



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



In the matter of: )  
)  
) ISCR Case No. 14-02166  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro Se*

02/12/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guidelines F, financial considerations. Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on November 20, 2013, seeking a security clearance. On July 24, 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; DOD 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 adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On August 14, 2014, Applicant answered the SOR and

elected to have his case decided on the written record in lieu of a hearing. On October 6, 2014, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 7. On October 8, 2014, a copy of the FORM was mailed to Applicant, giving him 30 days from its receipt to submit objections or supply additional information. He did not submit a response to the FORM. The case was assigned to me on January 30, 2015.

### **Ruling on Evidence**

Items 6 and 7 are reports of investigation (ROI) from Applicant's background investigation. Specifically, they are summaries of Applicant's interviews conducted by Office of Personnel Management investigators on January 28, 2014, and April 9, 2014. The Directive provides that "[a]n ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence."<sup>1</sup> Although Applicant has not objected to Items 6 and 7, his failure to object does not amount to authentication of the documents or a waiver of the rule.<sup>2</sup> Accordingly, Items 6 and 7 will not be received and considered in this case.

### **Findings of Fact**

Under Guideline F, the SOR alleged that Applicant had five delinquent debts totaling about \$17,315 (SOR ¶¶ 1.a-1.e). In his Answer to the SOR, Applicant admitted each allegation with comments. His admissions are incorporated as findings of fact.<sup>3</sup>

Applicant is a 55-year-old employee of a defense contractor. He has been working for that contractor since March 2008. He is married and has three children, ages 25, 27, 30. He is seeking a security clearance for the first time.<sup>4</sup>

Applicant's e-QIP reflected that he has been employed since October 1993. He was first employed as a corrections officer before obtaining his current job. In the e-QIP, he disclosed that he had a truck for 19 months, was informed that the first payment on

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<sup>1</sup> Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing caselaw that a properly authenticated report of investigation is admissible).

<sup>2</sup> Under Federal Rule of Evidence 901, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Waiver means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009).

<sup>3</sup> Items 1, 3, 4, 5.

<sup>4</sup> Item 4.

the truck was never received, decided not to make any additional payments, and returned the truck to the dealer. He disclosed no other delinquent debts in the e-QIP.<sup>5</sup>

A credit report dated January 16, 2014, reflected that Applicant had a judgment entered against him for \$7,050 in November 2013 (SOR ¶ 1.b) and had medical accounts placed for collection in the amounts of \$243, \$53, and \$50 (SOR ¶¶ 1.c-1.e). The debt in SOR ¶ 1.a was not listed in the credit report.<sup>6</sup>

In his Answer to the SOR, Applicant indicated that debt in SOR ¶ 1.a was incurred because he was out of work (no other information provided), and this debt pertained to a truck he returned. He also stated that he had a repayment agreement for the debt in SOR ¶ 1.b, was attempting to identify the creditor of the debt in SOR ¶ 1.c, and would pay the debts in SOR ¶¶ 1.c-1.e. However, he provided no proof of repayment agreements or payments made toward the delinquent debts.<sup>7</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 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, in reaching a 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

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<sup>5</sup> Item 4.

<sup>6</sup> Item 5.

<sup>7</sup> Item 3.

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 incurred five delinquent debts that he was unable or unwilling to satisfy for an extended period. The evidence is sufficient to establish the above disqualifying conditions.

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

Applicant indicated that he incurred the delinquent debt in SOR ¶ 1.a because he was out of work. He provided no other information about that period of unemployment. No period of unemployment was listed in his e-QIP. Consequently, it is unknown why that period of unemployment occurred, how long it lasted, and what impact it had on his financial situation. Furthermore, he presented no proof that he entered into repayment agreements, made payments, or took other actions to resolve his delinquent debts. He had an opportunity to present such evidence when he received the FORM, but did not avail himself of that opportunity. Based on the record evidence, I am unable to find that Applicant's financial problems are being resolved, are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, and good judgment. I am also unable to find that he has acted responsibly under the circumstances. None of the mitigating conditions apply.

## Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>8</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion. His handling of his financial problems leaves me with doubts as to his current eligibility for access to classified information. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant’s eligibility for a security clearance must be resolved in favor of national security.

## Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 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 eligibility for a security clearance. Clearance is denied.

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James F. Duffy  
Administrative Judge

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<sup>8</sup> The administrative judge should consider the 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.