 2012 and had a date of last activity of October 2012. Applicant cosigned this loan for a friend who soon thereafter defaulted. In May 2015, Applicant settled this debt for \$900 and entered into a repayment plan with the creditor. Under that plan, he agreed to pay \$79 every other week until the settlement amount is

---

<sup>1</sup> Tr. 6-8, 36; GE 1, 2; AE G.

<sup>2</sup> Applicant's Answer to the SOR.

<sup>3</sup> Tr. 26-27, 34-35, 47-50, 62, 69-70, 87-88; GE 2. Applicant did disclose a delinquent truck loan on his security clearance application.

paid. He authorized the creditor to debit his bank account automatically for the scheduled payments. He made two payments before the hearing.<sup>4</sup>

SOR ¶ 1.b – collection account in the amount of \$900. This account was opened in January 2014 and had a date of last activity of January 2013. Applicant testified that he thought he had paid this debt and disputed it through the credit reporting bureaus. This debt no longer appears on his most recent credit reports.<sup>5</sup>

SOR ¶ 1.c – charged-off account in the amount of \$504. This account was opened in January 2008 and had a date of last activity of March 2008. Applicant testified that the creditor agreed to remove this account from his credit reports. This debt no longer appears on his most recent credit reports.<sup>6</sup>

SOR ¶ 1.d – collection account in the amount of \$249. This utility account had a date of last activity of March 2009. Applicant testified that he discussed this debt with the creditor the week before the hearing, acknowledged he owed this debt, and indicated he would pay it. In his post-hearing submission, he provided a receipt showing it was paid.<sup>7</sup>

SOR ¶¶ 1.e through 1.o – state tax liens totaling \$26,443. These 11 tax liens are from State A where Applicant resided while serving in the military. The tax liens were filed in 2009 and 2011. He disputes the tax liens because he was a legal resident of State B while in the military and was exempt from paying income taxes to State A under the Servicemembers Civil Relief Act. He provided a sample of his military leave and earning statements from 2000 to 2008 that confirmed he was paying income taxes to State B. He also testified that he did not own land in State A. His ex-wife worked in State A, but they filed separate state income tax returns. He indicated that he gave a copy of his DD 214 to the tax authorities in State A to establish that he was not a resident of that state. At the time of the hearing, he believed State A was still investigating his claim that he was exempt from its state income taxes. Two credit reporting agencies have removed the tax liens from his most recent credit reports.<sup>8</sup>

---

<sup>4</sup> Tr. 28-33, GE 3; AE I.

<sup>5</sup> Tr. 33-36; GE 3; AE A-D.

<sup>6</sup> Tr. 36-39; GE 3; AE A-D.

<sup>7</sup> Tr. 39-42; GE 3; AE K.

<sup>8</sup> Tr. 42-47, 80-82; GE 1, 3, 5; AE A-D, G, H. Applicant's security clearance application indicated that he did own land in State A from 2003 to 2006. It is very unlikely that property taxes for those three years could account for the 11 alleged tax liens. Applicant stopped living in State A about two years after he retired from the military, but he was unemployed for most of that period.

SOR ¶ 1.p – judgment in the amount of \$737. This judgment was filed against Applicant in June 2008. Applicant testified that he contacted the creditor to arrange a repayment plan, but had not yet made any payments under that plan.<sup>9</sup>

SOR ¶ 1.q – collection account in the amount of \$499. This television service account had a date of last activity of January 2009. Applicant claimed he never had an account with this television service provider. He disputed this debt, and it no longer appears on his most recent credit reports.<sup>10</sup>

SOR ¶ 1.r – charged-off account in the amount of \$512. This account was opened in January 2008 and had a date of last activity of March 2008. He testified that he paid this debt in 2012. He did not provide documents confirming that payment. This debt no longer appears on his most recent credit reports.<sup>11</sup>

SOR ¶ 1.s – charged-off account in the amount of \$628. This account was opened in June 2007 and had a date of last activity of July 2007. Applicant testified the he believed this debt was paid and disputed it with the credit reporting agencies. This debt no longer appears on his most recent credit reports.<sup>12</sup>

SOR ¶¶ 1.t and 1.u – collection accounts in the amounts of \$135 and \$27. These are medical accounts that had dates of last activity of January 2009 and January 2010. He and his oldest daughter are covered by the military medical system. He had no knowledge of these debts and disputed them. They no longer appear on his most recent credit reports.<sup>13</sup>

SOR ¶ 1.v – collection account in the amount of \$628. This account was opened in February 2009 and had a date of last activity of February 2011. Applicant had no knowledge of this debt and disputed it. This debt no longer appears on his most recent credit reports.<sup>14</sup>

SOR ¶ 1.w – charged-off account in the amount of \$553. This account was opened in February 2006 and had a date of last activity of July 2006. Applicant testified that he paid this debt and disputed it through the credit reporting bureaus. This debt no longer appears on his most recent credit reports.<sup>15</sup>

---

<sup>9</sup> Tr. 47-51; GE 4.

<sup>10</sup> Tr. 51-53; GE 4; AE A-D.

<sup>11</sup> Tr. 53-54; GE 4; AE A-D.

<sup>12</sup> Tr. 54; GE 4; AE A-D.

<sup>13</sup> Tr. 54-56; GE 4; AE A-D.

<sup>14</sup> Tr. 56; GE 4; AE A-D.

<sup>15</sup> Tr. 56-57; GE 4; AE A-D.

SOR ¶ 1.x – charged-off account in the amount of \$165. This account was opened in October 2006 and had a date of last activity of March 2012. Applicant testified that this was an administrative fee he incurred when he dropped an online college course. He stated that he paid this debt in 2012 and disputed it. This debt no longer appears on his most recent credit reports.<sup>16</sup>

SOR ¶ 1.y – charged-off account in the amount of \$34,666. This account was opened in October 2006 and had a date of last activity of March 2003. This debt was a bank loan for a vehicle that his ex-wife purchased without his knowledge. He disputed this debt, and it was removed from his most recent credit reports. He testified that he currently had an account with that bank that was in good standing.<sup>17</sup>

SOR ¶ 1.z – collection account in the amount of \$52. This account was assigned for collection in April 2012. Applicant testified that he had no knowledge of this account and disputed it. This debt no longer appears on his most credit reports.<sup>18</sup>

In about 2008, Applicant hired a debt-management company to assist him in resolving his delinquent debts. He paid that company about \$100 a month. After a year with the company, he was disappointed with the progress it was making in resolving the debts. He terminated his relationship with that company and began resolving the debts himself.<sup>19</sup>

Applicant's annual salary is \$82,000. He testified that he receives about \$1,300 per month in retirement pay and \$863 in disability pay. In his post-hearing submission, he provided a budget that reflected his total net monthly income was \$6,621 and his total monthly expenses were \$4,640, which left him a net monthly remainder of \$1,981. He testified that he recently made a \$17,000 payment to pay off one of his vehicles.<sup>20</sup>

In the Navy, Applicant was awarded four Navy Achievement Medals and six Good Conduct Medals. His work performance evaluations reflect that he received high grades in each performance category over the past several years. His supervisor wrote that Applicant was an asset to the company, and the company was lucky to have him working on their team.<sup>21</sup>

---

<sup>16</sup> Tr. 57-58; GE 4; AE A-D.

<sup>17</sup> Tr. 58; GE 4; AE A-D.

<sup>18</sup> Tr. 58-59; GE 4; AE A-D.

<sup>19</sup> Tr. 68-70.

<sup>20</sup> Tr. 59-78; AE J, K, L.

<sup>21</sup> AE F, G.

## Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in reaching a decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 security concern for this guideline is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts that he was unable to pay for an extended period. The evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

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

(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;

(d) the individual initiated 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.

Starting in 2009, Applicant was unemployed for about one year after retiring from the Navy. In 2009, he also went through a divorce. His ex-wife was financially irresponsible. She opened a number of accounts in his name without his knowledge and then defaulted. He only became aware of delinquent accounts when he later applied for a vehicle loan. These were conditions beyond his control that contributed to his financial problems. Upon learning of the delinquent debts, he hired a debt-management company to assist him in resolving these problems. He later became dissatisfied with the debt-management company and began resolving the debts himself. Since then, he has successfully disputed many of the debts (SOR ¶¶ 1.b-1.c and 1.q-1.z). He also appears to have a legitimate basis for his pending dispute of the state tax liens (SOR ¶¶ 1.e-1.o). He paid the debt in SOR ¶ 1.d and entered into a repayment plan for the debt in SOR ¶ 1.a. He has yet to finalize arrangements to resolve the \$737 judgment in SOR ¶ 1.p. He has acted responsibly in methodically resolving his delinquent debts. AG ¶ 20(b) fully applies. AG ¶ 20(e) applies to the disputed debts.

Applicant's financial situation is stable. His delinquent debts are being resolved. They were the result of unusual circumstances that are unlikely to recur and no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) apply.

### **Whole-Person Concept**

Under the whole-person concept, the 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. The 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.

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.

My comments under Guideline F are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served honorably in the Navy for 20 years. He is a valued employee of his current company. He has held a security clearance for many years without incident. His delinquent debts arose from his ex-wife's financial irresponsibility. Although Applicant has some debts that remain unresolved, he has shown that he is committed to resolving them. He is financially stable and is meeting his current financial commitments. Overall, the record evidence leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. Applicant mitigated the security concerns under the financial considerations guideline.

### **Formal Findings**

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.z: For Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Clearance is granted.

---

James F. Duffy  
Administrative Judge