



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-05047
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/30/2017

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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 September 25, 2014. On August 17, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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.<sup>1</sup>

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<sup>1</sup> Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 guidelines apply to all adjudicative decisions issued on or after June 8, 2017. My decision is based on the guidelines in SEAD 4, referred to in this decision as "AG." The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on September 2, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 28, 2016. On September 29, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 7, 2016, and submitted a response, which was added to the record without objection.<sup>2</sup> The case was assigned to me on August 8, 2017.

### **Findings of Fact<sup>3</sup>**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b-1.d and denied the allegations in SOR ¶¶ 1.a and 1.e. His admissions are incorporated in my findings of fact.

Applicant is a 44-year-old field services technician employed by a federal contractor. He attended technical institutes from November 1998 to September 2002, receiving an associate's degree in December 2000 and a bachelor's degree in September 2002. He worked for a federal contractor from January 2001 to April 2008, when he was laid off when his employer closed its local factory. He held several intermittent part-time jobs from April 2008 to June 2009. He worked full time as a contractor for multiple companies from June 2009 to September 2012, when he was hired for his current position. He has served as an officer in the Army National Guard from October 2008 to the present and has held a security clearance since June 2008.

Applicant married in 1996, separated in 2011, and divorced in 2012. Applicant and his ex-wife had four children, now ages 20, 18, 16, and 10, for whom his ex-wife is obligated to pay child support. The divorce was contentious, and Applicant estimated that he spent about \$20,000 for legal fees and expenses. Applicant's ex-wife failed to pay child support for about two years and now pays it sporadically. Applicant has resided with a cohabitant since August 2011.

In his answer to the SOR, Applicant stated that he and his wife were never good at managing their finances. They had "a lot of missed payments and bounced checks over the years." Applicant enrolled in a financial budgeting class around 2009-2010, which he found helpful. When Applicant divorced, he had about \$40,000 in debts, not including

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<sup>2</sup> The FORM included Item 4, a summary of a personal subject interview (PSI) conducted on November 13, 2014. 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 submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he 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).

<sup>3</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

the mortgage loan for the marital home. When he submitted his security clearance application in September 2014, he disclosed numerous delinquent debts, including student loans. In his response to the FORM, he stated that he has resolved all but about \$5,000 in delinquent debts, consisting of the debts alleged in the SOR. He did not provide any detailed information or documentation regarding his financial situation at the time of his divorce or as of the date of his response to the FORM.

The SOR alleges five delinquent debts, which are reflected in credit bureau reports (CBRs) from October 2014 and July 2016 (Items 5 and 6). The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: home mortgage loan past due for \$38,189.** This account was opened in May 2006. Applicant and his wife applied for a refinancing of the loan in 2008 and stopped making payments while their application was pending. They did not set aside the money that would have been used for payments, but instead used it to pay other debts. After about four months, their application was denied, and the lender insisted on full payment of the past-due amount. Applicant brought the payments up to date in about February 2009. The October 2014 CBR reflected the loan payments as current as of May 2009, but past due for \$38,189 as of March 2013, with an outstanding balance of \$188,527. The July 2016 CBR reflects that the last payment on the loan was in March 2013.

When Applicant and his wife separated in January 2011, they agreed that Applicant would be responsible for the children, live in the marital home, and make the payments on the mortgage loan; and his wife would take the family car and make the payments on the car loan. He decided to live in his mother's home and rent out the marital home. Shortly after he found renters, his wife stopped making payments on the car loan. Since he was not living in the marital home, he decided to have the renters vacate the home and stopped making payments on the loan. According to Applicant, the lender for the home loan took back the house as "abandoned" and sold it for more than \$210,000, which was more than the balance of the loan. (Item 2; Response to FORM.) The CBRs do not reflect a foreclosure or other disposition of the marital home. Applicant provided no documentation reflecting any of the transactions regarding the marital home. There is no documentary evidence in the record reflecting that the debt is resolved.

**SOR ¶¶ 1.b and 1.c: credit-card accounts charged off for \$2,494 and \$2,972.** The October 2014 CBR reflected that both accounts were referred for collection in September 2010. In his answer to the SOR and response to the FORM, Applicant admitted these debts, explaining that he made payment arrangements with most of his creditors but could not afford to pay all of them. These debts are not resolved.

**SOR ¶ 1.d: utility bill placed for collection of \$477.** The October 2014 CBR reflected that this debt was referred for collection in May 2014. The July 2016 CBR reflected that the account became delinquent in December 2012. Applicant admitted this debt but was not sure the amount was correct. The debt is not resolved.

**SOR ¶ 1.e: medical bill placed for collection of \$107.** Applicant denied this debt in his answer to the SOR, stating that he contacted the collection agency and paid it in February 2016. He provided no documentation of payment or a dispute filed with the collection agency or the credit reporting agency.

The October 2014 and July 2016 CBRs reflect that Applicant made considerable progress with the delinquent debts he had at the time of his divorce. He refinanced his student loans and the payments are current. He paid off the delinquent car loan after his ex-wife reneged on her promise to pay it, and he qualified for another car loan, on which the payments are current. He settled two department store charge accounts and several credit-card accounts. He resolved a delinquent time-share loan by giving the lender a deed in lieu of foreclosure. He has not incurred any new delinquent debts since the marital breakup. On the other hand, he took no action on the delinquent mortgage loan after he abandoned the property or the four other delinquent debts alleged in the SOR. He has not provided any documents reflecting his current income or current living expenses.

### **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 adjudicative guidelines. 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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, his responses to the SOR and the FORM, and the CBRs establish the following disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

The following mitigating conditions are potentially relevant:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to 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 were numerous. Some of them are not yet resolved. In his response to the FORM, he states that the debts are not likely to recur because they were the result of his failed marriage and he is no longer

married. However, he is involved in a long-term relationship with a cohabitant, and he has not provided any evidence that their financial relationship is structured so that a breakup will not again result in unresolved debt.

AG ¶ 20(b) is not fully established. Applicant's unemployment, underemployment, his marital breakup, the legal expenses related to his divorce, his ex-wife's failure to make the car payments as agreed, and his ex-wife's failure to pay child support for two years were conditions beyond his control. He acted responsibly during his unemployment by working part time and actively seeking another job. He acted responsibly regarding the delinquent car loan and some of his credit cards by keeping in contact with the creditors and eventually resolving some of them. He did not act responsibly regarding the defaulted home mortgage loan. He walked away from the property and has not presented any documentary evidence of the events that followed. He has not acted responsibly regarding the two credit-card debts, the utility bill, and the medical bill alleged in the SOR. Although more than four years have elapsed since his divorce, he submitted no evidence that he remained in contact with the creditors alleged in the SOR or actively tried resolve the debts.

AG ¶ 20(c) is not established. Although Applicant stated that he completed a financial budgeting class in 2009-2010, he submitted no documentation of the nature of the class or his completion of it. Furthermore, the debts alleged in the SOR are not resolved or under control.

AG ¶ 20(d) is not established. A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that individuals to 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. They 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).

Applicant had a plan to resolve the debts resulting from his marital breakup, but he stopped executing it without addressing the debts alleged in the SOR. He took no significant actions to resolve the debt in SOR ¶ 1.a after abandoning the property. He presented no documentation showing that the mortgage loan alleged in SOR ¶ 1.a has been resolved. He has not disputed the information in the CBRs reflecting that the delinquent mortgage loan is not resolved. Applicants who assert that debts are resolved are expected to present documentary evidence supporting their assertions. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). In the FORM, Department Counsel specifically pointed out that Applicant had not provided any documentation that the mortgage debt was resolved. Applicant had a second opportunity to submit documentation regarding the defaulted mortgage loan in his response to the FORM, but he did not avail himself of the opportunity.

AG ¶ 20(e) is not established. Applicant indicated in his answer to the SOR that he disputed the amount of the debt alleged in SOR ¶ 1.d, but he submitted no documentary evidence of a dispute or the basis for it.

### **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 and applying the adjudicative factors in AG ¶ 2(d).<sup>4</sup>

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant has worked for federal contractors, served in the Army National Guard, and held a security clearance for many years. However, he provided no information about the quality of his service. He had a history of financial problems before he lost his job in April 2008. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about his financial problems. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome that presumption. 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.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.d:	Against Applicant
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Subparagraph 1.e:	For Applicant
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<sup>4</sup> The factors are: (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.



### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge