



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



In the matter of: )  
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 ) ISCR Case No. 15-00749  
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Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

01/30/2017

**Decision**

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TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On August 5, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On November 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Exec. Or. 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and referred his case to

an administrative judge for a determination whether his clearance should be granted or denied.

On December 7, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 26, 2016, was provided to him by letter dated January 28, 2016. Applicant received the FORM on February 23, 2016. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information within the 30-day period, which was received without objection.<sup>1</sup> On September 13, 2016, the case was assigned to me.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.e and 1.f, and denied SOR ¶¶ 1.a through 1.d.

### **Background Information<sup>2</sup>**

Applicant is a 49-year-old consultant employed by a defense contractor since June 2014. He seeks to renew his security clearance that he held over 20 years that “lapsed while [he] was in between Air Force software development contracts.” (Items 1, 2, 3)

Applicant graduated from high school in 1986. He served in the U.S. Air Force from 1986 to 1996, and was honorably discharged. He held a security clearance while in the Air Force. Applicant married in 2000 and divorced in 2009. He remarried in 2011. He has sole custody of four children and one stepchild from his first marriage, and shares custody of two stepchildren with his second wife. (Items 1, 2, 3)

### **Financial Considerations**

Applicant’s SOR contains six allegations consisting of five debts totaling \$11,076, and a 2012 home foreclosure. (SOR ¶¶ 1.a – 1.f)

Applicant attributes his financial problems to a series of events surrounding a contentious 2009 divorce. Applicant realized that he could not maintain two households, honor the irresponsible financial obligations incurred by his estranged wife, and support his children on his then salary. He immediately contacted his mortgage lender seeking a loan modification and despite his repeated attempts, his lender was unwilling to work with him. Applicant lost his home to foreclosure that occurred at the peak of the housing market downturn. There is no remaining mortgage arrearage or deficiency. (Items 1, 3, 5, 6; FORM response)

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<sup>1</sup> Applicant’s additional information will be referred to as FORM response.

<sup>2</sup> The limited background information regarding Applicant was derived from the FORM and was the most current information available.

In his FORM, Department Counsel noted that absent mitigating documentation, it was not clearly consistent with the national interest to grant Applicant's security clearance. Applicant apparently took note of Department Counsel's comments and in his FORM response provided sufficient mitigating documentation. Of particular concern was a \$10,564 collection account. The remaining four debts were all less than \$150 each.

Applicant has paid in full the two collection accounts in SOR ¶¶ 1.a and 1.b for \$112 and \$150, respectively. He has settled and paid the \$10,564 collection account in SOR ¶ 1.e for the lesser amount of \$8,215. Applicant provided sufficient evidence that he attempted to resolve or dispute the two remaining collection accounts in SOR ¶¶ 1.c and 1.d for \$150 and \$100, respectively. These debts no longer appear on his credit report. Applicant is current on his monthly expenses. (FORM response)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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 adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 "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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism.

It 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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.”

The evidence establishes the validity of the allegations and the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgement.

Full application of AG ¶ 20(b) is warranted. Applicant was involved in a costly and contentious divorce and he suddenly found himself responsible for bills incurred by his former wife as well as the sole custodian for his children. Additionally, Applicant could not have anticipated the downturn in the housing market.

AG ¶¶ 20(c) is partially applicable and 20(d) is fully applicable. Although Applicant did not receive formal financial counseling, his debts are resolved or being resolved and there are clear indications that his financial problems are under control. As noted above, Applicant has made a concerted effort to repay his creditors. He has paid or settled three of the five debts and attempted to settle or dispute two small debts that no longer appear on his credit report. Given Applicant's resources and situation at the time, he approached his debts in a responsible and measured way.<sup>3</sup> AG ¶ 20(e) is

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<sup>3</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is

applicable to the two \$150 and \$100 collection accounts alleged in SOR ¶¶ 1.c and 1.d. As noted, these debt no longer appear on Applicant's credit report.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The 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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's past military service and employment with a defense contractor weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts are resolved. Applicant understands what he needs to do to maintain his financial responsibility.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

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whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

### **Formal Findings**

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
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Subparagraphs 1.a – 1.f:	For Applicant
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### **Conclusion**

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge