



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-03395
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

10/17/2016

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application on September 8, 2014. On March 25, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.<sup>1</sup> The DOD CAF acted under Executive Order (Exec. 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 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.

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<sup>1</sup> On my own motion, I corrected a misspelling of the creditor's name alleged in SOR ¶ 1.a. (Tr. 11.)

Applicant answered the SOR on April 20, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 11, 2016, and the case was assigned to me on July 20, 2016. On July 27, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 17, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until September 2, 2016, to enable him to submit documentary evidence. On August 30, 2016, at Applicant's request, I extended the deadline for submitting evidence to September 16, 2016. He timely submitted Applicant's Exhibits (AX) A, B, and C, which were admitted without objection. DOHA received the transcript (Tr.) on August 29, 2016.

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

In his answer to the SOR, Applicant admitted the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 41-year-old machinist employed by a defense contractor since June 2014. He served on active duty in the U.S. Navy from October 1986 to November 2006 and retired as a petty officer first class (pay grade E-6). He was employed by defense contractors from November 2008 to November 2013, when he was laid off and was unemployed until he began his current job. He held a security clearance in the Navy and retained it as a contractor employee.

Applicant married in May 1992 and divorced in June 1992. He married again in July 1995 and divorced in September 2006. He has two children from his second marriage, ages 19 and 16.

Applicant's second wife was on active duty in the Navy. She deployed shortly after Applicant retired and left the children, who were then ages 9 and 6, with him. She did not make the mortgage loan payments or pay any child support to Applicant while she was deployed. When she returned from deployment nine months later, she divorced him and moved out of the marital home, taking much of the furniture and appliances with her. She moved into a new house that she and Applicant had built. Applicant continued to live in the former marital home and incurred the debts alleged in the SOR. He spent about \$10,000 for furniture and appliances, and he spent the remainder of the borrowed funds for child care and living expenses. (Tr. 54-55.)

When Applicant and his wife separated, she was an ensign, earning more than Applicant, who was a petty officer first class. The marital breakup left him with less than half the income that was previously available for family expenses. (Tr. 45.) He spent about \$7,000 in attorney fees for the divorce proceedings. (Tr. 50.)

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<sup>2</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Applicant is now living in a rental property. His ex-wife is making the mortgage loan payments on the marital home and intends to buy Applicant's interest in it. (Tr. 43-44.) He pays child support, which is deducted from his retired pay. (Tr. 41.)

The debt in SOR ¶ 1.a is a loan that Applicant obtained in June 2007. It was charged off in July 2010 and purchased by a collection agency in May 2012. As of August 2016, the account has an unpaid balance of \$21,700. He has been making monthly \$100 payments on this account since March 2014, reducing the balance from \$24,600 to its current balance. (GX 3 at 2; AX B; AX C.)

The debt in SOR ¶ 1.b is a credit card account that was referred for collection in September 2009 and purchased by a collection agency in May 2012. (GX 2 at 6; GX 3 at 2; GX 4 at 4.) He has been making monthly \$100 payments on this account since March 2014. (AX A.)

In both instances, Applicant contacted the collection agencies in 2013 and offered to make a payment agreement. He testified that he contacted them because "the moral thing to do is you borrow money from somebody, you pay them back." (Tr. 40.) He is making the monthly payments on both debts by automatic deductions from his bank account. As of the date of the hearing, he had about \$5,000 in that account. (Tr. 46, 51.)

Applicant's net monthly income, including his military retired pay, is about \$3,900. He estimated his monthly debt payments and living expenses to be about \$1,875, leaving a net monthly remainder of about \$2,125. (Tr. 43-49.)

### **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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 credit bureau reports, 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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is established. Applicant's debts are recent, but there are only two closely-related debts that arose under unusual circumstances making them unlikely to recur.

AG ¶¶ 20(b) and 20(d) are established. Applicant encountered circumstances that were largely beyond his control: a seven-month period of unemployment and a marital breakup that resulted in a drastic reduction in his income, unexpected expenses to furnish a home, and substantial legal expenses. He acted responsibly and demonstrated good faith by contacting the two creditors well before he submitted his security clearance application, making payment arrangements, and adhering to the agreed payment schedules.

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

## **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 and considered the factors in AG ¶ 2(a). 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 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 and 1.b:

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