



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-01438
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

08/25/2016

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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 H (Drug Involvement). Applicant has mitigated the security concerns raised by his drug involvement, but he has not mitigated the concerns raised by his delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 24, 2012. On October 21, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F and H. The DOD acted under 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 replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on December 23, 2015; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on January 25, 2016. On February 1, 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. He received the FORM on February 5, 2016, but he did not respond. The case was assigned to me on July 27, 2016.

### **Findings of Fact<sup>1</sup>**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.c, 1.e-1.i, and 2.a. He denied SOR ¶¶ 1.a, 1.b, 1.d, and 1.j. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old information security engineer employed by a defense contractor since August 2012. He was employed by another defense contractor from January 2004 to March 2006. He was employed by private-sector companies from February 2000 to December 2003 and from March 2006 to August 2012. He has never held a security clearance.

Applicant served as an active reservist in the U.S. Marine Corps Reserve from June 1992 to June 1998 and as an inactive reservist from June 1998 to June 2000. He received honorable discharges for both periods of service.

Applicant attended a university from August 1994 to May 1997 and earned a bachelor's degree. He married in August 2005. He has a daughter and a stepdaughter, ages 9 and 17.

When Applicant submitted his SCA in October 2012, he disclosed that he used marijuana "once every one or two years" in social situations from about August 1998 to May 2012. He stated that he does not intend to use any illegal drugs in the future because of the risk to his career. (Item 3 at 37-38.) His marijuana use is alleged in SOR ¶ 2.a., which he admitted.

The SOR alleges ten delinquent debts totaling about \$105,000 (SOR ¶¶ 1.a-1.j). The delinquent debts are reflected in his credit bureau reports (CBRs) from January 2016, January 2015, and November 2012. (Items 5, 6, and 7.)

Applicant stated that the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.j pertain to a mortgage loan that was resolved by a short sale, that the loans were forgiven, and that the debts were barred by a seven-year statute of limitations in November 2015. He stated that he was making monthly payments on the debts in SOR ¶¶ 1.c and 1.i, which are the same debt, and that the debt in SOR ¶ 1.d was paid in full. He stated that he intended to contact the collection agencies for the debts alleged in SOR ¶¶ 1.e-1.h.

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

(Item 2.) He provided no documentation of a short sale, forgiveness of any debts, payments on any debts, or payment agreements.

Applicant's claim that he is currently making payments on the debt alleged in SOR ¶¶ 1.c and 1.i is not supported by the evidence. His January 2016 CBR reflects that the last payment was in December 2015 and that the account was charged off for \$10,473. (Item 5 at 2.) Applicant has not provided any evidence of additional payments, even though the FORM gave him that opportunity.

Applicant's January 2015 and January 2016 CBRs support Applicant's claim that the debt alleged in SOR ¶ 1.d has been paid. The CBRs reflect the debt as a paid charge-off. (Item 5 at 3; Item 6 at 2.)

Applicant asserted that the debts in SOR ¶¶ 1.c and 1.i were the same debt. His November 2012 CBR supports his claim, reflecting that the creditor alleged in SOR ¶ 1.i is the collection agent for the creditor alleged in SOR ¶ 1.c.

Even though Department Counsel's submission specifically commented on Applicant's failure to provide documentation to support his responses to the SOR, he did not respond to the FORM. Except for his claims that SOR ¶¶ 1.c and 1.i are duplicates and SOR ¶ 1.d has been paid, his responses to SOR ¶¶ 1.a-1.c and 1.e-1.j are not supported by documentary evidence.

### **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. 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, 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)-20(d) are not established. Applicant's debts are numerous and recent. He provided no information regarding the circumstances in which his debts were incurred. He submitted no evidence of financial counseling. To the extent that Applicant relies on a statute of limitations to resolve the debts in SOR ¶¶ 1.a, 1.b, and 1.j, his reliance does not constitute a good-faith effort to resolve a debt within the meaning of the Directive. (ISCR Case No. 07-06841 at 4. Bd. Dec. 19, 2008).

AG ¶ 20(e) is established for the debt alleged in SOR ¶¶ 1.c and 1.i. 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). Accordingly, I have resolved SOR ¶ 1.c in Applicant's favor.

## **Guideline H, Drug Involvement**

The concern under this guideline is set out in AG ¶ 24: “Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.” Drugs are defined in AG ¶ 24(a)(1) as “[d]rugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens).”

Applicant's disclosure in his SCA and his admission of SOR ¶ 2.a establishes two disqualifying conditions under this guideline: AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”; and AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” The following mitigating conditions are potentially relevant:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 26(b): a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation;

AG ¶ 26(a) is established. Applicant's drug involvement ended in May 2012, more than four years ago, and there is no evidence that it has recurred.

AG 26(b) is not fully established. Although Applicant declared in his SCA that he intended to refrain from further drug involvement, he has not provided evidence that he has disassociated from his drug-using associates or that he avoids or has changed the environment where he used drugs. However, he has abstained from drug use for more than four years. His SCA is the equivalent of a signed statement of intent, but it does not include an agreement to automatic revocation of a clearance for any violation.

## **Whole-Person Analysis**

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 H in my whole-person analysis, and I have considered the factors in AG ¶ 20(a). I have specifically considered Applicant's honorable service in the U.S. Marine Corps, his history of employment by defense contractors, and his voluntary disclosure of his drug involvement. Because he requested a determination on the record without a hearing, I have 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 Guidelines F and H, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his drug involvement, but he 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 grant him 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.b: **Against Applicant**

Subparagraphs 1.c-1.d: **For Applicant**

Subparagraphs 1.e-1.j: **Against Applicant**

Paragraph 2, Guideline H (Drug Involvement): **FOR APPLICANT**

Subparagraph 2.a: **For Applicant**

## **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge