



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-03363
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

07/28/2016

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on June 9, 2014. On November 13, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 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 the DOD on September 1, 2006. The adjudicative 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 November 30, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 17, 2016, and the case was assigned to me on March 22, 2016. On March 24, 2016, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 20, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until May 6, 2016, to enable him to submit additional documentary evidence. He timely submitted AX F and G, which were admitted without objection. DOHA received the transcript (Tr.) on May 2, 2016.

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

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

Applicant is a 37-year-old electronics technician employed by a defense contractor since April 2014. He served on active duty in the U.S. Navy from September 1997 to August 2005 and was honorably discharged as an electronics technician third class (pay grade E-4). He was unemployed after his discharge from the Navy until May 2006. He worked for various private-sector employers from June 2006 to March 2009, and was unemployed from March 2009 to January 2011. He was self-employed from January to December 2011 and unemployed from December 2011 to March 2012. He worked for private-sector employers from March 2012 to February 2014 and was unemployed for about a month before beginning his current job. He held a security clearance while in the Navy.

Applicant attended college for nine months in 2006, four months in 2008, and from January 2013 until January 2014, when he received an associate's degree. He received a bachelor's degree in electronics engineering technology in November 2014. (Tr. 26.) He has never married and has no children.

Applicant failed to timely file his federal income tax return for 2011, when he was self-employed. He testified that he did not know how to file a return for self-employment and could not afford an accountant or professional tax preparer. (Tr. 43-44.) His failure to timely file is alleged in SOR ¶ 1.a. He filed his late federal return in June 2014 and owed \$2,117. (Attachment to SOR Answer.) He timely filed his 2015 return and received a refund, indicating that his federal tax debt is satisfied. (AX F.)

The delinquent debts alleged in SOR ¶¶ 1.b-1.s are reflected in Applicant's credit bureau reports (CBRs) from June 2014, March 2015, and December 2015. (GX 2; GX 3; GX 4.) The evidence concerning the delinquent debts alleged in the SOR is summarized below.

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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.

**SOR ¶ 1.b, cellphone bill placed for collection in August 2012 for \$229.** Applicant testified that this debt was a cancellation fee for changing providers. He testified that his new provider promised to pay the cancellation fee, but did not. The debt is unresolved. (Tr. 45-46.)

**SOR ¶ 1.c, judgment filed in June 2009 for credit-card debt of \$1,498.** Applicant testified that he has a payment plan providing for payments of \$150 per month, and he has reduced his balance to about \$400. He did not provide any documentation to corroborate his testimony. (Tr. 47.)

**SOR ¶ 1.d, bank overdraft charges placed for collection in February 2008 for \$382.** Applicant testified that he paid this debt and it was removed from his credit reports. He did not provide any documentation to corroborate his testimony. This debt is more than seven years old and would have been removed from his credit record under the Fair Credit Reporting Act (FCRA).<sup>2</sup>

**SOR ¶¶ 1.e-1.g and 1.n-1.s, delinquent student loans.** Applicant completed a loan rehabilitation program for six delinquent student loans in June 2014. (AX A.) He made monthly payments from January 2014 to February 2016. (AX G.) As of April 2016, he had paid one student loan in full, four were in forbearance, and four were defaulted. His current balance was \$13,862. (AX B.) The forbearance status ended in June 2016, and his payments are \$80 per month. (Tr. 43.)

**SOR ¶ 1.h, credit-card debt placed for collection in January 2013 for \$60.** Applicant testified that this debt was paid. He did not provide any documentation of payment, but his testimony is corroborated by his March 2015 and December 2015 CBRs, which do not reflect the debt, indicating that it is resolved. (Tr. 49; GX 3; GX 4.)

**SOR ¶ 1.i, collection account opened in April 2013 for \$137.** Applicant has taken no action to resolve this debt. (Tr. 49.)

**SOR ¶ 1.j, credit-card debt placed for collection in December 2007 for \$552.** Applicant has taken no action to resolve this debt, but it is no longer reflected on his CBRs. The debt is more than seven years old and would have been deleted in accordance with the FCRA.

**SOR ¶ 1.k, credit-card debt placed for collection in October 2010 for \$483.** Applicant has taken no action to resolve this debt. It is no longer reflected in his CBRs, for reasons not reflected in the record.

**SOR ¶ 1.l, utility bill placed for collection in June 2014 for \$312.** Applicant has taken no action to resolve this debt. (Tr. 52-53.)

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<sup>2</sup> Under the FCRA, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

**SOR ¶ 1.m, collection account opened in June 2014 for \$50.** Applicant has taken no action to resolve this debt. (Tr. 53.)

Applicant's annual salary is about \$51,000. After he pays his rent, car payment, and living expenses, he usually has a net monthly remainder of \$100-\$200. (Tr. 38.) He has a 401(k) plan with his employer, and he is currently repaying a \$1,200 loan at the rate of \$100 per month. He purchased a new car in 2014 for about \$21,000. He testified that he did not consider buying a used car, because the interest rate on a used car would have been higher. He spent \$1,300 on a five-day vacation in the summer of 2014. (Tr. 54-55.)

Applicant has received financial advice from a counselor at his former bank, who advised him to resolve his most recent debts first. He has changed banks and intends to contact his new bank and ask about financial counseling. (Tr. 46.)

Applicant's supervisor for the past two years testified that Applicant was made a supervisor based on his good work performance. His work has been accurate and timely and indicative of high potential for more responsibility. (Tr. 60-61.) Applicant's performance appraisal for the period ending in August 2014 rated him as "exemplary" in four performance criteria and "successful" in six criteria, with an overall rating of "successful." (AX D.) His performance appraisal for the period ending in November 2015 rated him as "exemplary" in five criteria and "successful" in five criteria, with an overall rating of "successful." (AX C.) The senior vice-president of the company employing Applicant submitted a letter stating that he is dependable, reliable, consistently ethical, and his integrity and honesty are beyond reproach. (AX E.)

### **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, testimony at the hearing, and the documentary evidence submitted at the hearing establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same"). 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 not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established for Applicant's student loans and the delinquent account alleged in SOR ¶ 1.h, but not for the other debts alleged in the SOR. Applicant's periods of unemployment were circumstances largely beyond his control. He has acted responsibly regarding his student loans by completing a rehabilitation

program, satisfying one student loan, and obtaining forbearance on four loans. He paid the debt alleged in SOR ¶ 1.h. His projected payments on the student loans, which began after the record closed, are within his financial means. However, his testimony that he was making payments on the judgment in SOR ¶ 1.c and had paid the debt in SOR ¶ 1.d is uncorroborated and insufficient to establish this mitigating condition for those two debts.

AG ¶ 20(c) is partially established, because Applicant has obtained some financial counseling, but his financial problems are not under control.

AG ¶ 20(d) is established for Applicant's untimely federal income tax return, the debt in SOR ¶ 1.h, and his student loans, but not for the debts alleged in SOR ¶¶ 1.b-1.d and 1.i-1.m. The deletion of the debts in SOR ¶ 1.d and 1.j from his credit record in accordance with the FCRA does not constitute a good-faith effort to resolve them. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Except for his student loans, Applicant does not have a cogent, plausible plan to resolve his debts. His payment of the \$60 debt in SOR ¶ 1.h falls short of "significant actions."

AG ¶ 20(e) is not established. Applicant testified that his cellphone provider promised to pay this debt, but he provided no documentation of the promise and he has not disputed the debt with the original creditor or the collection agency.

### **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 some warrant additional comment.

Applicant was candid and sincere at the hearing. He served honorably in the U.S. Navy and is highly regarded by his current employer. However, he has not been financially prudent. He recently purchased a new car and took an expensive vacation, even though he is deeply in debt. He has not contacted the creditors in SOR ¶¶ 1.i-1.m. He has no cogent plan for gaining control of his financial situation.

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 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

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraphs 1.e-1.h:	For Applicant
Subparagraphs 1.i-1.m:	Against Applicant
Subparagraphs 1.n-1.s:	For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge