



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 12-01898  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2013

**Decision**

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 (SCA) on August 19, 2011. On December 4, 2012, 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; 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.

Applicant received the SOR on December 13, 2012; answered it on December 31, 2012; and requested a determination on the record without a hearing. Department Counsel submitted the Government's written case on January 23, 2013. On January 23, 2013, a complete copy of the file of relevant material (FORM) was sent to Applicant,

who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. His response was due on February 27, 2013. He received the FORM on January 28, 2013, and he responded on March 25, 2013, and submitted additional evidence. Department Counsel did not object to his untimely submission. The case was assigned to me on April 10, 2013.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 37-year-old security officer employed by a federal contractor since June 2010. He has worked as a security officer for various employers since January 2001, including federal contractors from May 2004 to May 2010, frequently working for more than one employer at a time. He has held a security clearance since August 2008.

Applicant is unmarried and has no children. He was born in a foreign country and became a U.S. citizen in July 2005. His parents are deceased. He has eight living siblings. One is a medical doctor, one is a lawyer, one owns a cleaning business, one is a teacher, one is an artist, two are pastors, and one is an engineer. (Item 7 at 5.) He attended a community college from January 2000 to May 2003 and received an associate's degree. (Item 4 at 13.)

In June 2004, Applicant left a job by mutual agreement, after he asked for a different duty post because he had a fractured ankle that made it painful to stand. According to Applicant, his supervisor told him that he should find another job if he could not perform the duties that were assigned to him. In May 2010, Applicant was laid off from one of his jobs after failing to qualify with his weapon. In June 2010, he was fired by one of his employers after he was observed dozing while on duty. In his SCA, he explained that he was drowsy because of a medication he had taken. He held a second full-time job with another federal contractor from January 2011 until May 2012, when he was terminated because he "didn't have the suitability to work where [he] was assigned." (Item 4 at 17-23; Item 8 at 1.) He is still a full-time employee of the federal contractor who is sponsoring him for a clearance.

In a personal subject interview (PSI) in October 2011, Applicant told the investigator that his loss of one of his jobs in June 2010 cut his income in half for about six months, causing him to fall behind on his debt payments. He told the investigator that he had resolved a \$12,000 credit card debt for \$2,000 in October 2010; resolved a \$27,750 credit card debt for \$9,700 in July 2011 by paying \$7,000 and agreeing to make \$300 payments for nine months; resolved a third \$10,532 credit card debt in November 2010; and resolved a \$3,695 debt to an electronics store in July 2011. (Item 7 at 6-8.) His credit bureau report dated August 24, 2012, corroborates settlement of the three credit card accounts, but it reflects that the debt to the electronics store has not been resolved. (Item 5 at 1-2.) None of these debts were alleged in the SOR.

In November 2012, Applicant submitted a personal financial statement (PFS) reflecting net income of \$2,300; expenses of \$1,911; and debt payments of about \$717, resulting in a net shortfall of about \$326. The debt payments include the three debts alleged in the SOR, a \$132 payment on a student loan, a \$150 payment to the Internal Revenue Service, and a \$300 payment to a check-cashing service. (Item 8 at 6-7.) The debt payments reflected on his PFS are the amounts due, not the amounts actually paid.

Applicant pays rent but has no house payments or car payments. He recently sold his car for about \$10,000 to pay his debts. His parents are deceased, and his siblings appear to be well-educated and self-supporting. In his PFS, he listed a \$9,700 deposit into a “personal business account,” but he did not provide any details about a personal business.

The evidence concerning the three delinquent debts alleged in the SOR is summarized below.

**SOR ¶ 1.a (debt consolidation loan from credit union, charged off for \$27,690).** Applicant’s PFS indicates that he is obligated to make payments of \$500 per month on this debt. In his PSI, he told the investigator that he made payments of \$600 per month from 2008 to 2010, and that he submitted a “hardship letter” to the creditor in April 2010. (Item 7 at 7.) He submitted evidence of \$100 payments in July 2012 and September 2012. (Item 8 and 17-18.) In his response to the FORM, he submitted evidence of a \$270 payment in March 2013. (Response at 8.)

**SOR ¶¶ 1.b and 1.c (two personal loans for tuition and rent, charged off for a total \$16,555).** Applicant’s PFS reflects an obligation to make monthly payments totaling \$300 on these debts. In his PSI, he told the investigator that he had a verbal agreement with the creditor to pay whatever he could. (Item 7 at 7.) He submitted evidence of payments of \$25 and \$50 in July 2012, payments of \$25 and \$50 in August 2012, and payments of \$25 and \$50 in September 2012. (Item 8 at 11-16.) In his response to the FORM, he submitted evidence of payments of \$150 and \$100 in March 2013. His balances on the two accounts were \$8,016 and \$5,229 as of February 2013. (Response at 3-8.)

In Applicant’s response to the FORM, he refers to unspecified medical problems and his need for medications that have interfered with his ability to pay his debts, but he provided no details. (Response at 2.) His reference to medications in his response to the FORM is consistent with his explanation for sleeping on duty in June 2010.

### **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**

The SOR alleges three delinquent debts totaling about \$44,245. 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 following disqualifying conditions under this guideline are potentially applicable:

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.

Applicant’s credit bureau report, admissions in response to the SOR, statements during the PSI, and responses to interrogatories establish all three disqualifying conditions. He has a history of long-standing indebtedness that far exceeds his income. He has not explained how he accumulated the \$54,000 in debts that he resolved before the SOR was issued and the \$44,245 in unresolved debts alleged in the SOR. He has no financial responsibilities to anyone other than himself, and he has not explained why he has been unable to keep up with his financial obligations even though he has been employed continuously for more than 12 years.

AG ¶ 19(f) (failure to file federal or state tax returns) is not established. Although Applicant is indebted to the IRS, there is no evidence that this indebtedness is the result of failing to file income tax returns as required.

Security concerns based on financial considerations may be mitigated by any of the following conditions:

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;

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; or

AG ¶ 20(f): the affluence resulted from a legal source of income.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, unresolved, and not the result of circumstances making them unlikely to recur. In addition to the debts alleged in the SOR, he accumulated almost \$54,000 in delinquent debts that were not resolved until 2011.<sup>1</sup>

AG ¶ 20(b) is not established. It is not clear whether Applicant's termination related to a fractured ankle in December 2006 was a circumstance beyond his control. He presented no evidence regarding the circumstances of his injury or its severity. It is not clear whether Applicant's loss of employment in May 2010 due to his failure to qualify with his weapon was caused by his ineptitude as a marksman, which would be a condition beyond his control, or whether it was due to his failure to maintain proficiency or failure to participate in qualification firing. He attributed his most recent loss of employment in May 2012 to not having "the suitability to work where [he] was assigned,"

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<sup>1</sup> Conduct not alleged in the SOR 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 the evidence of debts not alleged in the SOR for these limited purposes.

with no further explanation. I conclude that Applicant has not carried his burden of showing conditions beyond his control.

AG ¶ 20(c) is not established. There is no evidence that Applicant has sought or received financial counseling.

AG ¶ 20(d) is not fully 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 aimed at evaluating 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, as a matter of law, 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 receives some credit for resolving several delinquent debts that were not alleged in the SOR. He is making payments on the debts in the SOR, but those payments have been intermittent and for less than the amounts due. He has not explained why he has not adhered to his payment plans for the three debts alleged in the SOR even though he still has a full-time job.

AG ¶¶ 20(e) and (f) are not relevant. Applicant has not disputed any of the debts alleged in the SOR, and there is no evidence of unexplained affluence.

### **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.

In spite of working two jobs for many years, Applicant has amassed considerable delinquent debt. He has not explained how he accumulated so much debt. He has made vague references to medical problems, but provided no details. He has made references to “personal business” but provided no details. Based on the limited evidence in the record, it appears that Applicant has consistently lived beyond his means and has not established a track record of timely and consistent payment of his obligations.

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 continue his 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

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge