



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-06792
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

11/16/2016

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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 on December 16, 2014. On March 18, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. 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 the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on April 18, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 20, 2016,

and the case was assigned to me on September 7, 2016. On September 9, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 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 Exhibits (AX) A through G, which were admitted without objection. I kept the record open until October 12, 2016, to enable him to submit additional documentary evidence. He timely submitted AX H and I, which were admitted without objection. DOHA received the transcript (Tr.) on October 6, 2016.

### **Findings of Fact<sup>1</sup>**

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

Applicant is a 30-year-old employee of a defense contractor. He served on active duty in the U.S. Navy from September 2004 to September 2011, and he was unemployed from September 2011 until he began working for his current employer in September 2012. He held a security clearance while on active duty.

Applicant married in September 2006 and divorced in August 2007. He married his current wife in June 2008. He and his wife have a seven-year-old daughter.

The SOR alleges six delinquent debts which are reflected in his credit bureau reports (CBRs) from January 2015 and February 2016 (GX 3 and 4.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: vehicle loan, placed for collection of \$6,071.** Applicant testified that he purchased a vehicle that was destroyed by flood waters in 2010, and the insurance company paid him the market value for the vehicle, which was less than he owed on the loan. He testified that he was unaware that the insurance did not fully cover the loss until his personal subject interview (PSI) with a security investigator in May 2015. (Tr. 31-33.) In June 2016, he settled the debt for \$2,400. (AX A.)

**SOR ¶ 1.b: credit-card account, placed for collection account of \$1,377.** This account was resolved in June 2016. (AX I.)

**SOR ¶ 1.c: vehicle loan, placed for collection of \$3,837.** Applicant testified that this debt was incurred to purchase a motorcycle. He stopped making payments because he could not afford them. He admitted the debt but disputed the amount being claimed. His February 2016 CBR reflects that the debt is disputed. (GX 3 at 1.) He intends to resolve the dispute about the amount due and settle the debt. (Tr. 37-38.)

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

**SOR ¶ 1.d: home improvement store debt charged off for \$747.** Applicant testified that this was his wife's account. His January 2015 CBR listed him as an authorized user. (GX 4 at 3.) In June 2016, Applicant's wife settled this debt for less than the full balance due. (AX H.)

**SOR ¶ 1.e: credit card account charged off for \$464.** This debt was charged off in December 2010. (GX 4 at 3.) In his May 2015 PSI, he identified it as an account he opened about five years before the PSI, with a credit limit of \$500. (GX 2 at 6.) His law firm disputed the debt, and it is not reflected in his February 2016 CBR. (GX 3.) Since less than seven years have elapsed since the debt was charged off, its deletion from his credit record suggests that it was resolved.<sup>2</sup>

**SOR ¶ 1.f: telecommunication account placed for collection of \$1,470 in October 2012.** Applicant's law firm disputed this debt and it was removed from his credit record. (AX D.) It is not reflected in his February 2016 CBR (GX 3.)

Applicant attributes his history of delinquent debts to irresponsible spending while he was on active duty. (Tr. 34.) He testified that the background investigation into his suitability for a clearance "opened [his] eyes as far as financial responsibility." (Tr. 42.)

Applicant's monthly income ranges from \$1,600 to \$3,200, depending on overtime. His wife served on active duty and is attending school under the GI Bill. She receives a stipend of about \$2,500 per month. She is a full-time student and expects to graduate in May 2017 with a degree in human resources management. (Tr. 44-45.) She also receives disability pay and is a member of the U.S. Navy Reserve, which adds about \$300 to her net monthly income. Applicant and his wife have a net monthly remainder of at least \$400 or \$500, depending on Applicant's overtime.

Applicant has not received financial counseling, but he hired a law firm to assist him with his debts after his PSI in May 2015. When he decided to buy a home, he was informed by the prospective lender that he needed to resolve his delinquent debts to qualify for a loan, and so he starting resolving his debts, even though his law firm was still working on validating or disputing some of them. (Tr. 48.) He used most of his savings to pay his delinquent debts and furnish their new home. They closed on the home loan in June 2016. (Tr. 28-29.) Their payments on the loan are \$2,500 per month. (Tr. 41-43.)

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<sup>2</sup> Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, which is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

## 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 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.” 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 CBRs 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 not established for the debts alleged in SOR ¶¶ 1.b-1.f, because they are numerous, recent, and were not incurred under circumstances making them unlikely to recur. The debt alleged in SOR ¶ 1.a was incurred as a result of the destruction of Applicant's automobile in a flood, and it is not likely to recur.

AG ¶ 20(b) is partially established for the debt alleged in SOR ¶ 1.a. The destruction of Applicant's vehicle in a flood was a circumstance beyond his control, but he was dilatory in resolving the debt. He learned about it in his May 2015 PSI but did not resolve it until June 2016. The other debts alleged in the SOR were not due to circumstances beyond his control.

AG ¶ 20(c) is partially established. Applicant has not received financial counseling, but he has received legal advice, and his financial problems are being resolved.

AG ¶ 20(d) is established. The good faith required by this mitigating condition 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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant's wake-up call was his PSI in May 2015, but his decision to resolve his delinquent debts was motivated by more than concern about his security clearance. He realized that he needed to put his financial affairs in order to stabilize his life and be able to buy a home. He has not yet resolved all his delinquent debts, but the adjudicative guidelines do not require that an individual 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. He or she 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 has a plan and is well on his way to completing it.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.e and 1.f. He disputed both debts, and they have been removed from his credit record.

## **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 was candid, sincere, and credible at the hearing. He has accepted responsibility for his earlier decisions and taken significant steps to put his financial affairs in order. He has not yet resolved the debt alleged in SOR ¶ 1.c, but I am confident, based on his track record of resolving his other debts, that he will resolve it.

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 that he 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-1.f:

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