



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-08144  
 )  
Applicant for Security Clearance )

**Appearances**

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

10/17/2017

**Decision**

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

On October 14, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on November 14, 2016, and elected to have his case decided on the written record in lieu of a hearing. On December 14, 2016, Department

Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on December 23, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on February 22, 2017.<sup>1</sup> He did not object to the Government's evidence. He submitted one document, which is marked as Applicant's Exhibit (AE) A and admitted without objection. The SOR and the answer (Items 1 & 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection. The case was assigned to me on October 1, 2017.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017 for all decisions after that date, and they supersede the AGs that Applicant received with the SOR.<sup>2</sup> Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, 1.d, and 1.e., and he denied SOR ¶ 1.c, all with narrative explanations, but no documents. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 39 years old. He was married from 2001 to 2006. He has been in a common-law marriage with his second wife since about 2009. They have two sons, ages 9 and 10. He also has two children from prior relationships, ages 17 and 18. (Item 3)

Applicant served honorably in the Army National Guard from 1995 to 1998. He then transitioned to the U.S. Army. After he wrote numerous bad checks, his Army security clearance was revoked and he was discharged under other than honorable conditions in 1999. (Items 3, 4)

Applicant earned an associate's degree in 2006. He has worked as an engineer and programmer, mostly in the defense industry since about 2008. From February 2009 to July 2010, he lived and worked in Germany, under a DOD contract. He was unemployed for about two months when the contract ended, so he returned to the United States. He worked as a programmer for a video company from October 2010 until June

---

<sup>1</sup> In responding to the FORM, Applicant asserted that the status of the SOR debts had changed, largely since they were no longer reflected on a credit report. He therefore requested that the Government prepare a "new File of Relevant Material" for him to respond to before the case was assigned to an Administrative Judge. The Directive does not provide for a "second bite at the apple" in this manner, so the case was then properly assigned to the DOHA Hearing Office, and ultimately to me, for a decision. Directive, ¶ E.3.1.7.

<sup>2</sup> The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

2011. He worked in a similar position for a defense contractor from June 2011 to February 2014. Since then, he has worked for his current employer. Applicant has also maintained his own computer consulting business since 2004. (Item 3)

In August 2014, in connection with his employment, Applicant submitted a security clearance application (SCA). His background investigation included a personal subject interview, in January 2015. The Government's evidence also includes more credit reports from September 2015 and August 2016. They detail the five delinquent debts in the SOR, which total about \$15,500. (Items 3, 4, 5, 6).

SOR ¶ 1.a is a student loan. It is listed as being past due in the amount of \$2,518 (the amount alleged), though the total amount due is actually \$26,042. (Item 5) Applicant stated in his answer that the account remained delinquent, though he would set up a payment plan for it. In his FORM Response, Applicant indicated that, according to a January 2017 credit report, the loan had been closed out and transferred to another creditor, so he is unsure how to resolve it. (FORM Response, AE A at 27-29)

SOR ¶ 1.b is a \$170 phone bill in collection. Applicant indicated in his answer that the account was for service at a prior address. He stated that he closed the account and requested a final bill, which never came. In his FORM Response, he reported that the creditor told him the account was closed but could not provide verifying information without an account number, since they no longer held the account. AE A lists the account as closed, but still in collection status. (FORM Response, AE A at 51-53)

SOR ¶ 1.c, which Applicant denied, is a \$10,432 charged-off debt relating to a repossessed auto. Applicant indicated that he co-signed for the truck with his then-fiancée, now his wife. He attempted to sell the truck when he moved to Germany in 2009, without success. He disclosed the debt on his SCA, but also noted that the account was closed during bankruptcy proceedings initiated by the "primary borrower" (now his wife). In his answer, he stated that he left a relative in charge of his accounts, all of which (including this one) were in collection status when he returned, in 2010. He reported that the account was no longer on his credit reports, since it was more than seven years old. In his FORM Response, Applicant essentially took the same position, though he noted that his current credit report lists a different auto account that is in good standing with the same creditor. (Item 3; FORM Response, AE A)

SOR ¶ 1.d is a \$398 charged-off account with a bank. Applicant stated it was one of the accounts that became delinquent when he moved to Germany, and remained delinquent at the time of the answer. In his FORM Response, he relied on the fact that the account was no longer listed on his credit report since it was more than seven years old, in claiming the account "has no bearing on my credit rating. (FORM Response)

SOR ¶ 1.e is a \$1,981 judgment issued against Applicant in 2011, for unpaid rent after early termination of a lease. He indicated in his FORM Response that when he

contacted the creditor to set up a payment plan, they referred him to a collection agent, but did not provide additional contact information.

In his answer, Applicant asserted that the SOR debts no longer represent his current financial situation. He cited several other accounts which he said were in good standing, including credit cards, an auto loan, a personal loan, and his rent. He acknowledged, however, that he has “always struggled” with his finances. He indicated that he has never resorted to “illegal or immoral means” to make ends meet. (Answer) Applicant does, however, have a history of writing bad checks, which led to the revocation of his security clearance, and his discharge from the Army under other than honorable conditions.<sup>3</sup> (Items 3, 4)

The only document Applicant provided with his FORM response was a January 2017 credit report. (AE A) He provided no details or documents about his current financial situation, such as his monthly income and expenses, or his assets.

### **Policies**

It is well established that no one has a right to a security clearance.<sup>4</sup> As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”<sup>5</sup>

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

---

<sup>3</sup> These incidents are not alleged in the SOR as disqualifying conduct, though they may be considered 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, 2016). Therefore, I will consider it accordingly.

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

<sup>5</sup> 484 U.S. at 531.

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>6</sup>

AG ¶ 19 provides conditions that could raise security concerns: ¶¶ 19(a) “inability to satisfy debts” and (c) “a history of not meeting financial obligations” are applicable, given the record evidence of Applicant's delinquent debts.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

---

<sup>6</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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;

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

(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.

None of these mitigating conditions apply. Applicant's chief assertion is that the SOR debts no longer reflect his current financial situation because the debts are more than seven years old, so they no longer appear on his credit report. However, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt.<sup>7</sup>

Further, it is well established that an applicant's ongoing, unpaid debts evidence a continuing course of conduct, and, therefore, can be viewed as recent for purposes of mitigation.<sup>8</sup> Applicant's debts are therefore ongoing. Applicant also has a history of writing bad checks, which led to the revocation of his clearance and a discharge from the Army under other than honorable conditions. Contrary to his assertions, Applicant provided insufficient evidence from which to conclude that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant did not establish that any of his debts are due to circumstances beyond his control. He provided no indication, and no documentation, to establish that he has made any payments towards any of his SOR debts, all of which he has now acknowledged. He is content to stand on his assertion that his debts are no longer valid because they no longer appear on his credit report. This position satisfies neither reasonable action nor good-faith efforts to pay or otherwise resolve his debts. AG ¶¶ 20(b), 20(d) and 20(e) do not apply.

---

<sup>7</sup> ISCR Case No. 14-03612 at 4 (App. Bd. Aug. 25, 2015)

<sup>8</sup> ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017)

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(a), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant did not provide sufficient documented information that he attempted to resolve his debts in a good-faith, responsible manner. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

## 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

---

Braden M. Murphy  
Administrative Judge