



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [REDACTED]                       | ) | ISCR Case No. 15-01008 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

05/15/2017

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond his control, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on June 30, 2014. On August 1, 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 (Ex. Or.) 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 DOD on September 1, 2006.

Applicant submitted his Answer to the SOR on August 18, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 3, 2016, and the case was assigned to me on September 26, 2016. On December 20, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the

hearing was scheduled for January 12, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through I were admitted without objection. DOHA received the transcript (Tr.) on January 24, 2017.

### **Findings of Fact**

Under Guideline F, the SOR alleges seven delinquent debts totaling approximately \$56,929, and a foreclosed mortgage account with an unspecified balance. The delinquent debts consist of: a judgment and three delinquent accounts owed to the mortgage-loan creditor totaling \$46,883; a \$9,620 judgment owed to a credit-card company; a \$178 medical account; and, a \$248 cable account. In his Answer, Applicant admits the foreclosure and the debts to the mortgage-loan creditor, however, he states that the delinquent accounts were combined and form the basis of the judgment which is now \$18,441. He admits the credit-card debt and denies the medical and the cable debts. His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from January 2015 and July 2014. (GX 4; GX 2.)

Applicant is a 56-year-old simulation engineer currently employed by a defense contractor since June 2014, and employed in the defense industry since July 2007. He was granted a DOD security clearance in 2008. He is a combat veteran who served honorably in the U.S. Navy from August 1986 until June 1994, and held a security clearance from at least 1989 to 1990. He received an associate's degree in May 1980; an advanced electronics program completion certificate in October 1989; an associate's degree in August 1999; a bachelor's degree in December 2006; and a master's degree in January 2012. He held a top secret clearance from 1989 to 1990 while in the Navy. He and his wife married in 1992, and they have a 20-year-old daughter. Applicant also has a 35-year-old son and a 29-year-old son from a prior marriage. (GX 1; Tr. 34; Tr. 40.)

Applicant purchased a house in 1995 for about \$138,500. In 1998, he refinanced the house with the mortgage-loan creditor for about \$156,000, which encompassed an equity line-of-credit that he used to make home repairs and to purchase a used vehicle. (GX 1; Tr. 29; Answer.) In about 2003, Applicant began experiencing financial difficulties when his wife became ill and was no longer able to work. He incurred medical bills in addition to suffering the impact of her loss of income. Applicant's mother-in-law was living with them during this period, and she became terminally ill. Applicant incurred medical treatment costs as well as expenses for her hospitalizations. In about August 2004, the contract on which Applicant was working ended, resulting in his unemployment and increased financial strain. After seeking local employment for about four months, he found an out-of-state job that required him to move. He incurred expenses for traveling home to visit his wife and perform work on the house. (Tr. 44.) Applicant supported two households from 2004 until 2008, when his family moved in with him. (Tr. 26-28.)

Between 2004 and 2008, based primarily on the advice of realtors, Applicant and his wife invested time and about \$43,000 in necessary repairs and modifications to their house in anticipation of its sale, exhausting their 401(k)s, and using their personal loan

and credit card to finance the work. In about 2007, they unsuccessfully attempted to sell the house on their own, and later listed it through a realtor. Despite the costly improvements, the house did not sell. (Tr. 30; Tr. 43.) Applicant continued to make the \$1,250 monthly mortgage-loan payments while the house lingered on the market. In 2008, he was no longer able to sustain the financial burdens of two households on his sole income, and had depleted his financial reserves. As a result, he negotiated with the mortgage-loan creditor which agreed to accept partial monthly payments. However, in August 2008, without warning or explanation, the creditor returned Applicant's partial payment and began foreclosure proceedings. (Tr. 28; GX 3; GX 1.) The house was foreclosed in November 2009 (SOR ¶ 1.a), and sold at auction in February 2010 for \$175,000. (Tr. 45; Answer; AX F.) The proceeds from the sale of the house satisfied the mortgage loan and the equity line-of-credit, with the creditor receiving a profit of approximately \$19,000. Applicant's 2015 and 2016 CBRs show a \$0 balance on the mortgage loan. The line-of-credit was not reported as a separate loan on any of the record CBRs. (Answer; Tr. 30; GX 4; GX 5; AX H.)

Applicant secured two additional loans with his mortgage-loan creditor, a vehicle loan (SOR ¶ 1.c) and a personal loan (SOR ¶ 1.e). He also had a credit-card account with another creditor (SOR ¶ 1.f). As Applicant struggled to maintain his mortgage-loan payments, he fell behind on these accounts, and ultimately defaulted on them in late 2006. (GX 2; Tr. 29; GX 3.) After defaulting, Applicant repeatedly contacted both creditors in an effort to establish repayment arrangements. However, both creditors demanded full payment of the debts. Applicant did not have the financial resources to comply. He consulted an attorney who advised him to file for bankruptcy, which he opted not to do. (Tr. 33.) Applicant unsuccessfully defended himself in court, and the debts were reduced to judgments. (Tr. 48-50; GX 1.)

The \$9,620 April 2008 judgment alleged in SOR ¶ 1.d is for Applicant's delinquent credit card. Applicant contends that the \$6,924 vehicle loan debt and the \$5,051 personal loan debt owed to the mortgage-loan creditor were combined by the creditor and are the underlying debts of the November 2009 \$16,467 judgment alleged in SOR ¶ 1.g. He states that the \$18,441 debt (SOR ¶ 1.b) is the same judgment alleged in SOR ¶ 1.g, with additional interest and fees. (Tr. 30-31; Answer.) He further asserts that despite the consolidation of the two accounts into one judgment, the two accounts and the judgment continued to be erroneously listed as three separate accounts on his CBRs. These assertions are supported by the record evidence. (GX 2; GX 4.) The two accounts and two judgments have been removed from Applicant's CBRs as of 2015. (GX 4; AX G; AX H.)

Applicant was told by the attorney with whom he consulted that the mortgage-loan creditor should have used the \$19,000 profit it made from the sale of Applicant's house to offset the judgment for Applicant's other two loans. (Tr. 46.) Despite questioning the legitimacy of the judgment, in 2012, Applicant again contacted the mortgage-loan creditor and attempted to settle the judgment, offering a lump-sum payment of \$2,000, which was refused. (AX I; Tr. 34; Tr. 48.)

Applicant paid the \$178 medical debt (SOR ¶ 1.d), incurred in 2011, in 2013. He paid the \$248 cable bill (SOR ¶ 1.h) also incurred in 2011, at an unspecified time. He

successfully disputed these two debts with the credit reporting agencies and they have been removed from his CBR. (Tr. 50; GX 4; GX 5.)

Applicant's co-worker, a former Navy captain, who assessed Applicant for his current employment and is aware of his financial issues, has "been positively impressed with [Applicant's] conviction, commitment, and integrity, both professionally and personally." (AX C.) Applicant received high performance evaluations in 2014 and 2015. His 2015 Manager's Assessment states, "[Applicant] has never shown himself to be anything other than a professional with the highest ethical standards and desire to uphold all company values." (AX D; AX E.)

Applicant has supported his family on only his income since 2003. He lives within his means, which includes out-of-pocket assistance for his daughter's college expenses of \$12,000 to \$14,000 a year. He rents his home, does not have a vehicle loan, and maintains a single credit card that has a balance of about \$1,640 and a \$2,000 limit. He has not incurred any delinquent debt since 2011, and no significant delinquent debt since 2008. There are no negative accounts on his 2016 CBRs. (Tr. 51-58; GX 2; GX 5; AX G; AX H.) He was candid, sincere, and credible while testifying and accepts responsibility for his previous financial issues. (Tr. 35-36.)

### **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's 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).

The record evidence establishes that SOR ¶¶ 1.b and 1.g are duplicate debts. Therefore, I have not considered the debt alleged in SOR ¶ 1.g when evaluating Applicant's financial status. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

Applicant's testimony, corroborated by the record evidence, establishes 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").

However, a person can mitigate concerns about his ability to handle and safeguard classified information raised by his financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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.

Applicant's financial difficulties arose from circumstances largely beyond his control. Specifically, his wife suffered an illness which resulted in medical costs and her inability to return to work, and his mother-in-law became terminally ill and required expensive medical care. Applicant was unemployed for four months until he found work in another state and moved. He paid the expenses for two households for four years solely on his income. He made costly and extensive necessary improvements on his house in an unsuccessful effort to sell it. As a result of these unforeseeable and unavoidable additional expenses, Applicant depleted his financial reserves, then fell

behind on his financial obligations. He acted responsibly and in good faith by maintaining contact with his creditors and repeatedly attempting to negotiate repayment plans. Despite his exhaustive efforts to resolve his debts, his creditors refused to accept his offers. He successfully disputed two paid SOR debts and has not incurred additional debt. “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). A security clearance adjudication is an evaluation of a person’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.)

Applicant has not incurred any significant delinquent debt since 2008, and no delinquent debt since 2011. He is current on his ongoing financial obligations and has reduced his overhead. He has no mortgage loan or vehicle loan and only a \$2,000 limit on his sole credit card, thus drastically limiting his potential to become financially overextended. These actions demonstrate that Applicant is committed to maintaining his plan for financial stability. A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The circumstances under which Applicant incurred delinquent debt are unlikely to recur, particularly in light of the proactive and preventive measures he has taken to ensure his financial stability. Applicant’s past financial difficulties do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(e) apply.

## **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 I have also considered the following:

Applicant is a combat veteran who served honorably in the military for eight years, and held a security clearance for part of that time. He has held a DOD security clearance since 2008, and is trusted and respected by his employer. He negotiated with his creditors in good faith, albeit unsuccessfully, to resolve his debts. He lives within his means, and has been proactive in limiting his susceptibility to any potential indebtedness. I am confident that Applicant will continue his good-faith efforts to maintain his financial stability.

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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.h:

For Applicant

### **Conclusion**

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

Stephanie C. Hess  
Administrative Judge