



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



In the matter of: )  
)  
) ISCR Case No. 14-00779  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

11/18/2014

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 11, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance. On June 3, 2014, Applicant answered the SOR and requested a hearing. This case was assigned to me on August 18, 2014.

On September 10, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for September 23, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3, while Applicant testified and offered Applicant Exhibits (AE) A through E. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on October 3, 2014.

### **Procedural Matter**

Applicant waived the 15-day notice requirement under ¶ E3.1.8 of the Directive.<sup>1</sup>

At the hearing, Department Counsel made a motion to withdraw the allegation in SOR ¶ 1.d. Applicant had no objection to the motion. The motion was granted, and SOR ¶ 1.d was withdrawn.<sup>2</sup>

### **Findings of Fact**

Applicant is a 38-year-old computer graphic illustrator who is being sponsored for a security clearance by a defense contractor. He earned a bachelor's degree in 2001. He also attended post-graduate school from 2001 to 2003, but did not obtain an additional degree. He is married and has two children, ages 14 and 16. This is the first time that he has sought to obtain a security clearance.<sup>3</sup>

Excluding the withdrawn allegation, the SOR alleged that Applicant had four delinquent debts totaling about \$99,285 (SOR ¶¶ 1.a-1.c and 1.e). In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings of fact. The largest debt (SOR ¶ 1.e, student loans placed for collection for \$93,455) amounts to 92% of his delinquent debt.<sup>4</sup>

Applicant acknowledged that he made financial mistakes and stated that he did not take his debts as seriously as he should have. He had a two-month period of unemployment in 2006. With the exception of that two-month period, he had been continuously employed from January 2001 until he lost his job in June 2014 due to the withdrawal of his interim security clearance. He also has been working as a part-time pizza delivery driver since March 2011. At the time of the hearing, his part-time job was his only income and he indicated that he was one payment behind on his mortgage.

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<sup>1</sup> Tr. 11.

<sup>2</sup> Tr. 44-45.

<sup>3</sup> Tr. 6-7, 23-24; 27-GE 1, 2.

<sup>4</sup> Applicant's Answer to the SOR.

When working full-time, he estimated that he had a net monthly remainder of about \$500, but stated he was living paycheck-to-paycheck.<sup>5</sup>

SOR ¶ 1.a – judgment entered May 2013 for \$2,635. This was a retail store credit card account. From July 1, 2013, to September 2014, Applicant made monthly payments of about \$50 toward this debt. At the time of the hearing, those payments totaled \$741. He indicated that, after having his pay garnished for another debt, he has been proactive on paying this one. Under the repayment agreement, he is only required to pay \$45 per month toward this debt, but pays a little more to resolve it in a shorter period. He has continued making the payments even though he has been laid off from his primary job since June 2014.<sup>6</sup>

SOR ¶ 1.b – collection account in the amount of \$2,528. This was a retail store charge account that had a date of last activity of February 2009. Applicant and his wife purchased a washer and dryer at the retail store for about \$1,100 and the remainder of this debt constitutes penalties and interest. He has not made any payments on this collection account or reached out to the creditor because he currently has no money to pay toward this debt.<sup>7</sup>

SOR ¶ 1.c – collection account in the amount of \$667. This was a bank debt for consumer purchases that was placed for collection in March 2011. Applicant presented no proof of payments or of efforts to resolve this debt.<sup>8</sup>

SOR ¶ 1.e – student loan accounts placed for collection totaling \$93,455. After marrying, Applicant and his wife attended college together for four years. They primarily financed their studies through student loans, but also had work-study jobs. At some point, their student loans were been combined, and the amount reflected above represents the total of their student loans. During an Office of Personnel Management (OPM) interview in November 2013, Applicant was questioned about these loans and indicated that he was attempting to negotiate a payment plan. His income tax refund for 2013 of about \$2,000 was withheld and applied to the student loans. In May 2014, his wife contacted the creditor holding the student loans and entered into a rehabilitation program. Under that program, they were initially required to make nine consecutive monthly payments of \$150 to rehabilitate the student loans. They made \$150 payments in May, June, and July, before they were unable to continue doing so because Applicant lost his job. Due to that loss of employment, the creditor reduced the rehabilitation payments to \$5 per month. They made the \$5 payments for August and September 2014. When asked why he defaulted on the student loans, Applicant indicated that he

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<sup>5</sup> Tr. 23-25, 31-35, 37-40; GE 2, 3; AE B, C.

<sup>6</sup> Tr. 40-41; GE 3; AE B.

<sup>7</sup> Tr. 41-43; GE 3.

<sup>8</sup> Tr. 43-44; GE 3.

mistakenly thought they were under a hardship deferment. He thought the hardship deferment ended in early 2014, but realized they may have become due earlier when his income tax refund was withheld.<sup>9</sup>

Applicant indicated that he plans to resolve the smaller debts before moving on to resolve the larger ones. His wife does not work. Since graduating from college, she has only worked outside the home for about two or three months in a part-time job. His credit report reflected that he satisfied a \$969 judgment not alleged in the SOR in June 2013; that he had five opened accounts paid as agreed; and that, excluding the alleged debts, he had four closed accounts with zero balances.<sup>10</sup>

A retired command master sergeant who has known Applicant for over 18 years described him as a man of integrity and an outstanding family man. He also stated that Applicant is loyal and totally trustworthy.<sup>11</sup>

A coworker stated that Applicant has excellent moral character and takes seriously the trust placed in him. Another coworker described him as a dependable, decent, hardworking, and trustworthy person.<sup>12</sup>

Applicant's pastor, who has known Applicant for over 18 years and served as his pastor for over 10 years, stated:

During all the years that I have been associated with [Applicant], his character has been impeccable! He is a very devoted husband and father who strives to be an exemplary role model. He has left a very positive impact on the young adults that were under his leadership while serving as our youth pastor. I know [Applicant] to be a very moral, honest, and sincere individual in his everyday activities within the community where he and his family live.

\* \* \*

Because of his commitment to his nation and employer, [Applicant] would never compromise his position in any way. His upstanding moral character would prevent him from doing anything dishonest that would jeopardize his career or his commitment to his employer or our nation.<sup>13</sup>

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<sup>9</sup> Tr. 28-31, 42-43, 45-50; GE 2, 3; AE C-E.

<sup>10</sup> Tr. 32, 47; GE 3.

<sup>11</sup> AE A.

<sup>12</sup> AE A.

<sup>13</sup> AE A.

## 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 adjudicative guidelines. These AGs 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.

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 delinquent debts that he was unable or unwilling to satisfy. This evidence is sufficient to raise the above disqualifying conditions.

Four 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; and

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

Applicant's delinquent debts are ongoing and significant. He admitted that he made mistakes in handling his finances. He attributed his financial problem to having a family of four that struggled on a limited income. Perhaps, his biggest mistake was not properly addressing his student loans when they came out of a hardship deferment. From the evidence presented, he failed to establish that his financial problems were the result of conditions beyond his control or that those problems are unlikely to recur. AG ¶¶ 20(a) and 20(b) do not apply.

In June 2013, Applicant satisfied one delinquent debt that was not alleged in the SOR through the garnishment of his pay. Before the initiation of the security clearance process, he initiated a repayment plan for the judgment in SOR ¶ 1.a and has been making consistent monthly payments under that plan. He evidently initiated that repayment plan to avoid another garnishment. Additionally, he entered into an agreement to rehabilitate his student loans after issuance of the SOR. He made three \$150 payments under that agreement until he lost his job in June 2014. Since then, the rehabilitation agreement has been modified to reduce the payments to \$5 per month, and he has continued to make the payments in the reduced amount. He provided no proof of financial counseling. In general, he failed to show that he acted responsibly in addressing his delinquent debts or that his financial problems are under control and are being resolved in a realistic manner. His financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(d) partially applies. AG ¶ 20(c) does 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.

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. AG ¶ 2(c).

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 is a devoted husband and father who is active in the community. He is a hard-working, valued employee. He often works weekdays and most weekends as a pizza delivery driver. There is no indication that he or his family live extravagantly. Nevertheless, he failed to show that he has acted responsibly in the handling of his finances. Despite the presence of some mitigation, security concerns remain.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant failed to mitigate the financial considerations security concerns.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b -1.c:	Against Applicant
Subparagraph 1.d:	Withdrawn
Subparagraphs 1.e:	Against Applicant

### **Decision**

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

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James F. Duffy  
Administrative Judge