



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-05009
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

02/10/2017

**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 on February 13, 2014. On January 15, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. Or.) 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. The AG 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 February 25, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on May 4, 2016. On May 5, 2016, 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. The FORM consisted of the SOR (Item 1), his answer to the SOR (Item 2), his security clearance application (Item 3), an unauthenticated summary of a personal subject interview conducted in May 2014 (Item 4), and three credit bureau reports (CBRs) (Items 5, 6, and 7). He received the FORM on May 11, 2016, and did not respond.<sup>1</sup> The case was assigned to me on February 2, 2017.

### **Findings of Fact<sup>2</sup>**

In his answer to the SOR, Applicant admitted all the allegations but asserted that the debts alleged in SOR ¶¶ 1.c and 1.d are duplicates. His admissions are incorporated in my findings of fact.

Applicant is a 56-year-old airfield operations dispatcher employed by a defense contractor since March 2000. He served on active duty in the U.S. Air Force from October 1977 to October 1981 and received an honorable discharge. He served in the Air National Guard (ANG) from June 1982 to December 2013, holding the rank of master sergeant and assigned as an assistant airfield manager. He retired from the ANG in December 2014. He has held a security clearance since October 1977.

Applicant married in April 1989. He and his wife have three adult children, an adopted 10-year-old son, and an 11-year-old foster son.

In a personal subject interview (PSI) in May 2014, Applicant told the investigator that his financial difficulties began after he obtained a home-equity loan to build a pool in his backyard. The monthly \$400 payments on the loan made it difficult for him to pay his other bills. He also had surgery on his shoulder in 2011 and 2013 that caused him to miss two or three months of work. He continued to receive pay from the ANG while disabled, but not from his job as a contractor. He also was furloughed from his ANG position for ten days in 2012-2013 and lost ten days of pay. Finally, he and his wife separated in May 2013 and reconciled in January 2014. While they were separated, he voluntarily paid his wife \$400 per month in child support. (Item 4 at 3-5.)

In the PSI, Applicant told the investigator that the judgment filed in May 2011 for \$1,073, alleged in SOR ¶ 1.a, had been satisfied for about two years. (Item 4 at 6.) He provided no documentary evidence showing that the judgment has been satisfied. However, it is not reflected in the May 2016 CBR. Since the judgment was filed less

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<sup>1</sup> Department Counsel informed Applicant that he was entitled to comment on the accuracy of Item 4; make corrections, additions, deletions, or updates; or object to the lack of authentication. I have treated his lack of response to the FORM as a waiver of any objections to Item 4. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

<sup>2</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

than seven years preceding the May 2016 CBR, its deletion from his credit record indicates that it was resolved.<sup>3</sup>

In the PSI, Applicant told the investigator that the judgments for \$27,507 and \$2,610, alleged in SOR ¶¶ 1.b and 1.c, were for delinquent credit-card accounts, and that he would pay them by the end of 2014, using money from his retirement account. (Item 4 at 6.) In his answer to the SOR, Applicant admitted that the judgments were unsatisfied. They are reflected as unsatisfied in the May 2016 CBR. (Item 7.)

In the PSI and his answer to the SOR, Applicant claimed that the collection account for \$2,898, alleged in SOR ¶ 1.d, and the judgment alleged in SOR ¶ 1.c are duplicates. He did not submit any documentary evidence supporting his claim.

### **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 § 2.

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.” Exec. Or.

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<sup>3</sup> Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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, corroborated by his 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") 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 recent, frequent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's childcare expenses for foster children were voluntarily incurred and not beyond his control. The primary cause for his financial problems was a home-equity loan for a pool that he could not afford. However, he encountered several conditions largely beyond his control: a shoulder injury that made him unable to work as a contractor for two or three months, a ten-day furlough, and a marital separation. He has not acted responsibly regarding the debts in SOR ¶¶ 1.b, 1.c, and 1.d. He told the investigator during his PSI that he intended to resolve them by the end of 2014, using his retirement account. He has presented no evidence of efforts to resolve the debts.

AG ¶ 20(c) is not established. Applicant presented no evidence of financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.a. However, Applicant presented no evidence of good-faith efforts to resolve the debts in SOR ¶¶ 1.b, 1.c, and 1.d.

AG ¶ 20(e) is not established. Although Applicant claimed that the debt in SOR ¶ 1.d duplicated the debt in SOR ¶ 1.c, he provided no documentary evidence to support his claim.

### **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 considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 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**

Subparagraph 1.a: For Applicant

Subparagraphs 1.b-1.d: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge