



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-04531
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R, Karoian, Esq., Department Counsel  
For Applicant: Andrea Batres, Esq.

01/30/2017

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**Decision**

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HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances beyond his control, Applicant experienced financial difficulties, but mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on November 7, 2014. On November 24, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. 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 DOD on September 1, 2006.

Applicant answered the SOR on December 29, 2015, attaching his attorney's December 28, 2015, entry of appearance, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 7, 2016, and the case was assigned to me on May 8, 2016. On July 6, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant's counsel that the hearing was scheduled for July 27, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A through H, which were admitted without objection. I kept the record open until August 10, 2016, to enable him to submit additional documentary evidence. He timely submitted AX I through Q, which I have admitted without objection. DOHA received the transcript (Tr.) on August 4, 2016.

### **Findings of Fact**

Three of the four past-due SOR debts are owed on mortgage loans: One on Applicant's primary residence for \$7,771 (SOR ¶ 1.a); and two on a rental property he purchased in 2003 for \$3,027 and \$1,179 (SOR ¶¶ 1.b and 1.d). The fourth SOR debt of \$1,091 is owed on a loan for a vehicle he purchased in 2012 (SOR ¶ 1.c). These debts total approximately \$13,068. In his Answer, Applicant neither specifically admits nor denies the allegations, but instead explains how each debt was incurred and describes some of his efforts to resolve them. Based on these statements, I conclude that Applicant has admitted his liability for each of the SOR debts. Applicant's admissions are incorporated in my findings of fact.

The four delinquent accounts are corroborated by the November 2015 and November 2014 credit bureau reports (CBR) (GX 2; GX 3.) At the time the SOR was issued, each of these debts was in past-due status, as opposed to collection or charged off. The November 2015 CBR lists SOR debts 1.a and 1.c as not more than three months past due, SOR debt 1.b as not more than two months past due, and SOR debt 1.d as over 120 days past due.

Applicant is a 44-year-old engineer employed by a defense contractor in his current job since 2009. He received a bachelor's degree in 1994 and a master's degree in 1997. He and his wife married in 1998 and they have two children, ages 11 and 14. (GX 1; Tr. 62; Tr. 23.)

Between 2002 and 2008, Applicant invested in seven properties, some as rental properties, some for resale, and his primary residence, most of which were financed with 30-year-fixed-rate mortgage loans. (Tr. 45-46.) Initially, Applicant's investing was very successful, and in his best year, 2005, he made approximately \$300,000 from the

sale and rentals on his properties. The majority of the 2005 profit came from the sale of his first investment property purchased in 2002, which he sold for nearly double the purchase price. (Tr. 57-58.) When the housing market crashed in 2008, Applicant owned five properties. Due to the overall economic downturn, the properties lost market and rental value and Applicant became financially overextended. He exhausted his savings and used credit cards to stay current on his mortgages and other financial obligations, but by 2009 was no longer able to do so. He has since struggled to maintain his financial obligations. Applicant invested in his final property in early 2008, before he was aware of the impending market crash. He is a one-third investor in a rental condominium. The market value of that property is currently less than the purchase price and he and the other investors are holding onto the property. They have had overall success in maintaining renters, and Applicant's monthly out-of-pocket expense is about \$600. His expenditures for the condominium and his remaining rental property are included in his monthly budget. (Tr. 59-61; AX Q.)

Applicant has continuously worked to resolve his financial issues through repayment and restructuring instead of choosing to file bankruptcy. (Tr. 32.) In about 2009, Applicant applied for a mortgage loan modification for his second mortgage loan on his rental property, but did not meet the criteria and was declined. In 2011, Applicant reapplied and successfully modified the loan, which helped prevent losing this property in foreclosure. (Tr. 28; Tr. 37.) The SOR alleges in ¶ 1.d that this loan is \$1,179 past due. Although Applicant has periodically fallen behind on this account, he has generally maintained the payments, the account has not been in collection, and it is now current. (GX 2; Tr. 37)

By 2011, Applicant had amassed significant credit-card debt, which ultimately totaled between \$80,000 and \$90,000. He consulted a credit-counseling company and developed a plan to retake control of his financial situation. (Tr. 30-33.) In 2012, he sold two of his rental properties, one in a short-sale, with the intention of using the profit of the other sale to pay down his credit-card debt, purchase a necessary second vehicle, and reduce his overall financial commitments. He contacted his five or six credit-card creditors, and worked out repayment schedules. He made his final credit-card payment in early 2015. (Tr. 30-32; Tr. 34.) The loan for the second vehicle is the debt alleged in SOR ¶ 1.c.

Applicant is now current on each of the SOR debts. Specifically, between March and July 2016, Applicant paid approximately \$9,000 to bring the SOR debts current. He used the money from his savings account and borrowed about \$2,000 from his vacation pay to make the last of these payments. Part of the reason his final payments were so recent is because he amassed as much vacation pay as possible before borrowing from that account. While their children were younger, Applicant's wife worked part time. She returned to full-time employment in 2014 and earns \$60,000 annually, which has increased her contributions to the household finances. (Tr. 25; Tr. 39.)

Applicant participated in additional financial counseling in 2016, reduced expenses, implemented and is following a written budget, has \$0 personal credit-card debt, and lives within his means. The budget includes the full costs of the rental property when it is not rented. (Tr. 26-38; GX 2; Tr. 65-67; AX Q.) He has about \$25,000 in his 401(k). (Tr. 51.) He has about \$1,000 in his savings account and is working to steadily increase the balance by following his budget, in order to pay any unanticipated expense without incurring debt. (Tr. 53-54; Tr. 57.) He has a net monthly remainder of about \$1,400. (AX Q.) He has long considered selling the rental property, on which he owes about \$197,000, and received an unsolicited offer of purchase for \$290,000 on July 29, 2016. (AX N.) Applicant has not incurred any debt since the purchase of his vehicle in 2012. (GX 2; Tr. 33.)

Applicant's current supervisor of over seven years states that Applicant has a strong work ethic, is reliable and trustworthy, and exercises good judgment. Applicant's supervisor further states that Applicant follows rules and regulations and has the ability to protect classified information. Applicant's childhood friend, then later college roommate, strongly recommends Applicant for a security clearance. (AX F.)

### **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's 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 testimony, corroborated by the record evidence, establishes 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.

Although real-estate investing is necessarily speculative, Applicant was initially successful in his investments and was not financially overextended prior to the unforeseen housing market crash in 2008. Since recognizing the impact of the housing market crash on his financial circumstances, Applicant has acted responsibly by steadily making efforts to retake control of his finances. He has not made a real-estate investment since early 2008. Through 2009, Applicant exhausted his financial resources, including using his credit cards for living expenses, in an effort to maintain his mortgages. He first consulted with a credit-counseling company in 2011, and entered repayment agreements with his credit-card creditors in 2012, fully satisfying those agreements by January 2015. He again participated in financial counseling in 2016, changed his spending and saving habits, is following a written budget, has no personal credit-card debt, and lives within his means. He is exploring the option of selling his rental property. None of the SOR debt was in collection or charged off, and the four accounts are now current. Applicant has not incurred any debt since his vehicle

purchase in 2012. The circumstances which led to Applicant's indebtedness are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant acted in good faith by implementing a plan to keep his mortgages out of foreclosure and by ultimately bringing each of the SOR debts current. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to 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. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

It is well established that payment of debts only under pressure of qualifying for a security clearance does not warrant the same application of the mitigating conditions as a timely resolution of debts. See ISCR Case No. 08-06058 at 7 (App. Bd. Sep. 21, 2009). However, while Applicant did not fully resolve his SOR debts until his hearing was pending, his actions to regain control of his finances began in earnest years earlier and establish a steady and sufficient track record of debt resolution. AG ¶¶ 20(a) through 20(d) apply.

### **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 I have also considered the following:

Applicant began addressing his debt in a responsible manner years before it had any potential impact on his security worthiness. He resolved a significant amount of credit-card debt by first seeking credit counseling and then implementing and satisfying repayment plans with his creditors. He proactively changed his spending and saving patterns and has not incurred any debt since 2012. He is trusted and respected by his long-time supervisor and close friend. I am confident that Applicant will continue his good-faith efforts to maintain his financial stability.

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 grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.d:

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.

Stephanie C. Hess  
Administrative Judge