



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 10-09528
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

11/26/2013

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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 January 5, 2011. In an undated document, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 DOD on September 1, 2006.

Applicant received the SOR on May 1, 2013; answered it on May 7, 2013; and requested a decision based on the administrative record without a hearing. Department Counsel requested a hearing and was ready to proceed on July 22, 2013. (Hearing Exhibit (HX) I.) The case was assigned to me on August 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2013,

scheduling the hearing for September 20, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until October 4, 2013, to enable Applicant to submit additional documentary evidence. He timely submitted AX B through E, which were admitted without objection. Department Counsel's comments regarding AX B through E are attached to the record as HX II. DOHA received the transcript (Tr.) on October 3, 2013. My decision was delayed by the furlough of administrative judges from October 1 to October 11, 2013, due to the failure of Congress to timely appropriate funds for fiscal year 2014.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.f and 1.h-1.j. He denied the allegations in SOR ¶¶ 1.g and 1.k. He stated that the debt alleged in SOR ¶ 1.e was paid in full. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 53-year-old senior consulting field engineer employed by a defense contractor. He served on active duty in the U.S. Navy from April 1981 to October 1988 and was honorably discharged. (GX 2 at 14.) He has worked for his current employer since April 2010. He was previously employed by another defense contractor from July 2003 to April 2010. He was laid off because of lack of work for two or three weeks before beginning his current job. (Tr. 37.) When he began his current job, his pay was about \$320 per month less than what he earned in his previous job. (Tr. 105.)

Applicant received a security clearance in September 1997. It was revoked in September 2009 when he did not timely respond to financial interrogatories from DOD. (GX 2 at 8; Tr. 10, 35.)

Applicant married in August 1992 and divorced in November 2005. He married his current spouse in September 2009. He has no children from either marriage and no financial obligations to his former spouse. His current spouse has two children, ages 23 and 26, who are self-supporting. (Tr. 33-34.)

Applicant filed a petition for Chapter 7 bankruptcy in December 1997 and received a discharge in April 1998. (GX 6.) He filed a petition for Chapter 13 bankruptcy in August 2000, which was dismissed in October 2000 for failure to commence payments. (GX 7.) He filed another petition for Chapter 13 bankruptcy in November 2000, which was dismissed in December 2003 for failure to make payments. (GX 8.) His three bankruptcy petitions are alleged in SOR ¶¶ 1.a-1.c.

Applicant's credit bureau reports (CBRs) dated January 19, 2011 and April 3, 2013 reflect the following delinquent debts, which are alleged in SOR ¶¶ 1.d-1.k. (GX 3 and 4.)

**SOR ¶ 1.d, home mortgage account past due for \$27,335, with total balance of \$27,335.** Applicant bought his home in September 2009. When he was laid off in April 2010, he was about one month behind on his payments. He remained one month behind until he missed another payment in January 2011 due to overspending on Christmas gifts. (Tr. 40.) He did not contact the lender, believing that he would be allowed to catch up on his payments. He missed the April and May payments after he was laid off. At this point, the lender would not accept any more payments until all the past-due payments were paid. (Tr. 40-42.) In January 2013, Applicant executed a trial period agreement as a condition for a loan modification. (GX 2 at 15-19.) In May 2013, his loan modification was approved. In September 2013, a foreclosure action on this property was dismissed without prejudice. (AX A.) Applicant's payments on the modified loan are current. The delinquent mortgage loan is reflected on the January 2011 CBR, but not on the April 2013 CBR. (GX 3 at e; GX 4.)

**SOR ¶ 1.e, credit card account collected by garnishment for \$6,989.** Applicant had a company credit card, and he was obligated to make the payments and then file for reimbursement from his employer. He fell behind on his payments. (Tr. 60-63.) In April 2012, Applicant authorized his employer to withhold \$318 per pay period until the debt was paid. (GX 2 at 21.) He believed he would have been fired if he had not authorized the withholding. (Tr. 69.) The debt has been paid in full. (AX B.)

**SOR ¶ 1.f, charge account in collection for \$2,722.** Applicant testified that this debt was incurred when he purchased a riding lawn mower. He made three payments and then fell behind because he was laid off. The account was referred for collection in June 2010. (GX 3 at 8.) He did not contact the creditor when he fell behind, nor did he contact the collection agency. (Tr. 71-73.) The debt is reflected on the April 2013 CBR (GX 4 at 1.) It is unresolved.

**SOR ¶ 1.g, charge account for a music service in collection for \$157.** Applicant opened an account with this creditor to purchase digital video disks (DVDs). The account required him to purchase six DVDs. After purchasing the required six DVDs, Applicant started sending the DVDs back to the creditor, but they continued sending him more DVDs, a total of five more. He did not contact the creditor, believing that returning the DVDs was sufficient notification that he did not desire to make any more purchases. After the account was referred for collection, he made no attempt to contact the collection agency. (Tr. 72-75.) The January 2011 CBR reflected that the account was referred for collection in February 2009, and that the debt was disputed. (GX 3 at 8.) The debt is not reflected on the April 2013 CBR. (GX 4.)

**SOR ¶ 1.h, utility bill in collection for \$173.** Applicant testified that this bill was incurred in his name by his ex-wife after they divorced. He testified that he contacted the original creditor by telephone after receiving interrogatories from DOHA, and told the creditor that he had never lived at the address where the service was received. He thought that the issue was resolved. (Tr. 76-78.) The debt is reflected on the January 2011 CBR, but not on the April 2013 CBR. (GX 3 at 8; GX 4.)

**SOR ¶ 1.i, college tuition bill in collection for \$703.** Applicant incurred this debt for on-line college courses, and it was referred for collection in September 2006. He testified that he thought the debt was consolidated with other student loans. He contacted the original creditor by telephone, and the creditor promised to respond, but did not. (Tr. 79-80.) The debt is reflected on the January 2011 CBR, but not on the April 2013 CBR. (GX 3 at 9; GX 4.) Applicant's April 2013 CBR reflects several student loans that are current.

**SOR ¶ 1.j, charge account in collection for \$2,598.** In his response to the SOR, Applicant stated that this debt is a duplicate of SOR ¶ 1.f. The January 2011 CBR reflects that both debts have the same account number (512107199062) but that the debt in SOR ¶ 1.f has four additional digits. I conclude that this debt duplicates the debt alleged in SOR ¶ 1.f.

**SOR ¶ 1.k, student loan in collection for \$259.** The January 2011 CBR reflects that this debt was referred for collection in July 2010. The debt does not appear on the April 2013 CBR. (GX 3 at 11; GX 4.) In his response to DOHA financial interrogatories, his answer to the SOR, and at the hearing, Applicant stated that he had no knowledge of this debt. He testified that could not find a telephone number for the original creditor, but he did not use any online search engines to identify either the original creditor or the collection agency. (Tr. 80-81.)

When Applicant purchased his home in September 2009, he withdrew funds from his retirement account to make the down payment. He incurred a federal tax penalty for early withdrawal from the account. Although he usually received a federal tax refund, he owed about \$6,700, which he was unable to pay when he filed his return for tax year 2010. He did not contact the Internal Revenue Service (IRS) regarding his inability to pay the taxes due. Instead, he waited for the IRS to contact him. When the IRS contacted him, he agreed to pay the entire amount. He withdrew \$6,874 from his retirement account and paid the taxes due in May 2012. (GX 2 at 30; Tr. 96-98, 102-03.) The tax debt is not alleged in the SOR.<sup>1</sup>

In April 2013, Applicant submitted a personal financial statement (PFS) reflecting net monthly income of about \$3,812, expenses of \$1,250, debt payments of \$2,422, and a net remainder of \$139. (GX 2 at 13.) Since April 2013, his net monthly income has increased to about \$4,000. His expenses and debt payments have remained about the same. (Tr. 83-85.) He does not have a written budget. (Tr. 89.) He has not received any financial counseling except for the counseling required by the bankruptcy court in 2003. (Tr. 90.)

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<sup>1</sup> Conduct not alleged in the SOR may not be an independent basis for denying a clearance. However, it may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered Applicant's tax debt for these limited purposes.

Applicant testified that his financial problems were the result of being reckless, and “when [he] would get money in [his] pocket, it started going out the door.” He testified that his financial recklessness stopped about two years ago. (Tr. 31.)

Applicant’s annual performance appraisals for the past two years rated him as exceeding expectations. For both years, he was rated one step below the top rating (far exceeds expectations) on a four-step scale. (AX C.)

### **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 SOR alleges a Chapter 7 bankruptcy filed in December 1997 and discharged in April 1998 (SOR ¶ 1.a); a Chapter 13 bankruptcy filed in August 2000 and dismissed in October 2000 for failure to commence payments (SOR ¶ 1.b); and a Chapter 13 bankruptcy filed in November 2000 and dismissed in December 2003 for failure to make payments (SOR ¶ 1.c). It also alleges eight delinquent debts totaling about \$40,937 (SOR ¶¶ 1.d-1.k).

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 does not reflect the circumstances leading up to Applicant's three bankruptcy petitions, except for his general comments at the hearing about financial

recklessness. The dismissal of his two Chapter 13 petitions reflected the same inattention to financial matters that caused him to lose his clearance in September 2009.

The evidence shows that the debt alleged in SOR ¶ 1.j is the same debt alleged in SOR ¶ 1.f. 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). Accordingly, I have resolved the debt in SOR ¶ 1.j for Applicant.

Applicant's admissions, credit report, and record of bankruptcy filings establish the following disqualifying conditions under this guideline:

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

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

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

The following mitigating conditions are potentially relevant:

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

AG ¶ 20(b) is not fully established. Applicant's short-term loss of employment around April 2010 and his reduced pay when he began his current employment were circumstances beyond his control. However, he initially did not act responsibly. He overspent on Christmas gifts even though he was past due on a mortgage payment. He did not contact the lender when he fell further behind. On the other hand, he finally realized the seriousness of his financial situation and successfully obtained a mortgage modification. He made all the payments on time during the trial period and was current on his payments as of the date of the hearing.

AG ¶ 20(c) is not fully established. Applicant obtained financial counseling as a prerequisite for his Chapter 13 petition in 2003, but he has not sought or obtained counseling to address his current financial situation. Except for the home mortgage loan alleged in SOR ¶ 1.d and the delinquent credit card account alleged in SOR ¶ 1.e, his financial situation is not yet under control.

AG ¶ 20(d) is established for the delinquent mortgage payments alleged in SOR ¶ 1.d, but not for the other debts alleged in the SOR. Although the credit card debt alleged in SOR ¶ 1.e has been paid, the involuntary manner in which it was paid does not constitute "good faith" within the meaning of this mitigating condition. 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). Payment 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). Applicant produced no evidence of payments on the other debts alleged in the SOR.

AG ¶ 20(e) is established for the music service debt alleged in SOR ¶ 1.g, the utility bill alleged in SOR ¶ 1.h, and the tuition bill alleged in SOR ¶ 1.i. Although Applicant did not dispute the music service debt in writing, his January 2011 CBR reflected that it was disputed, and Applicant's testimony established a reasonable basis for disputing the debt. The April 2013 CBR does not reflect the debt, indicating that the dispute was resolved in his favor. Deletion of the debt was not required by the Fair Credit Reporting Act, since it was referred for collection less than seven years before the April 2013 CBR, and the record reflects no other basis for deleting it.<sup>2</sup> Applicant testified that he telephonically disputed the debts alleged in SOR ¶¶ 1.h and 1.i, and they also were not reflected on the April 2013 CBR, even though they were referred for collection less than seven years before the date of the CBR.

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<sup>2</sup> Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years. 10 U.S.C. § 1681c.



## 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 some warrant additional comment.

Applicant served honorably in the U.S. Navy for seven years and has been employed almost continuously by defense contractors for ten years. He held a clearance for 12 years. He has made a good start toward righting his financial ship by successfully modifying his home mortgage, but he has not yet 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): AGAINST APPLICANT

Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.f:	Against Applicant
Subparagraphs 1.g-1.j:	For Applicant
Subparagraph 1.k:	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