



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-02752
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

12/12/2014

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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 November 8, 2013. On July 29, 2014, 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 August 4, 2014; answered it on September 6, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 29, 2014, and the case was assigned to me on October 31, 2014. On the same day, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the hearing for November 18, 2014. I

convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Department Counsel's letter transmitting copies of GX 1 through 3 to Applicant was attached to the record as Hearing Exhibit (HX) I. Applicant testified but did not present the testimony of any witnesses or documentary evidence. I kept the record open until December 3, 2014, to enable him to present documentary evidence. He timely submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. Department Counsel's comments regarding AX A through F are attached to the record as HX II. DOHA received the transcript (Tr.) on December 3, 2014.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.e and denied SOR ¶¶ 1.f and 1.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 31-year-old employee of a federal contractor. Applicant's father is retired from the U.S. Navy. Both his parents are teachers, and they place a high value on education. (Tr. 26.)

Applicant attended college from August 2001 to May 2007, when he graduated with a bachelor's degree in geographical information science. (Tr. 38.) He worked various summer jobs while in college. Since graduating from college, he has worked about 20 hours a week as a production manager for a media company. From February to April 2009, he took an online course in graphic design, in order to improve his job qualifications. In April 2009, he was hired as a security officer for a federal contractor, and he received a security clearance from another government agency. In December 2009, he tore his left Achilles tendon, was unable to work, and was on unpaid leave for a year. (GX 1 at 12-19.) In April 2010, while he was recovering, his home was destroyed by fire. He lost everything, and he moved in with his parents. (Tr. 84; AX D; AX E.) While living with his parents, he contributed \$400 to \$500 per month to the household expenses. (Tr. 83.) In December 2010, he injured the right Achilles tendon and was placed on unpaid leave again.

While recuperating from his two injuries, Applicant worked at home and earned a small income from graphic design work. His injuries were not covered by insurance. (Tr. 31-32.) He informed his creditors that he was incapacitated and unable to work full time. (Tr. 81.) Since April 2010, he has worked about 30 hours a week as a marketing manager for a federal contractor, who is sponsoring him for a clearance. (Tr. 39-40.) He is still working 20 hours a week as a production manager for the media company. (Tr. 40-41.)

Applicant was living with his parents when he submitted his security clearance application. (Tr. 84-85.) He moved out when he married in July 2014. (Tr. 82.) His wife started a new business related to the entertainment industry, but it is not yet generating income. (Tr. 43.) Applicant earns about \$2,000 per month, and his mother-in-law gives

him and his wife about \$500 per month. Applicant's monthly expenses are about \$1,900. (Tr. 45-46.)

In addition to the debts alleged in the SOR, Applicant's December 2013 credit bureau report (CBR) reflected eight student loans in deferred status and three student loans on which payments were current. It also reflected a car loan and one credit card account that were current. It reflected one credit card account that was 90 days past due that was closed and purchased by another lender in December 2007. (GX 2 at 4-7.) Applicant has paid off the loan on his eight-year-old car. (Tr. 83.)

The evidence regarding the delinquent debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: student loan past due more than 120 days, in the amount of \$5,621.** The payments on this loan were reflected as current in a May 2009 CBR. (GX 3.) In his answer to the SOR, Applicant stated that he has been paying \$100 per month on this debt since May 2014. After ten months, the account will be current. His account record reflects that the forbearance period on this debt ended in September 2009 and that he made monthly \$50 payments in July through October 2012, when he stopped making payments. He restarted a rehabilitation program in May 2014, making monthly \$100 payments from May through November 2014. (AX C.)

At the hearing, Applicant testified that he began making payments on his student loans after the six-month deferment period ended, but he defaulted on this loan because he mistakenly believed that payments on this loan were included in his other student-loan payments. He believes the loan will be rehabilitated after the January 2015 payment. (Tr. 27-28, 50-51.) Once the loan is rehabilitated, his payments will be \$50 per quarter, but he intends to continue making monthly \$100 payments in order to pay off the loan sooner. (Tr. 71-72)

**SOR ¶¶ 1.b and 1.c: two student loans placed for collection in January 2013 for \$17,984 and \$11,056.** In his answer to the SOR, Applicant stated he has been paying the collection agency \$150 per month in two \$75 increments since September 2013. His bank statement reflects a \$150 payment in January 2014, two \$75 payments per month in February through July 2014, one \$75 payment in August 2014, two \$50 payments per month in September and October 2014, and two \$75 payments in November 2014. (AX A.)

**SOR ¶¶ 1.d and 1.e: medical bills placed for collection in September 2011 and October 2011 for \$2,669 and \$1,800.** The December 2013 CBR reflects that these debts are disputed. (GX 2 at 9.<sup>1</sup>) Applicant testified that the dispute was based on his belief that the medical expenses were covered by insurance. (Tr. 90-91.) In his response to the SOR, he stated that he had been paying a total of \$30 per month on both debts since 2012. Under his payment agreement, he made payments of \$18 and

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<sup>1</sup> The page numbers of the CBRs are indicated in the top right corner of each page.

\$12 per month from December 2013 through March 2014, one \$18 payment in April through June 2014, and one \$30 payment per month from July 2014 through November 2014. (AX B; AX F.)

**SOR ¶ 1.f: medical bill placed for collection in May 2011 for \$1,545.** Applicant denied this debt in his answer to the SOR “until further information.” He stated that he was not sure if the debt was related to the payments he had made to a collection agency. At the hearing, he testified that he had been paying \$50 per month on this debt, and that he paid it in full during the summer of 2013, after being informed by the collection agency that his balance had been reduced to \$300. (Tr. 79-80.) He did not present any documentary evidence that the debt had been paid in full.

**SOR ¶ 1.g: department store charge account placed for collection on an unknown date for \$336.** Applicant denied this debt in his answer to the SOR. It is reflected in the May 2009 CBR as having been charged off in October 2007. (GX 3 at 7.) The December 2013 CBR reflects that the account is a “paid charge off” with a zero balance. (GX 2 at 8.) At the hearing, Department Counsel withdrew this allegation. (Tr. 14.)

### **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 three delinquent student loans (SOR ¶¶ 1.a-1.c) and three delinquent medical bills (SOR ¶¶ 1.d-1.f.) The allegation of a delinquent department store charge account (SOR ¶ 1.g) was withdrawn.

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 and 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 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 debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant encountered periods of underemployment and was unable to work as a security officer because of his injuries. These conditions were largely beyond his control. He has acted responsibly by keeping in contact with his creditors, negotiating payment agreements, and making regular payments to the extent that he was financially able.

AG ¶ 20(c) is partially established. Applicant has not sought or received financial counseling, but there are “clear indications” that his financial problems are being resolved.

AG ¶ 20(d) is established. Applicant is on the verge of rehabilitating the student loan in SOR ¶ 1.a. He is making regular payments on the student loans in SOR ¶¶ 1.b and 1.c and the medical bills in SOR ¶¶ 1.d and 1.e. He testified that he paid the medical bill in SOR ¶ 1.f, but he has not corroborated his testimony with documentary evidence. It is well settled that adverse information from a credit report will normally meet the requirement in Directive ¶ E3.1.14 that an allegation be supported by substantial evidence. ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010.) The lack of documentary evidence leaves the status of this debt uncertain. However, even if this debt is unresolved, the evidence as a whole establishes a good-faith effort to resolve his debts. A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has methodically addressed his delinquent debts and is well on his way to resolving them.

AG ¶ 20(e) is not established. Applicant initially disputed two medical debts, believing that they should have been covered by insurance. At the hearing, however, he did not dispute any of the debts alleged in the SOR.

### **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 has worked regularly while in college and after graduation. He has often worked multiple jobs in order to pay his financial obligations. He is making steady progress in resolving his debts. He learned the value of education, hard work, and perseverance from his parents. He was candid, sincere, and credible at the hearing.

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 based on financial considerations. 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.f:	For Applicant
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Subparagraph 1.g:	Withdrawn
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### **Conclusion**

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