



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
[REDACTED] ) ISCR Case No. 14-02663  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

03/15/2016

**Decision**

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations.) Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on October 8, 2013. On October 8, 2014, the Department of Defense (DOD) sent Applicant 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; Department of Defense 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.

For unexplained reasons, Applicant apparently did not receive the original SOR. The SOR was again sent to Applicant on January 29, 2015. Applicant received the SOR on March 4, 2015; answered it on March 12, 2015; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case

on October 15, 2015. On October 15, 2015, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 8, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 30, 2015, and did not respond.<sup>1</sup> The case was assigned to me on February 23, 2016.

### Findings of Fact

The SOR alleges five delinquent debts totaling approximately \$38,941 and a garnishment for a delinquent student loan of \$9,913. In his Answer, Applicant admitted that the debts alleged in SOR ¶¶ 1.a – 1.d were his debts, but qualified each admission with the repayment status of each debt. He admitted the garnishment alleged in SOR ¶ 1.f, but stated that SOR ¶¶ 1.d and 1.f represented the same debt. He denied SOR ¶ 1.e. Applicant's admissions in his Answer are incorporated in my findings of fact.

Applicant is a 50-year-old aviation engineer employed by a defense contractor since January 2006. He graduated from high school in 1983 and served honorably on active duty in the U.S. Navy from January 1984 until he retired in January 2004. He was granted a security clearance by the U.S. Navy in 1993 and has held a DOD security clearance since 2006. (GX 5.)

Applicant married in 1987 and divorced in 1995. He has two adult children. (GX 5.) Following the divorce, Applicant paid \$650 monthly in child support until 2009, never missing a payment. Applicant and his cohabitant began residing together in 2008. (GX 6.)

Applicant was unemployed from February 2004 until May 2004, immediately following his retirement from the U.S. Navy. He was also unemployed from September 2013 until January 2014, during which time he lived off his savings and did not receive unemployment benefits. (GX 6.)

The delinquent debts are reflected in Applicant's credit bureau reports dated January 23, 2014, and October 9, 2015. (GX 7; GX 8.) Applicant disclosed the student loan debt on his e-QIP (GX 5) and explained the garnishment in his Personal Subject Interview (GX 6.) The evidence concerning the status of these debts is set out below.

**SOR ¶ 1.a, judgment for medical debt entered in May 2013 for \$482.** This debt was for a physical exam required by Applicant's employer. Applicant was not aware that he was responsible for the debt and that it was unpaid. Applicant satisfied the judgment in November 2014. (GX 8.)

**SOR ¶ 1.b, personal loan, 120 days or more past due for \$16,306.** This loan was for a travel trailer that Applicant lives in when working off site. The account was

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<sup>1</sup>The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated October 15, 2015, and Applicant's receipt is dated October 30, 2015. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1.

past due for \$679. The loan was rehabilitated in January 2014 and Applicant continues to pay this account as agreed. The balance as of October 2015 was \$13,393. (GX 8.)

**SOR ¶ 1.c, credit-card account, charged off for \$16,164.** This debt was for home repairs. (GX 6.) Applicant opened this account in 2000 and the last transaction was in 2011 (GX 7.) He was making monthly payments of \$200 - \$300 until he fell behind due to a decrease in income and ultimately stopped making payments. (GX 6.) He stated that he will to pay this off once the garnishment is satisfied. (GX 4; GX 6.)

**SOR ¶¶ 1.d (\$5,755) and 1.f (\$9,913,) student loan referred for collection then garnishment in 2012, – duplicate debt.** Applicant cosigned for a \$10,915 student loan for his daughter in 2008 which, unknown to Applicant, she defaulted on in approximately 2010. (GX 6; GX 7.) SOR ¶ 1.d reflects the balance owed as of January 2014. (GX 7.) The \$9,913 is the original amount of the garnishment. (GX 6.) The October 2015 credit bureau report (CBR) reflects a July 2015 payment of \$110 with a remaining balance of \$1,585. (GX 8.)

**SOR ¶ 1.e, account referred for collection by a utility company for \$284.** Applicant does not recognize this debt, but is willing to pay it if is in fact his. (GX 4; GX 6.) This debt is listed on the 2014 CBR, but not on the 2015 CBR. (GX 7; GX 8.)

Applicant and his cohabitant reside in Applicant's home, which he purchased in 1998. Applicant's cohabitant is unemployed and seeking disability from the Veteran's Administration for a service-related injury. She does not make any financial contributions to the household. Applicant is current on his monthly mortgage payments of \$840 and has no history of delinquencies. (GX 6; GX 8.) He earns \$25 hourly. As part of a mobile team, he frequently works off site and receives an additional \$118 *per diem*. His total monthly income is approximately \$3,600 which includes \$1,000 from his Navy retirement pay. His regular monthly expenses, including the original garnishment amount of \$1,300, are \$2,950. He owns his 2005 pickup truck outright. When working off site, Applicant often lives in his travel trailer at campgrounds. Due to the irregular nature of his work assignments, Applicant's income fluctuates and he often experiences periods of decreased income. During his months-long off-site assignments, Applicant does not always receive his mail in a timely manner. (GX 6.) Applicant has not incurred any delinquent debt since 2013. (GX 8; GX 7.)

### **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's 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).

The record evidence establishes that SOR ¶¶ 1.d and 1.f are the same debt. Therefore, I have not considered the debt alleged in SOR ¶ 1.d when evaluating Applicant's financial status. 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).

As to the remaining debts, Applicant's admissions, corroborated by his CBRs, e-QIP, and Personal Subject Interview, 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"). 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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's debts are recent, in that two remain unresolved, and, due to the unpredictability of his income, they were not incurred under circumstances that are unlikely to recur.

AG ¶ 20(b) is established. Applicant experienced circumstances largely beyond his control. His daughter defaulted on her student loan and did not reveal this to him, thus preventing any proactive moves by Applicant and resulting in Applicant's pay being garnished monthly for \$1,300. He was unemployed and did not receive unemployment compensation for five months in 2013-14. Applicant acted responsibly by living off his savings while not incurring additional debt, maintaining his mortgage, and obtaining employment. He also has not cosigned any additional loans.

AG ¶ 20(c) is established. Applicant has not received financial counseling, however, he has resolved the majority of his debts and there is a "clear indication" that his financial problems are under control.

AG ¶ 20(d) is 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.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has paid off or is making the required monthly payments on three of the five debts alleged in the SOR. As of July 2015, Applicant has paid \$8,328 of the \$9,913 student loan debt alleged in SOR ¶ 1.f. As of October 2015, he has paid the past-due balance of \$679 and made regular monthly payments totaling \$2,234 on the debt alleged in SOR ¶ 1.b. Applicant satisfied the judgment of \$432 alleged in SOR ¶ 1.a. He intends to pay the debt alleged in SOR ¶ 1.c when the garnishment is satisfied and will pay the \$284 debt alleged in SOR ¶ 1.e if it is his responsibility to do so. He remains current on all his other ongoing financial obligations.

While legally responsible as the cosigner on his daughter's defaulted student loan, Applicant did not incur this debt through his own irresponsible behavior. The fact

that Applicant is paying this debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug.26, 2010). However, payment by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006).

### **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 I have also considered the following:

Applicant served honorably in the U.S. Navy for 20 years, where he was first granted a security clearance in 1993. He has held a DOD security clearance since 2006. He timely and completely fulfilled his child support obligations and has maintained his current mortgage since 1998. Despite the unpredictability of his income, Applicant lives within his means and will have the ability to pay his remaining delinquencies once the garnishment is satisfied. I am confident that Applicant will continue his good-faith efforts to resolve his remaining delinquent debts.

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 mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge