



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-01995
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2015

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on October 10, 2013. On April 7, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E.<sup>1</sup> 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 the DOD on September 1, 2006. Applicant answered the SOR in an undated document. On July 24, 2015, he requested a hearing before an administrative judge. (Hearing Exhibit (HX) I.) Department Counsel was ready to proceed on August 19, 2015, and the case was assigned to me on August 31, 2015.

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<sup>1</sup> The SOR also alleged security concerns under Guideline G (Alcohol Consumption), but the Guideline G allegations were withdrawn at the hearing.

On September 8, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 22, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 17 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until October 9, 2015, to enable him to submit additional documentary evidence. He timely submitted AX D through I, which were admitted without objection. DOHA received the transcript (Tr.) on September 30, 2015.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.c, 1.g, 3.b-3.f, and 3.h-3.n. He denied SOR ¶¶ 1.a, 1.b, 1.d-1.f, 2.a, 3.a, and 3.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 52-year-old aircraft mechanic employed by federal contractors since March 2007. He served on active duty in the U.S. Navy from February 1987 to February 2007, and retired as a petty officer first class (E-6). (AX C.) He received an associate's degree from a technical college in February 2009. He has never held a security clearance. (Tr. 14.)

The SOR alleges seven delinquent debts. The evidence concerning these allegations is set out below.

**SOR ¶ 1.a: Judgment for \$192,000, filed in June 2009.** Applicant denied this debt. It is reflected on his October 2013 credit bureau report (CBR), but not on his June 2014 CBR (GX 3; GX 4 at 5.) The October 2013 CBR and court records submitted by Applicant reflect that the judgment was entered against a defendant who has the same first and last names as Applicant, but the listed defendant has a middle name. Applicant's SCA and military records reflect that he has no middle name. (GX 1 at 5; AX C.) Applicant's evidence refutes this allegation.

**SOR ¶ 1.b: Delinquent second mortgage loan charged off for \$76,320 in March 2008.** This debt arose when Applicant was unable to make the payments on an investment property, because the tenants stopped paying rent. (Tr. 59.) He denied this debt, asserting that it was resolved. There were two mortgages on the property. The loan secured by the first mortgage was settled by a short sale for less than the full balance, and the first mortgage was released as satisfied. Applicant signed an unsecured promissory note for \$20,000 to resolve the second mortgage and testified that he paid it, but he submitted no documentary evidence of payment. The debt is not resolved. (GX 3 at 3; GX 4 at 4; AX A; AX B; Tr. 62-67.)

**SOR ¶¶ 1.c and 1.d: Credit card account charged off for \$15,615 in August 2010; placed for collection for \$13,589 in August 2013.** Applicant admitted these debts. The debt alleged in SOR ¶ 1.c was purchased by the lender alleged in SOR ¶ 1.d. Applicant entered into a payment agreement in September 2015, providing for \$650

payments to be made by automatic debit beginning on September 25, 2015. (GX 4 at 5; AX D; AX E; AX F; Tr. 67-68.)

**SOR ¶ 1.e: Medical debt for \$36, placed for collection in December 2009.** Applicant denied this debt, asserting that it was resolved. He provided a confirmation number but no documentation of payment. (Answer to SOR.) It is reflected as unpaid in his June 2014 CBR. (GX 3 at 1; GX 4 at 5.) It is not resolved.

**SOR ¶ 1.f: Debt for \$107 to digital video disk (DVD) club, placed for collection in May 2013.** Applicant denied this debt, claiming that he had no information about this debt. It is reflected on his October 2013 CBR but not in his June 2014 CBR. (GX 3; GX 4 at 15.) At the hearing, he testified that he tried to resolve the debt, but the original creditor could not find a record of the debt without an account number, which he did not have. (Tr. 71.) In his post-hearing submission, Applicant stated that he has been unable to locate the collection agency. (AX D.)

**SOR ¶ 1.g: Debt to investment club, placed for collection for \$3,748 in October 2013.** Applicant admitted this debt, which is reflected in his October 2013 CBR. (GX 4 at 14.). In his answer, Applicant stated that he had a payment plan in progress. In May, June, and July 2015, Applicant made three payments of \$1,049 on this debt. (AX E; AX G.) At the hearing and in his post-hearing submission, he stated that the debt is paid in full. (Tr. 72-73; AX D.) It is not reflected in his June 2014 CBR. (GX 3.)

The SOR alleges an alcohol-related incident (SOR ¶ 2.a) and 14 traffic incidents (SOR ¶ 3.a-3.n). Court records reflect the following incidents, listed in chronological order:

Date	SOR	Charges	Answer to SOR	Disposition	Evidence
02/20/04	3.a	No driver's license; defective equipment	Deny	Not guilty	GX 6
04/06/07	3.c	Speeding 57/45	Admit	\$60 fine	GX 8
07/06/07	3.n	Speeding 63/50	Admit	65 fine	GX 17
11/29/07	3.j	Reckless driving	Admit	\$100 fine	GX 13
02/20/08	3.d	Speeding 50/35	Admit	\$75 fine	GX 9
01/30/09	3.k	Speeding 65/45	Admit	\$100 fine	GX 14
07/20/09	3.b	Speeding 70/55; no driver's license	Admit	\$75 fine	GX 7
10/09/09	3.l	Speeding 72/55	Admit	\$85 fine	GX 15
09/22/10	3.e	Speeding 73/60	Admit	\$78 fine	GX 10
06/19/11	3.f	Disregard lane marking	Admit	Dismissed	GX 11
02/18/12	3.m	Disobey highway sign	Admit	\$30 fine	GX 16
09/27/12	3.h; 3.o	Open container; Speeding 78/60	Admit	\$35 fine and \$108 fine	GX 5; GX 2 at 2
12/20/13	3.i	No vehicle inspection	Admit	Dismissed	GX 12

Applicant was charged with misdemeanors for the incidents in SOR ¶¶ 3.a, 3h, and 3.j. He was charged with infractions for all the other incidents.

At the hearing, I granted Department Counsel's motion to withdraw the Guideline G allegations in SOR ¶¶ 2 and 2.a., withdraw SOR ¶ 3.g, and add SOR ¶ 3.o, alleging that Applicant received a summons for speeding and having an open container on September 27, 2012. (Tr. 20-21, 104.)

Applicant married in January 2002. He has two children, ages 17 and 11, and two stepchildren, ages 26 and 22. The 17-year-old child was from a previous marriage and lives with her mother. Applicant pays child support of \$295 per month. (Tr. 51.)

When Applicant first began working for a defense contractor, his annual pay was about \$45,000. (Tr. 52.) His current annual pay is about \$55,000, and his military retired pay is about \$14,400 per year. (Tr. 54.) His wife's annual pay is about \$70,000. (Tr. 84.) He testified that the monthly family income and expenses are about equal. However, he is refinancing his home mortgage loan, which will reduce his monthly payments by about \$600. (Tr. 87.)

### **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 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 the documentary evidence submitted at the hearing establish that the judgment in SOR ¶ 1.a was entered against someone other than Applicant. The evidence also shows that the debt alleged in SOR ¶ 1.c. is also alleged in SOR ¶ 1.d. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Thus, I will resolve the debt in SOR ¶ 1.d in Applicant's favor.

The evidence establishes the delinquent debts alleged in SOR ¶¶ 1.b, 1.c, 1.e-1.g 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"). The following mitigating conditions under this guideline 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 delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. The debt in SOR ¶ 1.b arose due to a falling real estate market and failure of tenants to pay the rent. However, Applicant did not submit evidence that he acted responsibly. He claimed to have paid the \$20,000 to satisfy the debt, but he submitted no evidence of payment. The medical debt in SOR ¶ 1.e may

have been due to conditions beyond his control, but he has provided no evidence of payment. He provided no evidence of the circumstances surrounding the debt to the investment club alleged in SOR ¶ 1.g.

AG ¶ 20(c) is not established. Applicant submitted no evidence that he has sought or received financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not established. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Thus, security concerns raised by delinquent debts are not mitigated by payment of debts motivated primarily by the pressure of qualifying for a security clearance. Applicant did not attempt to contact the creditor in SOR ¶ 1.f or initiate his payment plans for the debts in SOR ¶¶ 1.c, 1.d, and 1.g until after he received the SOR and realized that his delinquent debts were an impediment to obtaining a security clearance.

AG ¶ 20(e) is established for the judgment in SOR ¶ 1.a. Applicant disputed the debt and submitted documentary evidence that the judgment was entered against another defendant with a similar name.

### **Guideline G, Alcohol Consumption**

I granted Department Counsel's motion to withdraw the allegations under this guideline. The conduct originally alleged in SOR ¶ 2.a is now alleged under Guideline E in SOR ¶¶ 3.h and 3.o and is discussed below.

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. . . ." Applicant was found not guilty of the infraction alleged in SOR ¶ 3.a. However, his admissions and the documentary evidence submitted at the hearing establish SOR ¶¶ 3.b-3.f and 3.h-3.o. Although I granted Department Counsel's motion to add SOR ¶ 3.o, further review of the evidence has revealed that SOR ¶¶ 3.h and 3.o allege the same conduct. Thus, I will resolve SOR ¶ 3.o in Applicant's favor.

Applicant's driving record establishes the following disqualifying conditions under this guideline:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other

single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially relevant:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) is not established. Although all the incidents alleged under this Guideline were either misdemeanors or infractions, they are numerous and did not occur under unique circumstances. Applicant's most recent infraction occurred shortly before the hearing. His repeated violations raise concerns about his ability to follow rules and regulations.

AG ¶ 17(d) is not established. Applicant has acknowledged his behavior, but he has not taken steps to change it.



AG ¶ 17(e) is established. Applicant has been candid and forthright about his traffic incidents. He voluntarily disclosed his most recent incident at the hearing.

### **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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has worked in support of national defense, in and out of uniform, for more than 28 years. He was candid and sincere at the hearing. Although Applicant portrayed himself at the hearing as living paycheck to paycheck, his family's gross income is almost \$140,000 per year, suggesting that his delinquent debts were due to inattention rather than lack of income. His payment agreement for the debt alleged in SOR ¶¶ 1.c and 1.d is too recent to reflect a track record of compliance with it. His neglect of his financial obligations and his long record of traffic incidents raise doubts about his reliability, trustworthiness and judgment.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies and personal conduct. 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

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

Paragraph 2, Guideline G (Alcohol Consumption): WITHDRAWN

Subparagraph 2.a:	Withdrawn
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Paragraph 3, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a:	For Applicant
Subparagraphs 3.b-3.f:	Against Applicant
Subparagraph 3.g:	Withdrawn
Subparagraphs 3.h-3.n:	Against Applicant
Subparagraph 3.o:	For 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