



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-02091
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Charles C. Hale, Esq., Department Counsel  
For Applicant: *Pro se*

11/27/2017

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**Decision**

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CERVI, Gregg A., 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 September 20, 2012. On March 24, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F.<sup>1</sup> Applicant answered the SOR on June 16, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government’s written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on August 18, 2016.

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<sup>1</sup> 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.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 18, 2016. He submitted a response to the FORM, marked as Applicant Exhibit (AE) A. The Government's exhibits included in the FORM (Items 1 to 7) and AE A are admitted into evidence. The case was assigned to me on May 19, 2017.

### **Findings of Fact**

Applicant is a 60-year-old field manager employed by a defense contractor since 2008. He is a high school graduate. He has been married since 1995, and was previously married in 1977 and divorced in 1994. He has held a DOD security clearance since 2003.

The SOR alleges Applicant is delinquent on seven debts, and filed Chapter 13 bankruptcy in 2006, that was converted to a Chapter 7 and dismissed in 2008. He admitted the bankruptcy allegation, but denied the remaining allegations. He explained that the remaining debts alleged in the SOR were either paid, were part of the bankruptcy and forgiven, or there were no records of the accounts.

Applicant and his spouse operated a business that failed in 2006. They filed Chapter 7 bankruptcy, but it was dismissed in 2007. They also filed personal bankruptcy in 2006, claiming liabilities of over \$800,000. The case was dismissed in 2008. Applicant claimed in his SCA that a credit card debt was discharged through bankruptcy.<sup>2</sup> Applicant had a car and boat repossessed in 2008 and 2009 respectively, and a mortgage foreclosure on rental property in 2009. He claimed that no deficiency balance is owed or the creditor has not pursued collections on these accounts. The majority of the debts date from 2002 to 2009, with the majority of the debts reported on a 2012 credit report (GE 5) and are over 10 years old. The credit report shows SOR ¶ 1.b was an auto loan that was "disputed following resolution;" SOR ¶ 1.c was a charged-off account; SOR ¶ 1.e was disputed. Applicant's 2015 credit report (GE 6) substantially supports Applicant's improved credit standing, and indicates the mortgage foreclosure was disputed.

Applicant provided an October 2016 credit report that shows that he carries a current and second mortgage that are paid up to date and in good standing, and that he paid-off a home equity line of credit. There are no collection accounts or public records on file, except for one account from 2009 that was not alleged in the SOR that shows it was transferred to recovery but with a zero balance owed.

### **Law and Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. These AGs are applicable to this decision.

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<sup>2</sup> Bankruptcies that are dismissed generally do not result in discharged debts.

“[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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 ¶ 1(d).

## **Analysis**

### **Financial Considerations**

The security concern 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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following mitigating conditions are potentially relevant:

- (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; 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.

Applicant resolved the majority of his delinquent debts through disputes, a payment, and a bankruptcy filing, although it is unclear how the bankruptcy filings affected his debts after they were dismissed. It appears that the creditors did not pursue recovery on any of the debts that were originally part of the bankruptcies. Applicant provided the most current credit report showing that his SOR debts have been addressed or removed from his credit report. He does not have any current collection accounts or deficiencies owed, and his current credit report reflects a positive financial status.

Applicant's financial condition that led to the SOR debts was largely due to financial losses due to a failed business in 2008. According to his current credit report, Applicant appears to be on a sound financial footing. He has been employed in his current position since 2008 and has not incurred any new financial delinquencies since then. Sufficient time has passed with no new delinquencies to suggest that he has satisfactory control of his finances and that additional delinquencies are unlikely to recur. AG ¶¶ 20 (a) and (b) apply.

Applicant's resolved debts and current financial status leave me without doubts about his overall financial condition and ability to face his financial responsibilities. His past financial delinquencies no longer cast doubt on his current reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant has taken sufficient action to resolve his financial delinquencies, and is currently financially sound.

Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

### **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
Subparagraphs 1.a – 1.h:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

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Gregg A. Cervi  
Administrative Judge