



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-00871
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2017

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 28, 2014. On February 12, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F and E. 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 guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on April 7, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case

on June 15, 2016. On June 17, 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 ten items, including a summary of two personal subject interviews (PSI) conducted in July and August 2014 (Item 9). He received the FORM on July 6, 2016. He timely responded, and his response was included in the record with no objection from Department counsel.<sup>1</sup> The case was assigned to me on February 24, 2017.

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

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.c but denied all the other allegations. His admissions are incorporated in my findings of fact.

Applicant is a 55-year-old senior staff instructor employed by a defense contractor since October 2002. He served on active duty in the U.S. Navy from July 1979 to July 2002 and retired as a chief petty officer. He held a security clearance while on active duty and retained it when he was employed by a defense contractor.

Applicant married four times. He and his third wife had two children, now ages 23 and 21. His fourth wife passed away in July 2015 after suffering a stroke two days before he submitted his SCA. Until his wife's stroke, she handled all the family finances. (Item 9 at 6.)

When Applicant submitted his SCA in May 2014, he answered "No" to questions whether, in the past seven years, he had a judgment entered against him; defaulted on any type of loan; had an account or credit card suspended, charged off, or cancelled for failure to pay as agreed; or had any bills or debts turned over to a collection agency. However, he disclosed that he had been sued by a former landlord for damage to a rental home and was making payments on the debt. His credit bureau report (CBR) from June 2014 (Item 7) reflected five of the six debts alleged in the SOR. The medical debt referred for collection in November 2012 was reflected in his CBR from December 2014 (Item 8). The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: vacation membership service referred for collection of \$4,830 in July 2009.** In Applicant's answer to the SOR, he admitted this debt and stated that his

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<sup>1</sup> Item 9 was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he waived any objections to the PSI summary. 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

<sup>2</sup> Applicant's personal information is extracted from his security clearance application (Item 4) unless otherwise indicated by a parenthetical citation to other documents in the record.

wife bought the service but they never used it. He was unaware of the debt until he was confronted with his CBR during the July 2014 PSI. (Item 9 at 4.) In April 2016, Applicant settled this debt for \$2,415. (Response to FORM, Enclosures 1 and 2.)

**SOR ¶¶ 1.b and 1.c: medical bills referred for collection of \$189 in March 2012 and \$150 in November 2012.** In Applicant's answer to the SOR, he stated that the collection agency determined that the bills were posted to his account erroneously. He provided documentary evidence showing that the bills were deleted from his credit file. (Item 3 at 7.)

**SOR ¶ 1.d: judgment for \$16,178 filed in June 2013.** In Applicant's answer to the SOR, he stated that he vacated an apartment before the end of a lease and the apartment was vandalized while it was vacant. Applicant began making monthly \$397 payments on the judgment in April 2013, and he made a final lump sum payment of \$15,641 in September 2015, using funds from his wife's life insurance after she passed away in July 2015. (Response to FORM, Enclosures 3 and 4.)

**SOR ¶ 1.e: judgment for \$315 filed in March 2012.** This debt was for a medical bill and was reflected in the June 2014 CBR. (Item 7 at 3.) The collection agency told Applicant it had no record of this debt. The judgment is not reflected in the December 2014 CBR or the June 2016 CBR. (Items 5 and 6.)

**SOR ¶ 1.f: credit-card account charged off for \$14,592 in November 2012.** Applicant's family used this credit card for hotel and living expenses after his home was flooded while he was assigned overseas. When they exceeded his credit limit, the interest rate increased from 6% to 25%. Applicant paid a portion of the debt and the creditor forgave the remainder, which was mostly interest and penalties. (Item 9 at 4; Answer at 15.) The debt was not reflected in the June 2016 CBR. (Item 5.)

Applicant was unaware of the debts alleged in SOR ¶¶ 1.a-1.c and 1.e when he submitted his SCA. His wife suffered a stroke two days before he submitted it, and he was with her in the hospital when he completed it without reviewing his CBR. He disclosed the debt in SOR ¶ 1.d in his SCA. In his answer to the SOR and response to the FORM, he denied intentionally falsifying his SCA.

## **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 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 and 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 partially established. Applicant's debts were recent and frequent, but they were incurred under circumstances making them unlikely to recur, because he entrusted the family finances to his wife, who is now deceased.

AG ¶ 20(b) is established. The illness and death of Applicant's wife was a condition beyond his control, but all the debts alleged in the SOR were delinquent well before her illness. However, the debts in SOR ¶¶ 1.a, 1.d, and 1.f were incurred under conditions largely beyond his control. SOR ¶ 1.a was incurred by Applicant's wife without his knowledge. The debt in SOR ¶ 1.d occurred because the apartment was vandalized after Applicant moved out, even though it was still leased to him at the time. The debt in SOR ¶ 1.f was incurred because Applicant's home was flooded while he was out of the country. He acted responsibly by contacting the creditors as soon as he learned about the debts and resolving them.

AG ¶ 20(c) is established. Although Applicant submitted no evidence of financial counseling, his financial issues are under control.

AG ¶ 20(d) is established. Applicant paid or settled all the debts in the SOR, except those that he successfully disputed.

AG ¶ 20(e) is established. Applicant successfully disputed the medical debts in SOR ¶¶ 1.b, 1.c, and 1.e.

## **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition is AG ¶ 16(a): "deliberate omission . . . of relevant facts from any personnel security questionnaire . . . ." When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant disclosed in his SCA that he had been sued by his landlord for the debt in SOR ¶ 1.d. He submitted his SCA under emotionally difficult circumstances and did not

review his credit record before he submitted it. He admitted that he was less diligent than he should have been when he submitted it. I am satisfied that he did not deliberately omit the information about his delinquent debts. No disqualifying conditions under this guideline are established.

### **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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has a long history of service to the national defense, both in uniform and as an instructor employed by a defense contractor. He has held a security clearance since he first enlisted in the Navy. Because he 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). Nevertheless, he has submitted sufficient evidence in his answer to the SOR and response to the FORM to mitigate the security concerns raised by his delinquent debts and his omissions from his SCA.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, 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 and his omissions from his SCA. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a-1.f: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge