



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-02855  
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Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

03/03/2017

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On August 22, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On March 2, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 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 and 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 to determine whether his clearance should be granted or denied.

On March 16, 2016, 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 April 20, 2016, was provided to him by letter dated April 21, 2016. Applicant received the FORM on April 26, 2016. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the 30-day period. On February 10, 2017, the case was assigned to me.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations. His admissions are accepted as findings of fact.

### **Background Information<sup>1</sup>**

Applicant is a 59-year-old computer network systems engineer employed by his company since January 2009. He seeks a security clearance in order to qualify for a better position with a defense contractor. (Items 2, 3)

Applicant graduated from high school in June 1976, and was awarded an associate's degree in June 2006. He also received significant information technology training during his military and post-military career. (Items 2, 3) Applicant served in the U.S. Air Force from August 1982 to July 2008, and was honorably retired as a master sergeant (pay grade E-7). (Item 2)

Applicant was married from July 1981 to February 2002, and that marriage ended by divorce. He listed three adult children on his SF-86. (Item 3)

### **Financial Considerations**

Applicant's SOR lists eight debts totaling \$42,179, ranging from a \$155 water bill collection account to a \$9,660 credit card collection account. These debts are documented in Applicant's September 2014 and April 2016 credit reports. (SOR ¶¶ 1.a – 1.e; Items 4, 5)

Applicant attributes his financial difficulties to being "forced to retire (from the Air Force) because of High Year of Tenure [sic] rank restrictions" in 2008 after completing almost 27 years of active duty. Also, he was unemployed or underemployed until January 2009 when he found full-time employment. (Items 2, 3)

Applicant claims to have contacted his creditors in 2013 in order to make payment arrangements, but only two creditors responded demanding payment in full.

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<sup>1</sup> The limited background information regarding Applicant was derived from the FORM and was the most current information available.

(Item 2) Department Counsel correctly points out in her FORM that Applicant did not provide any documentation of any contact with his creditors. (FORM)

Applicant recently started college and has a job offer that will allow him to address his delinquent debts. He has provided a proposed payment plan once he is re-employed. (Item 2) Applicant's 2014 credit report shows not only delinquent debts, but also an additional \$34,597 charged-off second mortgage. Applicant claims that two of his SOR debts are duplicates and that he paid a \$155 water bill collection account "many years ago." (Item 2)

Applicant asserts that his almost 27 years of military service and recent academic record support a favorable security clearance adjudication. However, his failure to provide documentation to substantiate his claims of debt repayment and failure to address concerns raised in Department Counsel's FORM did little to enhance his situation. There is no record evidence documenting any attempt by Applicant to contact his creditors, pay his creditors, or otherwise resolve his debts over a lengthy period of time. Nor is there any record evidence of financial counseling.

### **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**

The Government met its burden of production in support of the allegations in the SOR. The facts established raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). In response to the Government's information, it was incumbent on Applicant to produce information sufficient to refute or mitigate the facts established against him. He did not submit any documents in response to the SOR or the FORM. Applicant did not show that he had paid or otherwise resolved his debts.

In summary, Applicant did not mitigate the security concerns raised by the Government's information. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. According, those doubts must be resolved against the Applicant.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

### **Formal Findings**

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.h:	Against Applicant

### **Conclusion**

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

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ROBERT J. TUIDER  
Administrative Judge