



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05508

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2017

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On August 3, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 5, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Exec. Or. 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted or denied.

On March 17, 2016, Applicant responded to the SOR. On April 20, 2016, Department Counsel was ready to proceed. On August 4, 2016, DOHA assigned Applicant's case to me. On September 28, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for October 26, 2016. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant testified, did not call any witnesses, and did not offer any exhibits. On November 3, 2016, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

Applicant admitted all of the SOR allegations except for SOR ¶¶ 1.a, 1.e, 1.f, and 1.i, which he constructively denied. After a thorough review of the record, I make the following findings of fact.

### **Background Information**

Applicant is a 52-year-old logistics management analyst employed by a defense contractor since June 2013. He seeks a security clearance to enhance his position within his company. (Tr. 11-13; GE 1)

Applicant graduated from high school in 1982. (Tr. 13-14; GE 1) He served in the U.S. Navy from 1983 to 2003, and retired as an aviation storekeeper first class (pay grade E-6) with 20 years of honorable service. (Tr. 14-16, GE 1) Applicant was married from 1988 to 1999, and that marriage ended by divorce. He has three adult children from that marriage. Applicant has been engaged since 2010, but has not decided on a wedding date. (Tr. 16-18; GE 1)

### **Financial Considerations**

Applicant's SOR contains 12 allegations consisting of 10 debts totaling \$66,482, a 2012 home foreclosure, and a failure to file state and federal income tax returns. His debts range from a \$312 student loan collection account to a \$34,043 charged-off mortgage account, and are documented in Applicant's August 2014 SF-86, August 2014 Office of Personnel Management Personal Subject Interview (OPM PSI), and August 2014 and January 2016 credit reports. (SOR ¶¶ 1.a - 1.i; Tr. 34-35, 43-45, 50-56; GE 1 – 4)

Applicant attributes his financial difficulties to his 1999 divorce and assuming "a good part" of the marital debt, financial responsibilities associated with raising his children after his divorce, the funeral costs associated with the 2011 death of his father, and relocating to another state in 2011 to secure another job. (Tr. 18-23, 34-35) Applicant estimates his combined annual income is approximately \$68,000 – current job at \$55,000 and military retired pay at \$13,000. He also works part-time as a ramp agent earning "about \$200 a week. (Tr. 23-24, 30-33)

Applicant filed his 2011 and 2012 state and federal income tax returns late in 2015. He timely filed his subsequent tax returns, but owes the IRS \$23,000 for tax years 2011, 2012, 2014, and 2015. He is satisfying his debt to the IRS through \$100 weekly payroll deductions. Those deductions began in July 2016. Because of his father passing away and moving to another state in 2011, things “got pushed to the way side.” (Tr. 25-26; 36-42)

When queried about the status of his debts, Applicant acknowledged that he was doing all that he could by paying off several of his debts through garnishment, leaving the remaining debts unaddressed. He did not provide any documentation reflecting garnishment deductions. (SOR answer; Tr. 26-28, 45-48)

Applicant’s financial situation is in a precarious state given that he is maintaining two homes, his and his fiancé’s. To complicate matters further, his fiancé has a high-risk pregnancy and is unable to work. She previously lost their child in 2011, the same year Applicant’s father died. (Tr. 28-29) Applicant consulted “numerous” credit counselors who advised that he was a “lost cause” leaving bankruptcy as his only solution. Applicant’s plan at present is to do what he is doing -- resolve his debts through garnishment proceedings and pay his remaining creditors if he acquires additional funds. He stated that, “what’s left in my paycheck (after garnishment) I barely can do what I’m doing.” (Tr. 29-30)

Applicant did not provide any documentation of any payments made, no evidence of financial counseling, or submit a budget. He has no balance in his checking account, has no savings account, is no longer contributing to his 401(k) account, and has no additional funds to address to debts. (Tr. 48-50, 56-57)

### **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 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**

The Government met its burden of production in support of the allegations in the SOR. The facts established raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*; 19(c) (*a history of not meeting financial obligations*); and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). In response to the Government's information, it was incumbent on Applicant to produce information sufficient to refute or mitigate the facts established against him. He did not submit any documents in response to the SOR that demonstrated he paid or otherwise resolved any of his debts or financial concerns raised.

In summary, Applicant did not mitigate the security concerns raised by the Government's information. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. According, those doubts must be resolved against the Applicant.

### **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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Subparagraph 1.a – 1.I:	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 national security to grant Applicant eligibility for a security clearance. Clearance is denied.

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ROBERT J. TUIDER  
Administrative Judge