



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04126

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2017

**Decision**

CURRY, Marc, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns.  
Clearance is denied.

**Statement of the Case**

On December 15, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant, alleging security concerns under Guideline F (financial considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

On January 12, 2016, Applicant responded to the SOR, admitting subparagraphs 1.a and 1.c, and denying the remainder of the allegations. Applicant requested that a decision be reached without a hearing. On March 14, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received a copy of the FORM on April 1, 2016, and did not file a response. The case was assigned to me on February 13, 2017.

### **Note on Evidence**

The FORM included a summary of a personal subject interview (PSI) conducted on September 11, 2014. (Item 4) The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant's failure to respond to the FORM waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

Applicant is a 49-year-old married man with three children, ages 22, 17, and 10. He earned an associate's degree in 1998. Since 2013, he has been working for a federal contractor as a computer technician. (Item 5 at 10)

Since 2009, Applicant has incurred approximately \$55,000 of delinquent debt, including a mortgage account and the deficiency remaining from a repossessed automobile (subparagraphs 1.d and 1.e). Applicant attributes his financial problems to a one-year period of unemployment beginning in September 2012. In August 2014, Applicant filed a petition for Chapter 13 bankruptcy protection, as alleged in subparagraph 1.a. (Item 2 at 1) It was dismissed after he failed to appear at a meeting of the creditors. (Item 5 at 58) Applicant filed another petition for Chapter 13 bankruptcy protection in 2015, as alleged in subparagraph 1.b. (Item 2 at 1) It was dismissed for the same reason that the earlier petition was dismissed.

The debt alleged in subparagraph 1.c, totaling, \$584, is a charged-off credit card account. In Applicant's answer, he asserted that he would have this balance satisfied within 30 to 60 days. (Item 2 at 1) Applicant had an opportunity, through the filing of a response to the FORM, to submit proof that he kept this promise to satisfy this debt. He did not do so.

The debt alleged in subparagraph 1.d, totaling \$35,364 is Applicant's mortgage delinquency. The property was foreclosed on January 15, 2015. (Item 2 at 9) In July 2015, Applicant sued the mortgagor, alleging wrongful foreclosure. (Item 2 at 7) The court dismissed Applicant's complaint in January 2016. (Item 7 at 1)

Applicant contends that he is no longer responsible for the remaining SOR debts because the statute of limitations on their collectability has expired. Applicant consulted with a credit counseling agency in April 2013. He was told that he could not participate, at the time, because he was unemployed. (Item 4 at 2)

### **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 his or 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**

Under this guideline, “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.” Applicant’s history of financial problems triggers the application of AG ¶19(c), “a history of not meeting financial obligations,” and AG ¶19(a), “an inability or unwillingness to satisfy debts.”

The following mitigating conditions are potentially applicable:

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 problems were significantly related to a lengthy period of unemployment between 2012 and 2013. This triggers the first prong of AG ¶ 20(b). Applicant produced scant evidence to establish that he has acted responsibly under the circumstances, as two bankruptcy petitions were dismissed because of his failure to attend meetings of the creditors. Moreover, he has provided no evidence that he has either paid or arranged payment plans for any of the delinquent debts. AG 20(b) only applies partially.

Applicant disputes the legitimacy of the foreclosure, as alleged in subparagraph 1.d, filing suit for wrongful foreclosure. The court dismissed this claim. Consequently, AG ¶ 20(e) does not apply.

Applicant’s contention that the he has no responsibility to pay the debts alleged in subparagraphs 1.e through 1.aa because they are no longer legally collectible may

be valid, but has no bearing on security clearance assessments. Per the Appeal Board, uncollectible debts remain relevant for the purpose of a security review even if they could not “be legally listed on a credit report after the passage of seven years.” (ISCR Case No. 98-0111 at 3 (App. Bd. Nov. 13, 1998)) Neither AG ¶¶ 20(c) nor 20(d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The 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.

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. I considered the whole-person factors in my analysis of the disqualifying and mitigating conditions under Guidelines F, and they do not warrant a favorable conclusion.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a through 1.aa:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc Curry  
Administrative Judge