



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 10-06994  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: William T. O’Neil, Esq., Department Counsel  
For Applicant: *Pro se*

May 19, 2011

**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 April 19, 2010. On December 7, 2010, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline F. DOHA 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 the Department of Defense on September 1, 2006.

Applicant received the SOR on December 18, 2010; answered it in an undated document; and requested a hearing before an administrative judge. DOHA received the request on January 13, 2011. Department Counsel was ready to proceed on February

4, 2011, and the case was assigned to an administrative judge on February 8, 2011. It was reassigned to me on February 14, 2011, to consolidate the docket. DOHA issued a notice of hearing on February 15, 2011, scheduling the hearing for March 10, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Department Counsel provided a list of exhibits, which is attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until March 17, 2011, to enable Department Counsel to submit a page that was missing from GX 3, and the missing page was timely submitted (HX II). I kept the record open until March 31, 2011, to enable Applicant to submit additional documentary evidence, and he timely submitted AX G through I. Department Counsel's comments regarding AX G through I are attached to the record as HX III. DOHA received the transcript (Tr.) on March 18, 2011.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b-1.e and 1.g-1.s. He denied SOR ¶¶ 1.a, 1.f. and 1.t-1.dd in his answer. At the hearing, he stated that he mistakenly denied SOR ¶¶ 1.a and 1.z-1.dd, and he intended to admit those allegations. (Tr. 34, 47-48.) His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 45-year-old security officer employed by a federal contractor. He has worked for his current employer since April 2010. He was unemployed for about two months before beginning his current job. He has never held a security clearance.

Applicant married in June 1998 and divorced in October 2006. No children were born during this marriage, but Applicant has five children from previous relationships, ages 27, 22 (twins), 20, and 13. The 13-year-old lives with her mother. He owed about \$8,567 in child support, which was collected by garnishment of his pay. (GX 1 at 42-44; AX D.) His child support obligation terminated in December 2010 (AX E; AX F.) He is now paying \$60 per month to satisfy the arrearage. (Tr. 43-44.) The arrearage is not alleged in the SOR.

Applicant testified that he was fired in 2006, after a disagreement with his supervisor. He was then evicted from his apartment and homeless for about two years. (Tr. 51-55.) He testified he worked as a security officer while living in a homeless shelter. (Tr. 67-68.)

In March 2011, Applicant began a debt management program providing for monthly payments of \$270 for 36 months. His plan provides for payments to the creditors listed in SOR ¶¶ 1.e-1.g, 1.i, 1.k, 1.o, and 1.p. (AX C at 3.) He has made one \$270 payment. (AX I.)

The table below summarizes the evidence concerning the delinquent debts alleged in the SOR.

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Answer to SOR</b>	<b>Status</b>	<b>Evidence</b>
1.a	Judgment (unpaid rent)	\$3,743	Deny	Unpaid	GX 7 at 1;
1.b	Judgment	\$2,574	Admit	Unpaid	GX 7 at 1
1.c	State tax lien	\$8,080	Admit	Unpaid	GX 7 at 1
1.d	State tax lien	\$4,262	Admit	Unpaid	GX 7 at 1
1.e	Utility bill	\$178	Admit	Debt management plan	GX 7 at 1; AX C
1.f	Collection (unpaid rent)	\$4,199	Deny	Debt management plan	GX 7 at 1; AX C
1.g	Credit card	\$114	Admit	Debt management plan	GX 7 at 1; AX C
1.h	Cable	\$784	Admit	Unpaid	GX 7 at 1
1.i	Credit card	\$434	Admit	Debt management plan	GX 7 at 2; AX C
1.j	Collection	\$405	Admit	Unpaid	GX 7 at 2
1.k	Cell phone	\$896	Admit	Debt management plan	GX 7 at 2; AX C
1.l	State tax lien	\$1,655	Admit	Unpaid	GX 6 at 4
1.m	Collection	\$470	Admit	Unpaid	GX 6 at 6
1.n	Cable	\$166	Admit	Unpaid	GX 6 at 6
1.o	Towing charge	\$200	Admit	Debt management plan	GX 6 at 7; AX C
1.p	Satellite TV	\$405	Admit	Debt management plan	GX 6 at 8; AX C
1.q	Parking	\$57	Admit	Unpaid	GX 6 at 9
1.r	Parking	\$57	Admit	Unpaid	GX 6 at 9
1.s	Library fine	\$75	Admit	Unpaid	GX 6 at 10
1.t	Federal income tax	\$9,000	Deny	Tax refunds seized; debt reduced to \$5,282; making payments of \$100 per month	GX 1 at 44; AX A; AX B; AX G

SOR ¶¶ 1.u-1.dd allege that Applicant failed to file federal and state income tax returns for 2005 through 2009. In November 2010, in response to DOHA interrogatories, Applicant submitted copies of federal income tax returns for 2004 through 2009. He admitted that he had not filed his state income tax returns for 2006 through 2009. He claimed that he filed his state return for 2005, but he did not attach a copy of the return. (GX 4.) After the hearing, he submitted a letter from a tax preparer and a copy of a state income tax return for 2009, showing that he owes \$850. The copy is not signed or dated, and it does not contain indicia of mailing or receipt. (AX H.)

In his answer to the SOR, Applicant denied the judgment alleged in SOR ¶¶ 1.a, because he believed he owed only half of the unpaid rent and his former roommate owed the other half. He later learned that he was legally liable for the entire amount of the unpaid rent, and he admitted the debt at the hearing. (Tr. 48-49.)

Applicant's current gross salary is \$1,026 per two-week pay period. Until his child support obligation was terminated, his net pay was \$375 per pay period, with child support being deducted from his gross pay. (AX D.) The reduction in child support will increase his net pay by about \$315 per pay period. He lives rent free with his parents. (GX 3 at 5-6.)

### **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, 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 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 security 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.

Applicant’s history of delinquent debts and failures to timely file federal and state income tax returns, as established by his admissions and his credit reports, establish the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns.

Security concerns based on financial problems can be mitigated by showing that “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(a). This mitigating condition is not established because Applicant’s delinquent debts and failures to file tax returns are recent, frequent, and did not occur under circumstances making them unlikely to recur.

Security concerns under this guideline also can be mitigated by showing that “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(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. There is no evidence connecting Applicant’s marital breakup in October 2006 with his current financial problems or failures to file income tax returns. He has had periods of unemployment or underemployment, but the primary cause of his problems has been neglect of his financial responsibilities. I conclude that this mitigating condition is not established.

Security concerns under this guideline also can be mitigated by showing that “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(c). Applicant has sought and received financial counseling, and he established a debt management plan for seven of his delinquent debts. However, he has made only one payment pursuant to the plan, and he has not yet established a track record of financial responsibility. Thus, it is too soon to conclude that the seven debts included in his debt management plan are being resolved. I conclude that this mitigating condition is not established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). 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). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement 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 demonstrated a good-faith effort to resolve his delinquent federal income taxes, alleged in SOR ¶ 1.t. His debt management plan covers only seven of his delinquent debts, and it is too soon to conclude that he will adhere to his plan for these seven debts. He has no plan to resolve his other delinquent debts. I conclude that this mitigating condition is established for his federal income tax debt, but not for his other delinquent debts.

Security concerns under this guideline also can be mitigated by showing “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(e). This mitigating condition is not established because Applicant has not disputed any of the debts. He initially denied the debt in SOR ¶ 1.a but admitted it at the hearing. He denied the debt in SOR ¶ 1.f, but he included it in his debt management plan. He denied the federal income tax debt, but he has negotiated a payment plan to resolve it.

### **Whole-Person Concept**

Under 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.

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. 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 is a mature adult. He was candid and sincere at the hearing, but he does not have a good grasp of his financial situation. He has neglected his financial obligations for many years. He took some positive steps when his hearing was imminent, but many of his delinquent debts remained unresolved, and he has not established a track record of financial responsibility.

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 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

Subparagraphs 1.a-1.s:	Against Applicant
Subparagraph 1.t-1.y:	For Applicant
Subparagraphs 1.z-1.dd:	Against 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