



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 12-09485
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

07/21/2016

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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 granted.

**Statement of the Case**

Applicant submitted a security clearance application on April 23, 2012. On September 15, 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. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on December 1, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 17, 2016, and the case was assigned to me on March 22, 2016. On March 24, 2016, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 19, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. I kept the record open until May 9, 2016, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. DOHA received the transcript (Tr.) on April 28, 2016.

### **Findings of Fact<sup>1</sup>**

In his answer to the SOR, Applicant did not expressly admit or deny any allegations. Instead, he stated that he had paid or was making payments on the debts alleged in SOR ¶¶ 1.a-1.c, 1.e-1.i, 1.k-1.l, and 1.n. I have treated these responses as admissions with explanations. He stated that the debts alleged in SOR ¶¶ 1.d, 1.j, 1.m, and 1.o were not on his credit report. I have treated these responses as denials. He stated that he thought his insurance company had paid the medical bill in SOR ¶1.p, and I have treated this response as a denial. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 50-year-old painter employed at a shipyard by a defense contractor. He has a high school education. He was a warehouse clerk for a private-sector employer from July 2001 to January 2012. He was unemployed from January 2012 until he began his current job in March 2012. He has never held a security clearance.

Applicant married in December 1990 and divorced in June 1992. He married his current spouse in July 1997. He has two adult children from his first marriage and a 16-year-old son from his current marriage. His 16-year-old son lives with him.

The delinquent debts alleged in the SOR are reflected in Applicant's credit bureau reports from May 2012, October 2014, and January 2016. (GX 2; GX 3; GX 4.) The evidence concerning the delinquent debts alleged in the SOR is summarized below.

**SOR ¶ 1.a, credit card account charged off for \$2,361.** Applicant testified that he was making payments on this debt. He submitted evidence of a \$100 payment in April 2016 and a reduction in the balance due from \$2,361 to \$1,461. (Tr. 29; AX B.)

**SOR ¶ 1.b, credit card account placed for collection of \$1,530.** Applicant testified that he had reduced the balance to \$1,024 by making payments until February 2015, when the debit card he was using was hacked. He had not yet resumed payments as of the date of the hearing. (Tr. 30-31; GX 4 at 5.)

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

**SOR ¶ 1.c, credit card account charged off for \$1,282.** In his answer to the SOR, Applicant stated that he was making payments on this account. His January 2016 CBR reflects that his last payment was in May 2013. (GX 4 at 6.) He testified that he had not contacted the creditor or made any further payments on this debt. (Tr. 33.)

**SOR ¶¶ 1.d-1.j, medical bills for \$270, \$120, \$81, \$75, \$70, \$66, and \$52.** Applicant testified that these debts were incurred when he had knee surgery in 2010, and he thought they were covered by his health insurance. (Tr. 36.) However, the \$66 debt was referred for collection in February 2009, before his knee surgery. The debts for \$81, \$75, \$70, and \$52 were referred for collection in 2011, which is consistent with Applicant's testimony. The collection accounts in SOR ¶¶ 1.m-1.p, discussed below, also were opened shortly after his knee surgery. He also testified that he suffers from gout and allergies, which may account for his other medical debts. (Tr. 37) His January 2016 CBR reflects that the debts in SOR ¶¶ 1.f (\$81), 1.g (\$75), and 1.h (\$70) were paid in full. (GX 4 at 2.)

**SOR ¶¶ 1.k and 1.l, federal tax liens for \$8,393 and \$2,815, both filed in 2012.** Applicant testified that he relied on his wife to file their federal income tax returns for 2005 and 2006. During that time, he was working long hours, seven days a week, at a refinery that was recovering from a fire. (Tr. 41.) He was unaware that the returns had not been filed until 2010, when he was contacted by the IRS. (Tr. 40-42.) He promptly entered into a payment agreement and is paying \$200 per month. He still owes about \$5,185. (Tr. 41-45; AX D.)

**SOR ¶ 1.m, collection account opened in January 2011 for a medical bill of \$532.** In his answer to the SOR, Applicant stated that this debt was not on his CBR. It is reflected in his May 2012 CBR, but not on his October 2014 and January 2016 CBRs. (GX 2 at 6; GX 3; GX 4.) He testified that he was unable to find any information about this debt. (Tr. 46.)

**SOR ¶ 1.n, collection account opened in September 2011 for a medical bill of \$131.** Applicant presented evidence of a \$282 payment to this collection agency in November 2015, a \$49 payment in December 2015, and a zero balance on the account. (AX A; AX C.)

**SOR ¶ 1.o, collection account opened in November 2011 for a medical bill of \$170.** In his answer to the SOR, Applicant stated that this debt was not reflected on his CBRs. It is reflected on his May 2012 CBR, but not on his CBRs for October 2014 or January 2016. (GX 2 at 10; GX 3; GX 4; Tr. 47.)

**SOR ¶ 1.p, collection account opened in February 2012 for a medical bill of \$494.** In his answer to the SOR, Applicant stated that he thought this bill had been covered by his insurance. He testified that he contacted the collection agency after he received the SOR, but he had not yet made a payment agreement. (Tr. 48.)

Applicant's annual pay is about \$48,000. Before he was laid off in January 2012, he was earning \$30 per hour. When he began working at the shipyard in March 2012, he earned \$18 per hour. His pay has now increased to \$23 per hour. His wife was laid off for about a year and returned to work in 2012. She earns about \$35,000 per year. (Tr. 27-28.) Applicant testified that on the day of the hearing he had about \$400 in his checking account, \$30 in his savings account, and no retirement or investment accounts. He has not made any major purchases or taken any vacations during the last five years. He drives a 15-year-old truck. He has never sought or received financial counseling. (Tr. 49-51, 53-54.)

## **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 16 delinquent debts totaling about \$18,400. 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).

Applicant’s admissions in his answer to the SOR, his testimony at the hearing, and the documentary evidence submitted during and after the hearing establish two conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”)

and AG ¶ 19(c) (“a history of not meeting financial obligations”).<sup>2</sup> 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 established for the medical debts alleged in SOR ¶¶ 1.d-1.j and 1.m-1.p. His knee surgery in 2010, the periods of unemployment for him and his wife, his substantial reduction in pay when he began his current job, and the hacking of his debit card were circumstances beyond his control. As commonly occurs, he had difficulty tracking the medical debts as they were transferred among various collection agencies. Nevertheless, he has acted responsibly by attempting to identify the debts, attempting locate the agencies collecting the debts, and making payments on several debts.

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<sup>2</sup> The disqualifying condition in AG ¶ 19(f) (“failure to file annual Federal, state, or local income tax returns as required . . .”) may not be an independent basis for denying Applicant’s application for a clearance, because his failures to timely file his federal income tax returns for 2005 and 2006 were not alleged in the SOR. However, 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). I have considered the evidence of Applicant’s failure to timely file his tax returns for these limited purposes.

AG ¶ 20(b) is not established for the other debts alleged in the SOR. Applicant and his wife have been employed since March 2012. Their ability to pay debts has been hampered by their federal income tax debt, but that debt was incurred through their negligence and not by circumstances beyond their control.

AG ¶¶ 20(c) and 20(e) are not established. Applicant has not sought or received counseling. He has been unable to identify or find some of his creditors, but he has not disputed any of the debts alleged in the SOR.

AG ¶ 20(d) is established for the credit-card debt alleged in SOR ¶ 1.a, the medical debts alleged in SOR ¶¶ 1.d-1.p, and the federal tax liens alleged in SOR ¶¶ 1.k and 1.l. The “good faith” required for this mitigating condition 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.) The adjudicative guidelines do not require that an individual resolve every debt alleged in the SOR, make payments on all delinquent debts simultaneously, or pay the debts alleged in the SOR first. An individual needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant and his wife live frugally. He began making payments on his debts before receiving the SOR. He contacted the IRS and negotiated a payment plan as soon as he learned about the tax liens. He has not yet resumed payments on the debts alleged in SOR ¶¶ 1.b and 1.c, but he is paying what he can on his limited income.

### **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 was candid, sincere, and credible at the hearing. He is financially unsophisticated and probably would benefit from financial counseling, but he recognizes his obligation to resolve his delinquent debts and has taken significant steps to resolve them.

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

Subparagraphs 1.a-1.p:

For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge