



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-05517
	)	
Applicant for Security Clearance	)	

**Appearances**

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

07/26/2016

**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 June 20, 2013. On November 26, 2014, 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 15, 2014, 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.<sup>1</sup> 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 3 were admitted in evidence without objection. Applicant testified but did not present the testimony of any witnesses or submit any documentary evidence. I kept the record open until May 16, 2016, to enable him to submit documentary evidence. On May 19, 2016, he submitted Applicant's Exhibit (AX) A through D. Department Counsel did not object to the untimely submission, and AX A through D were admitted in evidence. DOHA received the transcript (Tr.) on April 28, 2016. The record closed on May 19, 2016.

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

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.b-1.i. He denied SOR ¶ 1.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old refueler employed by a defense contractor at a shipyard since February 2013. Applicant's supervisor for the two months preceding the hearing submitted a statement describing him as an outstanding worker, dependable, and a strong leader and motivator. (AX D.)

Applicant served on active duty in the U.S. Air Force from November 2002 to December 2012, and received an honorable discharge. He was briefly unemployed, from December 2012 to February 2013, until he began his current job. He testified that he left the Air Force because he was scheduled for an unaccompanied overseas assignment and had no means of taking care of his three children while assigned overseas. (Tr. 26.) He is awaiting a determination on his application for disability compensation for a service-connected disability. (Tr. 23.) He has held a security clearance since June 2003.

Applicant graduated from high school in June 2000. He attended college from September 2000 to May 2001 but did not receive a degree. He resumed taking college courses after his discharge from the Air Force. At the time of the hearing, he had almost completed the requirements for an associate's degree. (Tr. 23.)

Applicant married in February 2005 and divorced in December 2011. Three children were born during the marriage, ages ten, eight, and five. He incurred legal expenses of about \$6,000 to obtain the divorce and custody of his three children. (Tr. 33.)

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<sup>1</sup> The record does not reflect the reasons for the 15-month delay from the date of Applicant's answer until Department Counsel was ready to proceed.

<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.

Applicant testified that his ex-wife was a drug addict and spent considerable money on drugs, making it difficult to meet their financial obligations. They separated in October 2010. At about the same time they separated, his ex-wife accused him of assaulting her, but he was found not guilty. He received temporary custody of their three children when they separated and permanent custody in February 2011.

After Applicant and his ex-wife separated, he was spending \$1,200 every two weeks for child care at the on-base child care center. The child care fees were based on family income. After six months, with the assistance of an Air Force financial advisor, he was able to reduce the cost of on-base child care to \$1,200 per month. (Tr. 30.) He has attempted to collect child support from his ex-wife, but she cannot be found. (Tr. 20-21.)

Applicant lived with a cohabitant from July 2012 to February 2015. His cohabitant had four children, and she took care of Applicant's children as well as her own while Applicant was at work. (Tr. 33.) After they broke up, he hired a nanny to care for his children for \$180 per week when he works a normal 8-hour schedule and \$300 per week when he works a 12-hour schedule. (Tr. 36.)

In an effort to generate additional income, Applicant works 7-day workweeks with 12-hour shifts every other month. (Tr. 25.) He earns about \$648 per week without overtime, and \$900-\$1,000 per week when he works seven days a week. (Tr. 35.) He testified that he usually has a remainder of about \$400-\$500 each month after paying all his living expenses. Since his discharge from the Air Force, he has not obtained financial counseling, although he completed a workbook on financial management that he obtained through his church. (Tr. 58.)

The debts alleged in the SOR are reflected in Applicant's credit bureau reports (CBRs) from July 2013 and May 2014. (GX 2; GX 3.) The evidence concerning the debt alleged in the SOR is summarized below.

**SOR ¶ 1.a, car loan charged off in August 2012 for \$7,175.** Applicant denied this debt in his answer to the SOR. He purchased a five-year-old vehicle in 2010, and found that it had major recurring mechanical problems that he could not afford to repair. He testified that the dealer who sold him the vehicle told him that it had a "military forgiveness program," under which he could surrender the vehicle and owe nothing on the loan. After he surrendered the vehicle, the dealer demanded the balance due on the loan. He tried to arrange a payment plan, but the dealer insisted on a lump-sum payment of the full amount. Applicant testified that all his dealings were by telephone and he was unable to submit any documentation to corroborate his testimony. (Tr. 38-40.)

**SOR ¶ 1.b, unsecured loan charged off in May 2010 for \$3,121.** Applicant testified that he gave his ex-wife money to pay off this loan, but she did not pay it. He testified that the debt was paid in full more than two years ago by garnishment of his pay. (Tr. 41-43.) He did not submit any documentation to support his testimony. His May 2014 CBR does not reflect any payments on this debt. (GX 3 at 2.)

**SOR ¶ 1.c, unsecured loan charged off in June 2010 for \$2,692.** In 2009, Applicant used this loan as the down payment for a vehicle. He trusted his ex-wife to make the payments, but she did not. He has not contacted the lender or made any payments on the charged-off amount. (Tr. 43-45.)

**SOR ¶ 1.d, cellphone bill charged off in September 2013 for \$870.** Applicant opened this account in November or December 2010. He has not contacted the creditor or made any arrangements to resolve this debt. (Tr. 46-47.)

**SOR ¶ 1.e, credit-card account charged off in November 2009 for \$430.** Applicant testified that this debt became delinquent because he charged more than he could afford on this credit card. He has taken no action to resolve this debt. (Tr. 47-48.)

**SOR ¶ 1.f, telephone bill charged off in November 2010 for \$430.** Applicant's CBRs reflect that the amount charged off was \$310. (GX 2 at 8; GX 3 at 2.) He testified that he contacted this creditor about six months ago, but he has not made any payments or payment agreements to resolve it. (Tr. 48-49.)

**SOR ¶ 1.g, past-due debt for \$35, for overpayment while on active duty.** Applicant testified that this debt was incurred when he was overpaid while he was on active duty. He testified that the debt was paid by an involuntary offset against his federal income tax refund. (Tr. 49-50.) He did not provide any documentation to corroborate his testimony.

**SOR ¶ 1.h, judgment filed in October 2010 for \$10,701.** This debt was incurred to purchase the vehicle for which Applicant borrowed the down payment and incurred the debt in SOR ¶ 1.c. He testified that the debt was paid by garnishment of his pay for about 18 months, and was paid in full about two months ago. (Tr. 50-51.) He provided no documentation to corroborate his testimony. His May 2014 CBR reflected that the judgment was unsatisfied. (GX 3 at 3.)

**SOR ¶ 1.i, judgment filed in December 2012 for \$1,064.** This judgment was satisfied in March 2015. Applicant paid his attorney a \$5,000 retainer to represent him in the divorce and custody litigation. He exceeded the amount of the retainer, resulting in this judgment. (Tr. 33-34.) It was collected by garnishment and was satisfied in March 2015. (AX B; AX C.)

**SOR ¶ 1.j, telecommunications debt for \$263, placed for collection in March 2012.** Applicant testified that he contacted this creditor in order to continue receiving service, but he was unable to resolve this debt because the creditor insisted on payment in full. (Tr. 53.)

**SOR ¶ 1.k, collection account for \$216 opened in July 2013.** Applicant could not provide any information about this debt. He has not contacted the collection agency listed in his CBR. He has not disputed the debt. (Tr. 54-55.)

**SOR ¶ 1.I, speeding ticket placed for collection in August 2012 for \$300.** Applicant testified that he contacted the collection agency about a year ago, but that he was unable to pay the fine due to another “financial incident.” (Tr. 55-56.)

### **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 12 delinquent debts, including two unsatisfied judgments, totaling about \$27,297. 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, his CBRs, and the documents submitted during and after the hearing 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 delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. Applicant attributed his financial problems to his ex-wife's drug addiction and failure to timely pay their bills. However, his marriage ended more than four years ago and he still has not addressed most of his delinquent debts.

AG ¶ 20(b) is not established. Applicant encountered several conditions that were largely beyond his control: his ex-wife's drug addiction and resultant financial irresponsibility, his marital breakup and the resultant legal expenses, expensive mechanical problems with a vehicle, and the high costs of child care. He works long hours and has taken measures to reduce his child care costs. However, he has not acted responsibly toward his creditors. He admitted that he has not contacted his creditors or taken any steps to resolve the debts in SOR ¶¶ 1.c, 1.d, and 1.k. He testified that he telephonically contacted the creditor in SOR ¶ 1.f six months ago and the creditor in SOR ¶ 1.l a year ago, but he has not followed up on his calls. His testimony reflects that resolution of the debts in SOR ¶¶ 1.b, 1.g, 1.h, and 1.i was passive, by involuntary garnishment or an offset against an income tax refund. He provided no documentation to corroborate his testimony that the debts in SOR ¶¶ 1.b, 1.g and 1.h were resolved.

AG ¶ 20(c) is not established. Applicant obtained help from a financial counselor in reducing his child care expenses, and he testified that he obtained a financial management workbook from his church, but his delinquent debts are not under control.

AG ¶ 20(d) is not established. This mitigating condition requires a "good-faith" effort to repay debts. 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). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR be paid first, or resolve every debt alleged in the SOR. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. Applicant has no plan. For the most part, he has reacted passively to his financial problems, and he has taken no significant active measures to resolve his debts.

AG ¶ 20(e) is not established. Applicant admitted all the debts except SOR ¶ 1.a. He could provide no information about the debt in SOR ¶ 1.k, but he has not disputed it.

### **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 and sincere at the hearing. He served honorably in the U.S. Air Force for more than ten years and he left active duty because he could not take care of his children while deployed overseas. He has held a security clearance for many years, apparently without incident. He has adjusted to being a single parent after a bitter divorce and custody battle, but he has reacted passively to the financial fallout from his failed marriage. He was put on notice three years ago, when he submitted his security clearance application, that his financial problems raised security concerns. It has been more than four years since his divorce, but he has not yet formulated a financial plan or taken significant steps to gain control of his financial situation.

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

Subparagraphs 1.a-1.l:

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