



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-06911
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/06/2016

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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 denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 12, 2013. On April 1, 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 June 11, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 29, 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 30, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until October 21, 2016, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on October 11, 2016.

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

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 41-year-old marine designer employed by a defense contractor since July 2013. He attended a technical college from January 1995 to May 1997 and received an associate's degree. He received a security clearance in 2000, but it is no longer active. (GX 2 at 4; Tr. 8.)

Applicant has worked for defense contractors since September 1997. He testified that all his jobs for defense contractors since 2010 have been temporary, the number of hours he worked and the amount he was paid was unpredictable, and between contracts he was often unemployed for a short time. (Tr. 26-29.) He was unemployed for about four months before beginning his current job. During a personal subject interview (PSI) in August 2013, he told a security investigator that he quit his job in March 2013 because his car broke down and he had no transportation to his job site. His SCA reflects that he left his job because of "loss of transportation." (GX 1 at 13.) He also told the investigator that he had a break in employment between contracts from June 2009 to December 2010. (GX 2 at 2.) He did not reflect this period of unemployment in his SCA. He now has a steady job, earning about \$50,000 per year. (Tr. 29.) He has no savings and just started a 401(k) retirement account. He testified that he is living paycheck to paycheck. (Tr. 30.)

Applicant married in August 1995, separated in October 2010, and divorced in September 2016. He is required to pay spousal support of \$350 per month. (Tr. 29.) He and his ex-wife have two sons, ages 21 and 18, who are both in college. He testified that his younger son has a full scholarship. His older son is trying to pay for college himself and receives some financial help from his parents, but his education is "not much of a financial strain." (Tr. 53.)

Applicant's credit bureau reports (CBRs) from July 2013 (GX 4) and August 2015 (GX 3) reflect the debts alleged in SOR ¶¶ 1.a-1.h. He and his wife filed a Chapter 7

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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.

bankruptcy petition in December 2000 and received a discharge in March 2001. His bankruptcy is alleged in SOR ¶ 1.i. The status of the debts alleged in SOR ¶¶ 1.a-1.h is summarized below.

**SOR ¶ 1.a: delinquent auto loan charged off in April 2013 for \$7,886.** The July 2013 CBR reflected that this account was a joint account opened in June 2007 and was 60 days past due. The August 2015 CBR reflected that this account was charged off for \$7,886 and that the date of last activity was in April 2013. Applicant testified that the account was for his ex-wife's car, purchased while they were both working full time, and that they were paying \$600 per month. He testified that his ex-wife has been making payments on the debt for about six months in accordance with a payment agreement. (Tr. 31-33.) He submitted no documentation of payments or a payment agreement.

**SOR ¶ 1.b: delinquent rent, charged off and referred for collection in September 2010 for \$3,575.** Applicant testified that this debt was incurred when he rented an apartment for a year, and then rented month to month. He testified that he gave the property management company 30 days' notice that he was moving out, but the company continued to charge him. He disputed the charge with the management company, but without success. He did not provide documentation that he gave the company 30 days' notice or that he disputed the debt. He testified that he intended to include the debt in a bankruptcy petition. (Tr. 33-35.) It is not resolved.

**SOR ¶ 1.c: satellite television service bill referred for collection in September 2013 for \$262.** Applicant testified that this debt was for equipment that was not returned. He thought his ex-wife turned in the equipment, but he was not sure. (Tr. 35-36.) The debt is not resolved.

**SOR ¶ 1.d: delinquent medical debt for \$110.** Applicant testified that he had not identified the creditor and had not made any payments on this debt. (Tr. 36.) It is not resolved.

**SOR ¶ 1.e: judgment for \$4,550 for past-due rent, filed in August 2009.** Applicant testified that this debt was incurred when he and his ex-wife both lost their jobs and were evicted from an apartment. He has not made any payments on the debt. He testified that he intended to include it in a bankruptcy petition. (Tr. 36-37.)

**SOR ¶ 1.f: judgment for \$656 filed in October 2010.** Applicant testified that this judgment was obtained by the same creditor as the creditor in SOR ¶ 1.b. (Tr. 37.) It is not resolved.

**SOR 1.g: judgment for \$1,255 for past-due rent, filed in March 2012.** Applicant testified that this debt was for another apartment and that it was satisfied by garnishment in 2013. (Tr. 38-39.) He submitted no documentary evidence of a garnishment or other payments. The August 2015 CBR reflects that the judgment is unsatisfied.

**SOR ¶ 1.h: judgment for \$4,887 for a delinquent automobile loan, filed in June 2011.** Applicant testified that he purchased an automobile in 2010, it broke down in 2011, the dealer refused to make the repairs, and he surrendered the automobile to the dealer. His monthly loan payments were \$100 per month. In the August 2013 PSI, he told the investigator that he had not made any payments on the loan to date. (GX 2 at 5.) At the hearing, he testified that he is making monthly \$145 payments on the debt (Tr. 39-40.) He submitted no documentary evidence of payments. The debt is not resolved.

At the hearing, Applicant testified that he and his ex-wife had an appointment with a bankruptcy attorney on Wednesday, October 5, 2016. (Tr. 48-49.) In Applicant's post-hearing submission, he stated that he and his ex-wife have been unable to agree on filing a bankruptcy petition, and that he intended to contact all his creditors and negotiate payment agreements. (AX A.) He submitted no documentary evidence of payments or payment agreements.

Applicant testified that his Chapter 7 bankruptcy in December 2000 occurred at a time when his wife was not employed outside the home, their children had medical problems, he had no medical insurance, they had recently lost their home, and he was earning only about \$30,000 per year. It was not triggered by excessive consumer debt. He estimated that about \$50,000 in debts was discharged. (Tr. 41-43.) There is no documentary evidence of the bankruptcy in the record, but Applicant admitted the allegation in his answer to the SOR.

## **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).

The debts alleged in SOR ¶¶ 1.b and 1.f involve the same creditor and they appear to have arisen from the termination of the same rental agreement. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). However, in this case the debt in SOR ¶ 1.b involves rental for a period ending some time before September 2010 and the debt in SOR ¶ 1.f is for a much smaller amount for a period after September 2010. Thus, I conclude that the two debts are not duplicates.

Applicant's admissions in his answer to the SOR, his testimony at the hearing, and the CBRs submitted at the hearing 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 established for SOR 1.i. The bankruptcy discharge was almost 17 years ago under circumstances substantially different from Applicant's current situation,

and there appears to be a nine-year period that elapsed before the debts alleged in the SOR began to accumulate. This mitigating condition is not established for the debts alleged in SOR ¶¶ 1.a-1.h, because the debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶¶ 20(b) is not fully established. Applicant's marital breakup and his periods of unemployment and underemployment were conditions largely beyond his control. However, he has been steadily employed since July 2013. Furthermore, he has not presented documentary evidence showing responsible conduct. He testified that his ex-wife was making payments on the debt in SOR ¶ 1.a, that satellite equipment that was the basis for the debt in SOR ¶ 1.c had been returned, that the judgment in SOR ¶ 1.g had been satisfied by garnishment, and that he was making monthly payments on the debt in SOR ¶ 1.h. It is reasonable to expect an applicant to present documentary evidence to support testimony that certain debts have been resolved. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). However, Applicant presented no documentary evidence, even though he testified that he had documentary evidence to support his testimony and was given additional time after the hearing to present it.

AG ¶ 20(c) is not established. While Applicant likely was required to obtain financial counseling as part of his Chapter 7 bankruptcy in 2000, he presented no evidence of more recent counseling, and his financial situation is not under control.

AG ¶ 20(d) is not established. Applicant has presented no documentary evidence of any payments or payment agreements. In his post-hearing submission, he promised to contact his creditors and make payment agreements, but he did not support his promise with documentary evidence. A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

AG ¶ 20(e) is not established. Although Applicant testified that he disputed the past-due rent payments alleged in SOR ¶¶ 1.b and 1.f, he provided no documentation of his dispute or any basis for overturning the judgment against him. There is no evidence that he filed a dispute with the credit bureaus.

### **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, and I have considered the factors in AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that the security concerns raised by Applicant's bankruptcy discharge in March 2001 are mitigated, but he has not mitigated the security concerns raised by the delinquent debts accumulated after March 2001. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him 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): AGAINST APPLICANT

Subparagraphs 1.a-1.h:

Against Applicant

Subparagraph 1.i:

For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge