



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



In the matter of: )  
)  
) ISCR Case No. 14-00330  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

09/19/2014  
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**Decision**  
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DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Clearance is denied.

**Statement of the Case**

On February 28, 2014, the Department of Defense (DOD) 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; Department of Defense 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 could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. March 7, 2014, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On April

30, 2014, Department Counsel compiled the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 9.

On May 5, 2014, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any objections or any additional matters within 30 days of its receipt. Applicant received the FORM on May 13, 2014, and did not submit any objections or additional matters within the allotted period. The case was assigned to me on September 15, 2014. Items 1 through 9 in the FORM are admitted into evidence.<sup>1</sup>

### **Findings of Fact**

Applicant is a 55-year-old security officer who works for a defense contractor. He has been working for his current employer since April 2011. He retired from the U.S. Army after serving on active duty from August 1978 to August 2000 and attaining the grade of sergeant first class (E-7). He earned a bachelor's degree in 2007, a master's degree in 2009, and another master's degree in 2011. He is married and has two adult children. He held a security clearance in the Army as a member of the military police.<sup>2</sup>

The SOR alleged that Applicant had two delinquent debts totaling \$28,176. In his Answer to the SOR, Applicant admitted each allegation with comments. His admissions are incorporated as findings of fact.<sup>3</sup>

In his Electronic Questionnaire for Investigations Processing (e-QIP) dated October 18, 2012, Applicant stated that he has operated a part-time real estate business since April 2003 and has been working as a real estate broker for that business since January 2005. In the e-QIP, he also disclosed that he had two delinquent debts, *i.e.*, the debt in SOR ¶ 1.a for over \$21,000 and a bank debt for \$2,247 that he stated was paid in full. He further noted that, when the real estate market crashed, he took a financial hit and enrolled with a credit counseling service to resolve his financial problems.<sup>4</sup>

In the e-QIP, Applicant also indicated that the debt in SOR ¶ 1.a resulted in a default judgment being entered on April 9, 2010, and, eleven days later, the court

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<sup>1</sup> In the FORM, Department Counsel discussed Applicant's interview with an Office of Personnel Management (OPM) investigator on January 4, 2013. However, the summary of the OPM interview was not included in the FORM. In the absence of evidence supporting Department Counsel's comments about that interview, those comments are disregarded.

<sup>2</sup> Item 4. In Section 15 of the e-QIP, Applicant indicated that he was not discharged from the military, but noted in Section 13A.6 that he was retired. He may not have realized that he was discharged when he retired.

<sup>3</sup> Items 1 and 3.

<sup>4</sup> Item 4. A credit report confirmed that the bank debt was satisfied. See Item 5.

dismissed the case against him. In the comments section of the e-QIP, he stated “[the creditor] took me to court as the guarantee” of this debt. In his Answer to the SOR, he reiterated the court case against him was dismissed, noted the debt belonged to his real estate business, and indicated the debt should be removed from his credit report. He also stated that he tried several times to have the creditor remove this debt from his credit report, but it refused.<sup>5</sup>

In his Answer to the SOR, Applicant indicated the debt in SOR ¶ 1.b was for a credit card that became delinquent when the real estate market crashed. A credit report indicated the last reported delinquency on this debt was in November 2012. Applicant stated that he tried to get the creditor to add this debt to his debt repayment plan with the credit counseling service, but the creditor apparently had already transferred the debt to a collection agency. He stated that he contacted the collection agency and began making monthly payments of \$50 toward this debt. He indicated that he made two \$50 payments in 2014. He also noted that his working hours in his current job were cut, and he was in the process of obtaining another full-time security position.<sup>6</sup>

Applicant’s credit report of December 18, 2013, listed the debt in SOR ¶ 1.a as a charged-off account with a balance of \$22,068. It indicated the last payment on that account was in February 2010, and contained the following entry, “\*\*Consumer statement\*\* Y Item disputed by consumer This debt is a corporate account consumer is not liable per court decision.” The credit report also listed the debt in SOR ¶ 1.b as a collection account with a balance of \$6,108 and indicated the last payment on that account was in September 2013.<sup>7</sup>

Applicant’s credit report of April 28, 2014, continued to list the debt in SOR ¶ 1.a as a charged-off account with a balance of \$22,068 and contained no indication the debt was disputed. The credit report also continued to list the debt in SOR ¶ 1.b as an unpaid collection account with a balance of \$6,008.<sup>8</sup>

Court records submitted by Department Counsel reflected that a default judgment was entered against Applicant’s real estate business for the debt in SOR ¶ 1.a on April 9, 2010, and that a complaint against Applicant was dismissed on April 20, 2010. The court record does not indicate the reason why the complaint against Applicant was dismissed.<sup>9</sup>

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<sup>5</sup> Items 3-8.

<sup>6</sup> Items 3, 5, 6, and 8.

<sup>7</sup> Item 6.

<sup>8</sup> Item 8.

<sup>9</sup> Item 7.

Applicant provided no proof of payments towards the delinquent debts. He also provided no evidence concerning the quality of his professional performance, the level of responsibility of his duties, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.<sup>10</sup>

## 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 AGs. These guidelines 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, to reach his 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.

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<sup>10</sup> Items 1-9.

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 Financial Considerations 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 two delinquent debts that he was unable or unwilling to pay over 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.

Applicant disputes the debt in SOR ¶ 1.a. In April 2010, a court entered a default judgment against Applicant's real estate business for this debt and dismissed a complaint against him. The court record does not indicate why the complaint against Applicant was dismissed. Later, Applicant tried to have the creditor remove this debt from his credit reports, but the creditor refused to do so. He disputed the debt with the credit reporting agencies, but it remains on his credit report as a delinquent debt. In the e-QIP, he indicated the creditor proceeded against him in court as the "guarantee" of the debt. From the evidence presented, I cannot find that Applicant has provided sufficient documentary proof to substantiate that he has a reasonable basis for disputing the legitimacy of this debt. In other words, he failed to provide enough evidence to establish that he was not personally liable for the debt in SOR ¶ 1.a. AG ¶ 20(e) does not apply.

Applicant's delinquent debts are on-going, significant, and long-standing. Based on the evidence presented, I cannot find that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to the crash of the real estate market. He also noted that his working hours in his current job have been cut. Those events are conditions beyond his control that contributed to his financial problems. When exactly the real estate market downturn impacted him is unknown. Furthermore, he has not

established that he has acted responsibly under the circumstances in attempting to resolve these debts. His e-QIP indicates that he has been continuously employed since at least July 2008. Little is known about his financial situation. The amount of his monthly income, expenses, and debt payments are unknown. From the evidence presented, I cannot determine whether he could or could not have taken earlier or more aggressive steps to resolve these debts. AG ¶ 20(b) does not apply.

Applicant has sought the assistance of a credit counseling service to resolve some non-alleged debts. He attempted to include the debt listed in SOR ¶ 1.b in a debt repayment plan, but the creditor apparently transferred that debt to a collection agency. He stated that he started to make \$50 payments to the collection agency. The balances of this debt on his credit reports indicated that he made two \$50 payments toward that debt. This evidence is insufficient to conclude he has made a good-faith effort to repay it. No evidence of any payments toward the debt in SOR ¶ 1.a was provided. From the evidence presented, I cannot find that Applicant's financial problems are under control or are being resolved. AG ¶¶ 20(c) and 20(d) do not 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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 served in the Army for 22 years and retired in the grade of sergeant first class. He reported no criminal record, drug involvement, or alcohol-related issues on his e-QIP. Nevertheless, his financial problems remain a security concern

because he has failed to show that he is addressing those debts in a responsible manner.

Overall, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant

### **Decision**

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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James F. Duffy  
Administrative Judge