



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-08470
	)	
Applicant for Security Clearance	)	

**Appearances**

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

05/24/2017

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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 26, 2014. On June 14, 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 replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on July 18, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 27,

2016, and the case was assigned to me on March 2, 2017. On March 3, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 21, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through L, which were admitted without objection. DOHA received the transcript (Tr.) on March 31, 2017.

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

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

Applicant is a 49-year-old curriculum developer employed by a defense contractor since November 2013. He served on active duty in the U.S. Navy from August 1985 to August 2007, when he retired. He earned an associate's degree in May 2007 and a bachelor's degree in February 2014. He held a security clearance in the Navy and is seeking to continue it. He was unemployed for two months after retirement and was employed by defense contractors from November 2007 to July 2013, when his employer lost its contract with the Navy. He was unemployed for four months before being hired for his current job.

Applicant married in August 1987. He and his wife have three children, ages 26, 24, and 18. He has custody of an infant granddaughter, because the parents (his daughter and her husband) are in jail for heroin involvement. (Tr. 34.)

The delinquent debts alleged in SOR ¶¶ 1.a-1.d are reflected in a credit bureau report (CBR) from December 2014. (GX 3 at 5 and 14.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: credit-card account referred for collection of \$6,551 in February 2010.** Applicant settled this debt and received an IRS Form 1099-C, reflecting that \$4,768 was cancelled in December 2012. (AX K.)

**SOR ¶ 1.b: credit-card account referred for collection of \$1,098 in February 2010.** Applicant settled this debt and received an IRS Form 1099-C, reflecting that \$661 was cancelled in October 2010. (AX J.)

**SOR ¶ 1.c: medical bill referred for collection of \$560 in July 2009.** The medical debt was incurred by Applicant's daughter, who was hospitalized but did not file an insurance claim. As a military retiree, Applicant is covered by TRICARE. He testified that he contacted the hospital and the bill "went away." (Tr. 36.) The debt is not reflected in March 2017 CBRs (AX H; AX I.)

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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: telecommunications bill referred for collection of \$100 in June 2014.** Applicant testified that he initially disputed this debt because the collection agency could not explain what it was. However, he “just paid it . . . to get rid of it.” (Tr. 36.) The debt is reflected in his March 2017 TransUnion CBR as a paid collection. (AX H.)

Applicant testified that when he retired from the Navy in 2007, his income was reduced by about \$10,000 per year. He attributed his credit-card debts to overspending, and he blamed much of the overspending on his wife. (Tr. 51-52.) Around 2008, he hired a debt-consolidation company to resolve his debts, and the company resolved the debts alleged in SOR ¶¶ 1.a and 1.b plus numerous debts not alleged in the SOR. (Tr. 43-45.) Applicant closed most of his credit-card accounts. He and his wife now have only one credit card each. His wife has a \$500 limit and he has a \$2,000 limit.<sup>2</sup> (Tr. 58-59.)

Applicant’s current monthly take-home pay, including his military retirement pay, is about \$7,000. He is also receiving \$1,560 per month under the Post 9/11 GI Bill. His monthly expenses are about \$5,000. He currently has no delinquent debts. (Tr. 41-42.)

When Applicant submitted his SCA, he disclosed that he did not timely file his federal and state income tax returns for 2011, 2012, and 2013. He stated that he had since filed the returns for all three years and was in the process of paying the taxes due. (GX 1 at 35-36.) During a personal subject interview in July 2015, he told a security investigator that he had not yet filed his federal and state income tax returns for 2014. (GX 2 at 5-6.) His failures to timely file his tax returns are alleged in SOR ¶¶ 1.e-1.g.)

At the hearing, Applicant testified that he did not file his federal and state income tax returns for 2011, 2012, and 2013 because he had not yet received the IRS 1099-C forms reflecting 10 or 15 delinquent credit-card debts, including those alleged in the SOR. Even though some debts were cancelled in 2001, he did not receive the IRS 1099-C forms until 2013. (Tr. 52-53.) He did not request extensions of time to file his 2011, 2012, or 2013 returns. (Tr. 61-62.) He filed the returns for 2011 through 2014 in late 2014. (Tr. 64.) He requested and received an extension of time to file his 2015 returns, and he filed them about two weeks after the extension expired. He filed his 2016 federal and state tax returns on time. (Tr. 65.) He did not seek or receive any professional tax advice when he fell behind in filing his tax returns. (Tr. 53-54.)

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<sup>2</sup> The evidence reflects that Applicant had many more delinquent debts than the four alleged in the SOR. Conduct that is 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 evidence of unalleged delinquent debts for these limited purposes.

In December 2016, Applicant obtained a three-year loan from his bank and paid \$10,932 to the IRS to satisfy his federal tax debt. (AX G.) He paid federal income taxes of \$2,200 for 2016 by direct debit from his bank account. (AX C; AX D.) He received a refund from the state for 2016. (AX E; AX F.)

Applicant's program manager and production manager have known him for about three years, and they both submitted letters attesting to his integrity, reliability, and hard work. His program manager describes him as "respectful of privacy, sensitive information, rules and restrictions," and "an upstanding citizen and proactive member of the community." His production manager describes him as hard-working and dedicated and states that he has no reason to question his integrity. (AX A; AX B.)

### **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 SOR alleges two delinquent credit-card accounts (SOR ¶¶ 1.a and 1.b), a delinquent medical bill (SOR ¶ 1.c), a delinquent utility bill (SOR ¶ 1.d), failure to timely file federal and state income tax returns for 2011, 2012, 2013, and 2014 (SOR ¶¶ 1.e and 1.g), and \$7,370 in past-due federal and state taxes for tax years 2011, 2012, and 2013 (SOR ¶ 1.f). 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 the documentary evidence presented at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

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. Applicant's delinquent debts and overdue tax returns were recent, frequent, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is established for the debts alleged in SOR ¶¶ 1.a-1.d, but not for the tax debts and failure to timely file tax returns. Applicant's pay reduction when he retired from the Navy was a natural consequence of retiring and not a condition beyond his control, because there is no evidence that he was involuntarily retired. The additional

financial obligation of supporting an infant granddaughter was a condition beyond his control. The failure of creditors to timely supply IRS Forms 1099-C was a condition beyond his control. He acted responsibly regarding the delinquent debts alleged in SOR ¶¶ 1.a-1.d by hiring a debt-consolidation service and resolving the debts well before he received the SOR. He did not act responsibly regarding his past-due tax returns and his tax debts. He did not seek professional advice or request extensions of time to file the returns for 2011, 2012, 2013, and 2014. He received an extension of time for his 2015 returns but still filed late.

AG ¶ 20(c) is partially established. There is no evidence that the debt-consolidation company provided financial counseling within the meaning of this mitigating condition, and Applicant did not seek or receive financial counseling from any other source. However, Applicant has resolved his delinquent debts, filed his past-due tax returns, and paid the taxes due.

AG ¶ 20(d) is established. Applicant resolved his delinquent debts and past-due tax returns well before he received the SOR.

AG ¶ 20(e) is not applicable. Applicant initially disputed the telecommunications bill alleged in SOR ¶ 1.d, but he then paid it “to get rid of it.”

### **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 served honorably for 22 years in the Navy and has worked for defense contractors since 2007, holding a

security clearance for the entire time. He was financially naïve when he retired from the Navy, did not manage his finances well, and took on unexpected family obligations. He has resolved his financial problems and learned valuable financial lessons. He is now financially stable and has taken steps to avoid future financial problems. 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 and past-due tax returns. Accordingly, I conclude 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.g:

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