



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 12-09621  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: Richard L. Morris, Esq.

02/03/2016

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on April 23, 2012. On August 5, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF 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 DOD on September 1, 2006.

Applicant answered the SOR on August 20, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 8, 2015, and the case was assigned to me on October 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 3, 2015,

scheduling the hearing for November 17, 2015. I convened the hearing as scheduled.<sup>1</sup> Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through S, which were admitted without objection. DOHA received the transcript (Tr.) on November 25, 2015. I kept the record open until December 7, 2015, to enable Applicant to submit additional documentary evidence. He timely submitted AX T through V, which were received without objection.

### **Findings of Fact**

In his answer to the SOR, Applicant did not expressly admit any allegations. However, at the hearing, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 57-year-old logistics analyst employed by defense contractors since June 2000. He has worked for his current employer since September 2014 (AX I.) He first received a security clearance in 1978, but he does not have a current active clearance. (Tr. 6, 10, 21.)

Applicant served in the U.S. Air Force from September 1978 to September 1980 and was trained as a laboratory technician. (Tr. 20, 23.) He attended a community college for about two years but did not receive a degree. (Tr. 20)

Applicant married in April 2002. He and his wife have a 12-year-old daughter. His wife has two adult sons from a previous relationship.

Applicant was laid off in 1990 and remained unemployed for 18 months. When he found employment, his pay was 35% lower than his previous pay. (Tr. 24, 28.) He filed a Chapter 7 bankruptcy petition in December 1990, and his debts were discharged in April 1991. (GX 5.) The record does not reflect the debts that were included in this bankruptcy, but he was able to prevent foreclosure of his home mortgage loan by exhausting his investments.

In January 1993, Applicant filed a Chapter 13 bankruptcy petition. The record does not reflect the debts included in this bankruptcy. The wage assignment was terminated in November 1993. (GX 6.)

In 2007, Applicant's daughter was diagnosed with a rare genetic disorder, and his insurance company refused to pay for her treatment. Applicant paid for her treatment with his own resources. Treatment was not available locally, requiring out-of-pocket travel expenses for treatment at specialty clinics. Applicant applied for Medicaid in 2007, but it was not approved until 2012. (Tr. 30-31.)

In September 2012, Applicant sold his home in a short sale. The proceeds of the sale were sufficient to satisfy the mortgage loan. (GX 7 at 17-18.) In October 2012,

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<sup>1</sup> Applicant waived the 15-day notice requirement of Directive ¶ E3.1.8. (Tr. 8.)

Applicant filed another Chapter 13 bankruptcy petition, listing assets of \$44,805 and liabilities of \$50,139 (GX 7 at 17.) The debts alleged in SOR ¶¶ 1.g, 1.i, 1.j, and 1.k are included in the Chapter 13 bankruptcy. (GX 3 at 2; GX 7 at 8-10.) His schedule of creditors and payment schedule include tax debts for state and federal income taxes for 2012. (GX 7 at 18.) The federal income taxes are being paid through the Chapter 13 bankruptcy. (AX D; Tr. 45.) He paid the state tax debt in full by direct payments from his bank account. (AX T.)

The Chapter 13 payment plan provided for monthly payments of \$53 for 6 months, then \$412 for 1 month, then \$125 for 14 months, then \$300 for 9 months, then \$630 for 9 months, then \$890 for 16 months, and then \$1,353 for 6 months. (GX 7 at 21.) As of the date of the hearing, he had complied with his Chapter 13 payment plan for 37 months. His plan is scheduled to be completed in November 2017. (AX V.)

Applicant was diagnosed with multiple sclerosis in April 2013. (Tr. 22.) His mobility difficulties were obvious at the hearing. (Tr. 18.) He was unaware of three delinquent medical copay bills incurred in the treatment for his multiple sclerosis, until he received the SOR and reviewed his credit bureau report (CBR). The medical debts are alleged in SOR ¶¶ 1.d (\$30), 1.e (\$108), and 1.h (\$93). He paid them in September 2015. (AX F, G, and H; Tr. 32-34.)

Applicant's monthly income is about \$6,639. His monthly expenses are \$4,062, including his Chapter 13 payments, leaving him a net monthly remainder of about \$2,577. (AX M.)

Applicant received top ratings in all performance categories for his first year on the job with his current employer, and he received a pay raise. (AX J; AX K.) A co-worker, who retired from the U.S. Navy after 25 years of service and who has known Applicant since April 2008, describes him as honest, trustworthy, and loyal. (AX Q.) Another coworker who has known Applicant since 1972 considers him a "class act," a loyal friend, and an inspiration. (AX R.) A Navy civilian employee, who has known Applicant for 27 years, considers him honest, trustworthy, loyal, and dedicated, with a great attitude and work ethic. (AX S.)

### **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 admissions, corroborated by his CBRs, 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"). Applicant's failure to pay his federal and state income taxes for tax year 2012 implicates AG 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same"), but it may not be an independent basis for denying a security clearance, because it was not alleged. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's failures to pay his federal and state taxes for these limited purposes.

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; and

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

AG ¶ 20(a) is not fully established. The bankruptcy alleged in SOR ¶ 1.c is recent and is his third use of the bankruptcy process. The debts alleged in the SOR ¶¶ 1.d-1.k are numerous, recent, and were not incurred under circumstances making them unlikely to recur. However, the bankruptcy petitions in 1990 and 1993, alleged in SOR ¶¶ 1.a and 1.b, are not recent.

AG ¶ 20(b) is established. Applicant's 18-months of unemployment, his pay reduction after his unemployment, his daughter's illness, and his own illness were conditions beyond his control. He has acted responsibly. Instead of walking away from his debts in 2012, he resolved his home mortgage loan by a short sale, resorted to a Chapter 13 bankruptcy, and has complied with his Chapter 13 payment plan for 37 months. When he became aware of three delinquent medical debts attributable to his own medical treatment, he paid them promptly.

AG ¶ 20(c) is established. His Chapter 13 necessarily would have included financial counseling, and his financial situation is under control

AG ¶ 20(d) is established. Applicant paid the copay bills for his medical treatment as soon as he became aware of them, and he has complied with his Chapter 13 payment plan for 37 months.

### **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 and I have considered the factors in 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 mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has 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**

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

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

Subparagraphs 1.a-1.k: For Applicant

**Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge