



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-05516
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

04/24/2017

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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 granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 13, 2014. On March 18, 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. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on April 1, 2016; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on May 13, 2016. On the same day, 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. The FORM consisted of nine items, including the summary of a personal subject interview (PSI) conducted by a security investigator April 2015 (Item 3). Applicant received the FORM on May 20, 2016, did not respond. The case was assigned to me on March 27, 2017.

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. I conclude that Applicant waived any objections to the PSI summary by failing to respond to the FORM. 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<sup>1</sup>**

In his answer to the SOR, Applicant admitted the allegations, and he explained what he had done to resolve his delinquent debts. I have incorporated his admissions and explanations in my findings of fact.

Applicant is a 62-year-old graphic artist employed by a federal contractor since October 2007. He was self-employed as a graphic artist from December 2004 until he accepted his current position. He has held a security clearance since December 1983.

Applicant served on active duty in the U.S. Marine Corps from May 1972 to May 1976 and received an honorable discharge. He received a general educational development (GED) certificate while he was in the Marine Corps. He has no formal education beyond high school.

Applicant married in April 1984 and divorced in August 1997. He married his current spouse in February 1998. His current spouse is a foreign-born naturalized U.S. citizen. He has two adult children from his first marriage, ages 27 and 30. He has traveled to his wife's country of birth for two to three weeks each year from December 2007 to December 2013 to vacation and visit his wife's family during the Christmas-New Year's holidays.

When Applicant submitted his SCA, he disclosed that he was paying his federal income taxes for 2013 through an installment agreement. He also disclosed four delinquent credit card accounts that were suspended, charged off, or cancelled for failure to pay as agreed: (1) an account charged off for \$2,780 in August 2009 and resolved in August 2012; (2) an account that became delinquent in August 2009 for \$7,225, which was resolved in December 2012; (3) an account that was charged off for \$17,348 in August 2009 and resolved in December 2013; and (4) an account that was charged off

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

in August 2009 for \$15,921 and resolved in August 2012. He attributed these delinquent accounts to paying only the monthly minimum balances, causing the balances to increase in spite of the monthly payments.

Applicant's credit bureau report (CBR) from November 2014 reflected two charged-off credit-card accounts from the same bank. One was charged off for \$2,775 and the other was charged off for \$12,213. Both accounts were charged off in January 2010. (Item 8 at 7.) The two charged-off credit-card accounts are the only debts alleged in the SOR, and they were resolved in December 2013.

The November 2014 CBR reflected two tax liens, both for \$3,786. One lien was paid and released in July 2009 and the other was paid and released in September 2009. (Item 8 at 5.) It is not clear whether the two entries in the CBR are duplicates.

In a previous SCA submitted in September 2003, Applicant stated that he was employed by a defense contractor from May 1986 to May 2009, unemployed from May 2009 to February 2003, employed by a defense contractor for two months in 2003 and then unemployed for three months and self-employed for one month, and unemployed from August 2004 until the date he submitted his SCA. He also disclosed that he received a Chapter 7 bankruptcy discharge in August 1998, that his pay had been garnished for delinquent child-support payments, and that he owed about \$3,076 in federal income taxes.

After submitting his September 2003 SCA, Applicant was interviewed and submitted a sworn statement in February 2004. He stated that he was hired as a subcontractor in May 2002, started work in June 2002 and was laid off from September 2002 to December 2003. He received unemployment compensation of \$1,400 but had a child-support obligation of \$976 per month. He fell behind on his child-support payments and his credit-card payments. He paid the child-support arrearage in January 2004. He submitted a personal financial statement reflecting that his net monthly income in January 2003 was \$3,086, his monthly expenses were \$3,482. As of February 2004, he was able to make the minimum payments on his credit-card accounts. (Item 7.) His security clearance was continued, notwithstanding his previous delinquent debts.<sup>2</sup>

In a personal subject interview (PSI) in April 2015, Applicant told an investigator that a state tax lien for \$3,786 was imposed for unpaid property taxes on his home and paid in July 2009. He was unaware of the delinquent property taxes, which were the result of an increase after reassessment, until he was contracted by a collection agency.

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<sup>2</sup> The only debts alleged in the SOR were the two credit-card accounts that were resolved in December 2013. Conduct not alleged in the SOR may not be an independent basis for denying or revoking a security clearance. However, it may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the financial delinquencies not alleged in the SOR for these limited purposes.

In the PSI, Applicant told the investigator that he hired a debt-resolution company to resolve the delinquent credit-card accounts, and several accounts were resolved. In August 2012, he had accumulated \$12,000, and he contacted the debt-resolution company to obtain settlement offers for two remaining debts. He was unable to contact the debt-resolution company and believes that it went out of business. He contacted the bank that had issued the two credit cards, paid the penalties and interest, and persuaded the bank to cancel the debts. Both debts were cancelled in December 2013. He received an IRS Form 1099-C for each debt and reported the cancelled debts on his federal income tax return for 2013. Applicant's February 2016 CBR (Item 9) reflected no delinquent debts.

### **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; 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 and his November 2014 CBR 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;

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.

AG ¶ 20(a) is partially established. Applicant's debts were numerous and were not incurred under circumstances making them unlikely to recur, but his debts are not recent. He resolved his last delinquent debts in December 2013, and his most recent CBR reflects no delinquent debts.

AG ¶ 20(b) is established. Applicant had numerous periods of unemployment. Even when he was self-employed, he often had times when he was without any subcontracts. He was financially unsophisticated, not realizing for many years that minimum payments on credit-card accounts did not reduce the balances. Nevertheless, he gave high priority to his child-support obligations and paid the arrearages when he was financially able. He kept in contact with his creditors, even though he was making only the minimum payments. He obtained the assistance of a debt-resolution company. He was unaware of the property tax lien until he was contacted by a collection agency, and he promptly resolved the lien. When he had difficulty paying his federal income taxes, he negotiated a payment plan. He resolved his last delinquent debts in December 2013 and is now current on all his obligations.

AG ¶ 20(c) is established. Applicant obtained the assistance of a debt-management company for help in resolving his debts, who helped him resolve several debts. When he lost contact with the company, he contacted his creditors directly and resolved his two remaining debts. His documentary evidence showing resolution of the two debts alleged in the SOR and February 2016 CBR showing no delinquent debts provide "clear evidence" that his financial problems have been resolved.

AG ¶ 20(d) is established. Applicant systematically paid, settled, or otherwise resolved all his delinquent debts.

AG ¶ 20(e) is not established. Although the November 2014 CBR reflects that Applicant disputed the two debts alleged in the SOR, he presented no documentary evidence of the basis for his disputes, and they appear to have been resolved against him.

### **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 some warrant additional comment.

Applicant has held his current job for more than nine years, and he has held a security clearance and worked for other federal contractors for many years. He has limited formal education, and he did not realize that carrying high credit-card balances and making only minimum payments was foolish. He traveled annually to visit his wife's family, but there is no evidence of funding source for that travel and no evidence that he spent extravagantly during his family visits.

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 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 access to classified information. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge