



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 12-09823
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel  
For Applicant: *Pro se*

10/13/2015

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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 granted.

**Statement of the Case**

Applicant submitted a security clearance application on June 14, 2012. On January 6, 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 29, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 30, 2015, and the case was assigned to me on July 13, 2015. On July 28, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 26, 2015. I convened the hearing as scheduled. Government

Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until September 11, 2015, to enable Applicant to submit additional documentary evidence. He timely submitted AX E, F, and G, which were admitted without objection. DOHA received the transcript (Tr.) on September 2, 2015.

### **Findings of Fact**

In his answer to the SOR, Applicant did not specifically admit or deny the three allegations. Instead, he explained that he was trying to negotiate a payment plan for the debt in SOR ¶ 1.a, that he had paid the debt in SOR ¶ 1.b, and that he was current on his payments on the debt alleged in SOR ¶ 1.c. I have treated his answer as a denial of all three allegations.

Applicant is a 37-year-old painter employed by a defense contractor at a naval shipyard. He has worked for his current employer since March 2012. He has never held a security clearance.

Applicant graduated from high school in August 1997. He attended college from August 1997 to December 1999 but did not receive a degree. He worked for various private-sector employers before he was hired for his current job. He was laid off from December 2010 to February 2011 and for about six weeks in 2011. (GX 2 at 5.)

Applicant married in October 2009. (AX B.) His wife has two children, ages 11 and 8, from previous relationships. He and his wife have two children, ages 5 and 3. (Tr. 78.)

The SOR alleges three debts, which are reflected on his credit bureau reports (CBRs) dated July 4, 2012, and October 23, 2014. (GX 4; GX 5.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: unsatisfied judgment for unpaid rent (\$6,660).** Applicant and his wife lived in an apartment with flexible rent, based on household income. The rent was adjusted every three months. The apartment was originally rented by his wife in 2007, before they were married. She was a single mother with two children and was employed. Her rent was around \$200 per month. She quit her job, notified the rental office that she was no longer employed, and asked that her rent be recomputed. She knew that unemployed tenants paid about \$25 per month. After not receiving a response from the rental office, she stopped paying rent. She lived in the apartment for a year without paying rent. (Tr.70-73.)

Applicant moved into the apartment after they were married in October 2009. He knew that his wife had not been paying any rent. (Tr. 48-48.) He wanted to sign a lease as a joint tenant with his wife, but the apartment manager delayed acting on his request until April 2010. After Applicant signed the lease, he and his wife began paying rent in

various amounts, because the apartment manager was vague on the amount they should pay. (Tr. 74.) In the fall of 2011, the apartment manager sued Applicant and his wife for \$12,000 in unpaid rent, based on the market rate of \$800 per month. They appeared in court without legal representation and contested the apartment manager's claim. In October 2011, the court entered a judgment for \$6,660 against Applicant and his wife. They were evicted, and they moved into another apartment, where they lived for about six months until it was destroyed by fire. (Tr. 51.)

In March 2014, Applicant and his wife offered to settle the debt for \$3,000. The apartment manager company rejected the offer, claimed that Applicant and his wife owed about \$12,000, and offered to set up a monthly payment plan for a \$12,000 balance. (GX 2 at 2; GX 3 at 3; AX E.) Applicant and his wife were unwilling to agree to a \$12,000 balance, and the apartment manager was unwilling to agree to a payment plan for the amount of the judgment. There was no payment plan in effect as of the date of the hearing. (Tr. 63-64.)

Applicant testified that he intends to use his federal income tax refund to settle the debt. He claimed a refund of \$5,591 on his federal income tax for 2014, but had not received it as of the date of the hearing. (Tr. 39; AX G.) Applicant and his wife want to buy a home, and they know that the unsatisfied judgment is an impediment to qualifying for a loan. (Tr. 58.)

**SOR ¶ 1.b: delinquent cable-service debt, referred for collection (\$88.).** This debt was referred for collection in October 2011. The debt has been paid and is not reflected on Applicant's October 2014 CBR. (Answer to SOR; GX 5; AX F; Tr. 33.)

**SOR ¶ 1.c: delinquent student loan, referred for collection (\$13,008).** The loan has been rehabilitated and is no longer in collection. Applicant pays \$31.88 per month, and the payments are current. (AX C; Tr. 61.)

Applicant's federal income tax return reflected gross income of \$47,801. (AX F.) He testified that his take-home pay is about \$2,500 per month, and he has about \$200 left each month after paying all his bills. (Tr. 56-57.) His wife has accepted an offer to return to her old job, where she will have weekly take-home pay of \$450. (Tr. 89.)

Applicant and his wife have not received formal financial counseling, but they have consulted with a bank loan officer, who has advised them on ways to manage their money and improve their credit rating. They have started keeping a written budget. (Tr. 59.)

Applicant's pastor has known him since early childhood. Applicant and his wife are deeply religious and very active in their church. Their pastor submitted a letter describing Applicant as a responsible and loving husband and father. (AX A.)

## 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”). 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, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is relevant to the judgment alleged in SOR ¶ 1.a, because Applicant's wife did not pay rent for her apartment for more than a year before they were married. Her conduct was a condition largely beyond his control. However, this mitigating condition is not fully applicable, because Applicant knew his wife's rent was in arrears and he voluntarily committed himself to liability for the debt.

AG ¶ 20(c) is not fully established. Applicant and his wife have not received financial counseling in the traditional sense, but they have received advice from a loan officer. They have followed the loan officer's advice and have substantially improved their financial situation.

AG ¶ 20(d) is established. The "good faith" required by this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Applicant has made a good-faith effort to resolve the unsatisfied judgment in SOR ¶ 1.a, and he has resolved the debts in SOR ¶¶ 1.b and 1.c.

A security clearance adjudication is not a debt-collection procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. It ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Applicant has demonstrated his good judgment, reliability, and trustworthiness with respect to the judgment in SOR ¶ 1.a. He has offered a lump-sum settlement, which was rejected. He has offered to set up a payment plan, but the creditor has insisted that any payment plan be for an amount that exceeds the judgment. Applicant and his wife are now in the process of accumulating sufficient funds to pay the amount of the judgment. If Applicant's income tax refund is paid as claimed, he will have most of the funds necessary to satisfy the judgment. Based on his credible testimony and his track record in resolving his other delinquent debts, I am confident that he will resolve the unsatisfied judgment as soon as he accumulates the funds necessary to do so.

AG ¶ 20(e) is established for the unsatisfied judgment. Applicant has disputed the amount of the debt claimed by the creditor because it exceeds the amount awarded by the court. His CBRs correctly reflect the amount of the judgment, but the creditor insists on a greater amount.

### **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 sincere, candid, and credible at the hearing. He and his wife are not financially sophisticated, but they have worked hard to achieve financial stability and resolve their debts. 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.c:

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