



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 14-00990  
 )  
 Applicant for Security Clearance )

**Appearances**

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

11/13/2014

**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 July 17, 2013. On April 28, 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 June 13, 2014; answered it on July 21, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 14, 2014, and the case was assigned to me on August 19, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 20, 2014, scheduling the hearing for September 11, 2014. I convened the

hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Department Counsel's letter to Applicant transmitting copies of the documents she intended to submit at the hearing is attached to the record as Hearing Exhibit (HX) I. Applicant testified but did not call any witnesses or submit any documents. I kept the record open until September 26, 2014, to enable him to submit documentary evidence. On September 26, 2014, Applicant requested one additional week to gather and submit documents, and I granted his request. (HX II.) He timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. Department Counsel's comments regarding AX A are attached to the record as HX III. DOHA received the transcript (Tr.) on September 25, 2014.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted ¶¶ 1.a, 1.d, 1.f, 1.h-1.j, and 1.l. He denied ¶¶ 1.b, 1.c, 1.e, 1.g, 1.k, and 1.m-1.q. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 33-year-old employee of a defense contractor. He has worked for his current employer since October 2010. He worked for another defense contractor from August 2008 to September 2010. He served in the U.S. Navy from January 2002 to August 2008 and received an honorable discharge. He has held a security clearance since August 2003.

Applicant married in September 2002 and divorced in February 2008. He married again in September 2008 and separated in November 2010. He has a nine-year-old stepdaughter. He has shared living expenses with his current cohabitant since the fall of 2013. (Tr. 40.)

Applicant was injured in a motorcycle accident in March 2012. He was hospitalized for two weeks and unable to work for about four months.<sup>1</sup> (Tr. 36.) His only income during his recovery period was disability pay. He usually earned net pay of about \$1,200 per two-week pay period, but his income dropped to about \$900 per pay period while he was disabled. (GX 3 at 10; Tr. 82.) His federal income tax records reflect that his gross wages for 2011 were \$47,181; but in 2012 they dropped to \$36,423. (AX A at 3-4.)

The SOR alleges 17 delinquent debts, which are listed in Applicant's credit bureau report (CBR) dated August 9, 2013 (GX 2.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a, judgment for unpaid rent filed in January 2014 (\$2,486).** Applicant admitted this debt. He has not taken any action to resolve it. (Tr. 41.)

---

<sup>1</sup> In a personal subject interview (PSI) in August 2013, Applicant stated that he was unable to work for two months. (GX 3 at 10.) In his Answer to the SOR, he stated that he was unable to work for five months. At the hearing, he clarified that he was unable to work from March to July, a period of about four months.

**SOR ¶ 1.b, judgment filed in June 2012 (\$7,728).** Applicant denied this debt because he disagreed with the amount. (Tr. 50.) The debt arose from Applicant's purchase of a motorcycle. He fell behind on his payments before his motorcycle accident and was trying to negotiate an agreement. The lender filed suit against him in January 2012. The case was continued twice, in February 2012 and April 2012, and a default judgment was entered against him in June 2012. (GX 4 at 5.) Four garnishments were imposed in October 2012, June 2013, September 2013, and May 2014. (GX 4 at 7.) Applicant testified that \$1,500 also was seized from his credit union account. (Tr. 58.) Although the amount of the debt has been reduced by the garnishments, it remains unresolved.

**SOR ¶ 1.c, personal loan, charged off and referred for collection in November 2009 (\$2,439).** In his response to the SOR, Applicant denied this debt because it was charged off. At the hearing, he admitted that he owed the money and has not resolved the debt. (Tr. 60-61.)

**SOR ¶ 1.d, personal loan, charged off in February 2013 (\$1,330).** Applicant admitted this debt. He has not taken any action to resolve it. (Tr. 42.)

**SOR ¶ 1.e, personal loan, charged off in September 2012 (\$590).** In his response to the SOR, Applicant denied this debt because it was charged off. At the hearing, he admitted that he owed the debt and has not resolved it. (Tr. 61.)

**SOR ¶ 1.f, cell phone account, referred for collection in September 2012 (\$393).** Applicant admitted this debt. He contacted the creditor in July 2014 to determine what was required to set up a payment agreement, but he had not reached an agreement as of the date the record closed. (Tr. 43-45.)

**SOR ¶ 1.g, cell phone account, referred for collection in February 2012 (\$636).** In his response to the SOR, Applicant denied this debt. At the hearing, he admitted that he owed the debt and it is unresolved. (Tr. 62.)

**SOR ¶ 1.h, fitness club account, referred for collection in July 2012 (\$592).** Applicant admitted this debt but has not taken any action to resolve it. (Tr. 43.)

**SOR 1.i, cell phone account, referred for collection in March 2013 (\$548).** Applicant admitted this debt but has not taken any action to resolve it. (Tr. 46.)

**SOR ¶ 1.j, self-storage bill, referred for collection in July 2012 (\$448).** Applicant admitted this debt. His property in the storage unit was seized. He contacted the creditor, but he was unable to negotiate a payment agreement. (Tr. 46-48.)

**SOR ¶ 1.k, medical bill, referred for collection in August 2012 (\$348); SOR ¶ 1.m, medical bill, referred for collection in August 2012 (\$293); SOR ¶ 1.n, medical bill, referred for collection in August 2012 (\$272); and SOR ¶ 1.p, medical bill, referred for collection in August 2012 (\$170).** Applicant denied these debts. After his

motorcycle accident, he was hospitalized in a civilian facility and then transferred to a military medical facility. His treatment record at the military facility reflects that his treatment was covered by TRICARE. (AX A at 5.) When he received medical bills from the civilian facility, he sent them to his private insurance company. He received collection letters from the civilian providers, but he ignored them because he was waiting for the insurance company to pay the medical bills. (GX 3 at 12-13; AX A at 6.) At the hearing, he admitted that he had not followed up on the status of his medical debts since 2012. (Tr. 64.)

**SOR ¶ 1.i, self-storage bill, referred for collection in June 2012 (\$308).**

Applicant admitted this debt for a second storage unit. His property was seized, but the debt is not resolved. (Tr. 48-49.)

**SOR ¶ 1.o, cable service bill, referred for collection in August 2012 (\$266).**

In his answer to the SOR, Applicant denied this debt. At the hearing, he admitted that he owed the debt and it is unresolved. (Tr. 65.)

**SOR ¶ 1.q, insurance bill, referred for collection on an unknown date (\$99).**

Applicant denied this debt because he still has insurance with the same company. He has not contacted the insurance company to determine the basis for the \$99 debt. It is unresolved. (Tr. 66-67.)

In June 2013, Applicant borrowed about \$35,750 to buy a new truck. He has a 75-month loan with payments of \$728 per month. Both Applicant and his cohabitant obtained the loan, because Applicant's credit rating was too low to obtain a loan. He needed to replace his truck because his old one broke down, but he had no explanation for not buying a less expensive vehicle. (Tr. 86-88.)

Applicant submitted a personal financial statement (PFS) in response to DOHA interrogatories reflecting net monthly income of \$1,132, expenses of \$1,262, and debt payments of \$250 per month. (GX 3 at 7.) He testified that the PFS is inaccurate, and his net monthly remainder is about \$250 or \$300. After the hearing, he submitted an updated PFS reflecting monthly income of \$3,200. He listed housing expenses of \$1,275; transportation expenses of \$1,116 (including the \$736 payment on the new truck); food cost of \$300; personal care costs of \$100; federal and state taxes of \$536; and contributions to retirement account of \$73, leaving a monthly shortfall of \$200. (AX A at 2.) His updated PFS does not provide for any debt payments, other than the loan for the new truck.

### **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 17 delinquent debts totaling about \$19,000. 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, testimony at the hearing, and August 2013 CBR 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").<sup>2</sup> The following mitigating conditions are potentially relevant:

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;

---

<sup>2</sup> Applicant's purchase of a new truck in spite of his inability to pay his debts would appear to raise AG ¶ 19(e) ("consistent spending beyond one's means"), but it is not alleged in the SOR. As such, it cannot be used as an independent basis for denying or revoking his security clearance. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have his purchase of the truck for these limited purposes.

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 and ongoing. His motorcycle accident is a circumstance not likely to recur, but his payments on the motorcycle were delinquent before the accident.

AG ¶ 20(b) is not established. Applicant's motorcycle accident was a circumstance beyond his control, but the payments on the motorcycle were delinquent before the accident, and he has not acted responsibly after returning to work. He contacted the creditors for the debts in SOR ¶¶ 1.f, 1.j, and 1.l, but he has taken no significant actions to resolve his other debts.

AG ¶¶ 20(c) and 20(d) are not established. Applicant has not sought or received financial counseling. He has made no payments and negotiated no payment agreements. The collections for the debt in SOR ¶ 1.b were by involuntary garnishment, which does not constitute a good-faith effort to repay the debt.

AG ¶ 20(e) is not established. Applicant disputed the amount of the debt in SOR ¶ 1.b, but not the underlying debt. He justifiably believes that some of his medical debts should have been paid by TRICARE or private insurance, but has taken no action since 2012 to resolve the question whether his medical care was covered.

### **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 for his current employer since October 2010, previously served honorably in the U.S. Navy, and has held a security clearance since August 2003. However, he has paid little attention to his financial obligations. He recently incurred a \$35,000 debt to buy a new truck, even though he could not qualify for a loan in his own name. He appears to have no grasp of his financial situation and little understanding of the importance of being financially responsible.

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 continue his 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.q: Against Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge