



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 13-01246
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

04/29/2014

**Decision**

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 on August 6, 2013. On December 16, 2013, 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 DOD on September 1, 2006.

Applicant received the SOR on January 6, 2014; answered it on January 14, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 24, 2014, and the case was assigned to me on January 29, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 30, 2014, scheduling the hearing for February 21, 2014. I

convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on March 4, 2014.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations. For the reasons set out below, I am not confident that his admissions of SOR ¶¶ 1.b-1.e were provident. His admissions of SOR ¶¶ 1.a, 1.f, and 1.g are incorporated in my findings of fact.

Applicant is a 27-year-old nuclear ship refueler employed by a defense contractor. (Tr. 31.) He has worked for his current employer since July 2013. He graduated from high school in June 2004. He was unemployed until October 2004. He attended college from January 2005 to January 2006 and from January to May 2009, but he did not obtain a degree. He worked in the food service industry from May to September 2008, when he quit his job because his supervisor told him he would be fired if he took a day off on his birthday. He was unemployed from September 2008 to March 2009. He worked at various seasonal and intermittent jobs until he began his current job. He has never married and has no children. He has never held a security clearance.

Since Applicant was 19 years old, he has pursued his dream of working as a freelance production assistant for a travel and game show. He testified that the pay was good when he was working, but it only lasted three to six months of the year. In between, he worked various intermittent jobs. He attributed his financial problems to the lack of consistent, steady employment. (Tr. 23-24.)

Applicant now makes from \$16.85 to \$17.30 per hour, depending on which shift he works. He estimates that his gross annual pay is around \$35,000 per year. (Tr. 34.) He is sharing an apartment with a friend and lives frugally. He estimates that he has a net monthly remainder of about \$433 after paying all his living expenses. (Tr. 40.) He has not received financial counseling. (Tr. 41.)

Except for the debt alleged in SOR ¶ 1.d, all the debts alleged in the SOR are reflected on his credit report. (GX 2.) The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a (delinquent student loan, \$5,945).** When Applicant submitted his security clearance application, he disclosed a delinquent student loan of about \$8,763 that was referred for collection in December 2012. The delinquent student loan was incurred in 2006 or 2007, when Applicant was in college. (Tr. 25-26.) His federal tax refund of \$1,308 was intercepted to partially pay this debt, and he is making payments by payroll deduction. (GX 1 at 41-42.) His pay vouchers reflect that \$86.77 was deducted from his pay for the pay period ending on January 19, 2014; \$66.65 was deducted for the pay period ending on January 26, 2014; \$83.80 was deducted for the pay period ending on February 9, 2014; and \$107.78 was deducted for the pay period

ending on February 15, 2014. (AX A.) He testified that he initiated the payroll deductions after he was notified that his wages would be garnished if he did not take action to repay the debt. (Tr. 36-37.)

**SOR ¶ 1.b (collection account for \$471).** This account was opened in July 2011 and referred for collection in August 2013. (GX 2 at 4.) Applicant testified that he did not recognize this account and has not tried to contact the collection agency. (Tr. 42-43.)

**SOR ¶ 1.c (collection account for \$339).** This account was referred for collection in March 2007. (GX 2 at 4.) Applicant testified that he did not recognize this account and has not attempted to contact the collection agency. (Tr. 43.)

**SOR ¶ 1.d (past-due account for \$2,237).** This debt is not reflected on Applicant's credit report (GX 2), and there is no other evidence in the record establishing it. Applicant testified that he did not recognize this debt, and he speculated that it might be related to the voluntary vehicle repossession that he disclosed on his security clearance application. He believed that his financial obligation was satisfied when he voluntarily surrendered the vehicle. His credit report reflects an automobile account with the same creditor that was closed with a zero balance, which is consistent with his testimony. (GX 2 at 5; Tr. 43-44.)

**SOR ¶ 1.e (collection account for \$1,164).** This account was referred for collection in September 2008. (GX 2 at 6.) Applicant did not recognize this account and has not attempted to contact the collection agency. (Tr. 44.)

**SOR ¶ 1.f (collection account for \$571).** This account was referred for collection in March 2009. (GX 2 at 6.) Applicant admitted having an account with the original creditor, but he has not taken any action to resolve it. (Tr. 44.)

**SOR ¶ 1.g (collection account for \$442).** This account was referred for collection in November 2012. Applicant attended the community college, the original creditor for this debt, but he testified that he did not know he had a remaining balance on his account. (Tr. 45.)

Applicant testified that he does not know how much he has in his bank account, even though he has a net remainder of more than \$400 each month and has been employed full time since July 2013. He could not explain how he spent the net remainder, other than on "everyday life things that come up." (Tr. 53-54.)

### **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 SOR alleges seven delinquent debts. 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).

The delinquent debt alleged in SOR ¶ 1.d is not established by the evidence. However, Applicant’s credit report and his admissions at the hearing establish the remaining debts and 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”).

Security concerns based on financial considerations may be mitigated by any of the following conditions:

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;

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; or

AG ¶ 20(f): the affluence resulted from a legal source of income.

None of the mitigating conditions are established. Applicant's delinquent debts are numerous, recent, and not the result of circumstances making them unlikely to recur. They are not the result of circumstances beyond his control. He has not sought or obtained counseling, He has not disputed any of the debts. Except for the student loan alleged in SOR ¶ 1.a, he has not initiated any action to resolve the debts. His payroll deductions for SOR ¶ 1.a were not a "good-faith" effort to repay the debt, because they were not initiated until he was threatened with garnishment. See ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011). Affluence is not at issue in this case.

### **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 and candid at the hearing. He has been drifting since age 19, pursuing a dream of being an entertainment producer. He has paid little attention to his income or his expenses. He has little understanding of his current financial situation. Even though he has been generating a net remainder of more than \$400 per month for six months, he does not know how much money he has or where his discretionary funds were spent. He has good intentions but no plan for resolving the debts in SOR ¶¶ 1.b-1.g.

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 based on financial considerations. 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**

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge