



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-06675  
 )  
Applicant for Security Clearance )

**Appearances**

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

08/01/2017

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On March 11, 2015, Applicant submitted a Questionnaire for National Security Positions (SF-86). On May 18, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Executive Order (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.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). These AGs apply to all adjudicative decisions issued on or after June 8, 2017. Any changes

resulting from the issuance of new Adjudicative Guidelines did not affect my decision in this case.

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

On June 23, 2016, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated August 19, 2016, was provided to him by letter dated August 22, 2016. Applicant received the FORM on September 19, 2016. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional information within the 30-day period. On July 7, 2017, the case was assigned to me.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. His admissions are accepted as findings of fact.

### **Background Information<sup>1</sup>**

Applicant is a 44-year-old software engineer employed by a defense contractor since March 2015. He seeks a security clearance in conjunction with his current employment.

Applicant graduated from high school in June 1991. He was awarded a bachelor's degree in January 1998. Applicant married in August 2003, and has two minor children. He did not serve in the U.S. Armed Forces.

### **Financial Considerations**

Applicant's SOR lists six allegations, consisting of a Chapter 13 bankruptcy filed and dismissed in 2012, and a Chapter 7 bankruptcy also filed and dismissed in 2012. Also listed are four debts: (1) a charged-off credit card account for \$30,256; (2) a charged-off credit card account for \$4,699, (3) a charged-off home equity account for \$39,712, and (4) a charged-off credit card account for \$20,367. (SOR ¶¶ 1.a – 1.f; Item 1) These allegations are established through Applicant's admissions; his March 11, 2015 SF-86; his March 31, 2015 and August 18, 2016 credit reports; his April 22, 2015 Office of Personnel Management Personal Subject Interview (OPM PSI); and his

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<sup>1</sup> The limited background information regarding Applicant was derived from the FORM and was the most current information available.

Chapter 13 and Chapter 7 bankruptcy summaries accessed on August 17, 2016. (Items 1 – 7)

Applicant attributes his financial difficulties to three periods of unemployment: (1) April 2010 to March 2011; (2) March 2013 to November 2013; and (3) March 2014 to March 2015. In March 2015, he began his current job. (Items 2, 3)

As a result of these periods of unemployment, Applicant was unable to make the house payments on his two homes. He immediately contacted his lenders seeking to refinance, but his overtures were rejected. With his lenders threatening foreclosure, he filed Chapter 13 and 7 bankruptcies in 2012 to delay foreclosure while he tried to sell his homes. Applicant was able to sell both homes by short sale and the bankruptcies were dismissed. (Items 1, 2, 3) Additionally, all of Applicant's credit card debt was incurred to make mortgage payments on the homes he eventually lost. (Items 1, 3)

In his SOR answer, Applicant submitted copies of Form 1099-C cancelling the debts listed in SOR ¶¶ 1.c and 1.d, a Form 1099-A disclosing the status of the debt in SOR ¶ 1.e, and a Form 1099-C cancelling the debt in SOR ¶ 1.f. In short, all four of the creditors or lenders listed in the SOR cancelled or are not pursuing Applicant's debts and issued Forms 1099-C or 1099-A. In Applicant's April 22, 2015 OPM PSI, he reported that he included the cancellation of debts when he filed his Federal income taxes. (Items 1, 2, 3)

During that same OPM PSI, Applicant stated that he is trying hard to recover from the financial fallout following his periods of unemployment. He is living on a tight budget and is building up his savings. His wife is also working full-time which has helped with the household expenses. Applicant stated that he has a good, steady job that will allow him to maintain financial stability. (Item 3)

### **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**

AG ¶ 18 articulates the security concern for financial problems:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” “(b) unwillingness to satisfy debts regardless of the ability to do so;” and “(c) a history of not meeting financial obligations.” Based on the information in the SOR, the record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists seven potential mitigating conditions:

(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;

(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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

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. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. Therefore, his debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt "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." Under AG ¶ 20(b), he receives full credit because his three lengthy periods of unemployment and downfall in the economy were largely beyond his control. When faced with income shortfalls, Applicant acted responsibly by attempting to work with his lenders and when that failed, he filed Chapters 13 and 7 bankruptcies to delay foreclosure. This strategy gave him additional time to sell his homes, which he did by short sale.<sup>2</sup>

AG ¶¶ 20(c) and (d) are partially applicable. Although there is no evidence in the record that Applicant sought formal financial counseling, it is clear that his financial situation is under control and his SOR debts have been resolved. It should be noted that Applicant gained no benefit from his bankruptcy filings other than acquiring additional time to sell his homes, thereby mitigating his losses. The remaining mitigating conditions are not applicable.

Applicant's financial situation is on the mend, but it will take additional time and steady employment for him to regain his former financial status. The steps Applicant has taken support the notion that he takes his financial responsibility seriously and that this

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<sup>2</sup>Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

process has had a sobering effect on him. 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(d).

### **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:	FOR APPLICANT
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Subparagraphs 1.a – 1.f:	For Applicant
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### **Conclusion**

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT TUIDER  
Administrative Judge