



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-02115
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

04/15/2016

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**Decision**

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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, 2014. On September 29, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF 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 on October 23, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 10, 2015, and the case was assigned to me on January 6, 2016. On January 14, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that

the hearing was scheduled for February 4, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 9 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 March 4, 2016, to enable him to submit additional documentary evidence. He timely submitted AX D through F, which were admitted without objection. DOHA received the transcript (Tr.) on February 12, 2016.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.d, 1.f, 1.h-1.r, 1.v-1.z, 1.bb-1.dd, and 1.hh-1.jj. He denied SOR ¶ 1.e, 1.g, 1.s-1.u, 1.aa, and 1.ee-1.gg. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old pipefitter employed by defense contractors since January 2013. He worked for a defense contractor from September 2011 to March 2012. He has held a second job as a security officer since February 2012. He held non-federal jobs from August 2008 to January 2012, with a two-month period of unemployment in August-September 2011. He served on active duty in the U.S. Navy from November 1995 to March 2003 and received an honorable discharge based on medical disability. (Tr. 32.) He held a security clearance from January 1996 until it was revoked in April 2013 because of his financial problems. (GX 2 at 45-46; GX 4 at 4.)

Applicant married in February 1999, and his marriage was annulled in March 2000 because his first wife was already married to someone else. (Tr. 34.) He married in June 2003 and divorced in July 2008. He married again in November 2008. He and his third wife separated in October 2014, and they expected their divorce to be granted at the end of February 2016. (Tr. 28.)

Applicant has a 12-year-old son from his second marriage, for whom he is obligated to pay child support of \$400 per month. He is in arrears for about \$6,548, as alleged in SOR ¶ 1.y. His child-support payments are now collected automatically from his pay, at the rate of \$129 per week, with about \$116 being applied to the arrearage. (AX B; Tr. 35-36.) He has two stepdaughters, ages 23 and 25, who are the daughters of his third wife. (Tr. 51-52.)

Applicant testified that he works two jobs, and he depended on his third wife to pay the bills and file their income tax returns. She did neither. Instead, she filed a bankruptcy petition solely in her name. When she discovered that she could not proceed with her bankruptcy until their income tax returns were filed, she filed their 2012 federal income tax return. Applicant was notified in September 2014 that he owed about \$8,000. He contacted the Internal Revenue Service and negotiated a payment plan for \$200 per month. He has been making the payments since November 2014 (AX A; Tr. 35-39.) This debt was not alleged in the SOR.

Applicant testified that he was unsure about the basis for the judgment alleged in SOR ¶ 1.a. He admitted the debt in his answer to the SOR, but he has taken no action to identify, resolve, or dispute the debt. (Tr. 46.)

Applicant testified that the judgment for unpaid rent alleged in SOR ¶ 1.b was incurred by one of his stepdaughters and that she had resolved it. He did not provide any documentation to support his testimony. (Tr. 46-47.)

Applicant testified that the judgment alleged in SOR ¶ 1.c was for the deficiency after his third wife's car was repossessed. It is being collected by garnishment of his pay. (Tr. 49-50; GX 9.)

Applicant testified that the judgment alleged in SOR ¶ 1.f was for unpaid rent on an apartment for another stepdaughter. Applicant co-signed the lease, and his stepdaughter failed to pay the rent. (Tr. 51-52.) This debt is included in the collection account alleged in SOR ¶ 1.v. (Tr. 57.)

Applicant denied the judgment for a delinquent credit-card account alleged in SOR ¶ 1.e and the delinquent credit card accounts alleged in SOR ¶¶ 1.g and 1.s. He testified that he has never had any credit cards until recently, when he obtained a secured credit card account. (AX C; Tr. 53.) His testimony is contradicted by the credit bureau reports (CBRs) submitted by Department Counsel. The February 2005 CBR reflected a credit card issued by the creditor alleged in SOR ¶ 1.s that was placed for collection and then closed at his request, with the last activity occurring in March 2001. (GX 5 at 4.) The April 2012, August 2014, and February 2015 CBRs reflect the charged-off credit card alleged in SOR ¶ 1.g and another credit card issued by a different credit grantor that was closed by the grantor in April 2004 and not alleged in the SOR. (GX 6 at 5-6; GX 7 at 6, 10; GX 8 at 2,4.)

Applicant testified that the deficiency after a car repossession alleged in SOR ¶ 1.h occurred after he bought his second wife a car in his name and she failed to make the payments. He admitted that he is liable for the debt, which is unresolved. (Tr. 45, 54.)

Applicant admitted the medical debts alleged in SOR ¶¶ 1.i-1.o, 1.q, and 1.bb-1.dd. Four of the medical debts (SOR ¶¶ 1.q and 1.bb-1.dd) are for less than \$100. He testified that the debts were the result of his third wife's medical problems. They are unresolved. (Tr. 54-55.)

The delinquent cellphone account alleged in SOR ¶ 1.p was incurred by Applicant's second wife. It is unresolved. (Tr. 55.)

Applicant testified that the satellite television account alleged in SOR ¶ 1.r was incurred during his third marriage and became delinquent because his wife failed to pay it. It is unresolved. (Tr. 55-56.)

Applicant denied the debts alleged in SOR ¶¶ 1.t and 1.u in his answer to the SOR and at the hearing. He has done nothing to validate or dispute these debts. (Tr. 56.)

The delinquent cellphone accounts alleged in SOR ¶¶ 1.w and 1.x are duplicates. The debt was incurred during his third marriage. It is unresolved. (Tr. 57-58.)

Applicant denied the collection accounts alleged in SOR ¶¶ 1.ee-1.gg in his answer to the SOR and at the hearing. He has done nothing to validate or dispute them. (Tr. 60.)

Applicant admitted the jewelry store debt alleged in SOR ¶ 1.hh. He has taken no action to resolve it.

Applicant admitted the garnishments alleged in SOR ¶¶ 1.ii and 1.jj. The garnishment in SOR ¶ 1.ii is being collected at the rate of \$350 per pay period. (GX 9.) He testified that the garnishment alleged in SOR ¶ 1.jj was to collect a penalty for early termination of a lease, and that it has been satisfied. (Tr. 48.) He did not submit any documentation to support his testimony that it was satisfied.

Applicant has not disputed any of the debts alleged in the SOR. He testified that he did not know how to file a dispute and that he thought he needed a lawyer to do so. (Tr. 66-67.)

Applicant's net monthly income from his primary job is about \$3,700. He earns about \$1,300 per month from his second job as a security officer. (Tr. 41-42.) He testified that his net monthly remainder after paying his rent and living expenses is about \$2,000. (Tr. 62.)

### **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).

The cellphone debts alleged in SOR ¶¶ 1.w and 1.x appear to be the same debt. 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). I will resolve SOR ¶ 1.w for Applicant.

Applicant's admissions and the CBRs 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"). AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same") may not be an independent basis for denying Applicant a security clearance because his failure to file his federal income tax return for 2012 was not alleged in the SOR. However, it may be considered to assess Applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether he has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

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 numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant has encountered conditions largely beyond his control: his multiple marital breakups, two months of unemployment in 2011, and the medical expenses incurred by his third wife. The failure of his second wife to make the payments on her car was not a condition beyond his control, because he voluntarily obtained the financing in his name. The failures of his stepdaughters to pay their rent were not conditions beyond his control, because he voluntarily co-signed their leases. If family members opened credit-card accounts in his name, their fraud would be a condition beyond his control. However, he has not refuted the evidence in the CBRs, nor has he shown evidence of identity theft. The failure of his third wife to file his federal income tax return for 2012 was not a condition beyond his control; it was a product of his inattention to his financial responsibilities. In any event, he has not acted responsibly toward most of the debts alleged in the SOR. He has acted responsibly toward his federal income-tax debt and his child-support obligation, but he has done virtually nothing to dispute, settle, or otherwise resolve the other delinquent debts alleged in the SOR.

SOR ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and his financial situation is not under control.

SOR ¶ 20(d) is established for the child-support arrearage alleged in SOR 1.y and the federal income-tax debt that is not alleged. It is not established for the debts alleged in SOR ¶¶ 1.c, 1.ii, and 1.jj, because collection by involuntary garnishment "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009).

SOR ¶ 20(e) is not established. Although Applicant denied owing the debts in SOR ¶¶ 1.e, 1.g, and 1.s, he submitted no evidence to support his denials, and he has not disputed the debts with the original creditors or the credit reporting agencies.

### **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 and I have considered the factors in AG ¶ 2(a). 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 raised by his delinquent debts. 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

Subparagraphs 1.a-1.v, 1.x, and 1.z-1.jj: Against Applicant

Subparagraphs 1.w and 1.y: 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