



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-02970
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: *Pro se*  
12/22/2017

**Decision**

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MARINE, Gina L., 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 August 8, 2014. On February 23, 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 (EO) 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 (2006 AG).

Applicant answered the SOR on March 25, 2016, and requested a hearing before an administrative judge. The Government was ready to proceed on February 21, 2017, and the case was assigned to me on June 13, 2017. On July 10, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 11, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 8 were admitted into evidence, without objection. The letter that the Government sent to Applicant was appended to the record as Hearing Exhibit (HE I) and the Government's exhibit list as HE II. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted into evidence, without

objection. At Applicant's request, I left the record open until September 11, 2017. Applicant timely provided additional documents that were admitted into evidence as AE C through M, without objection. DOHA received the transcript (Tr.) on August 18, 2017.

On June 8, 2017, the DOD implemented new AG (2017 AG).<sup>1</sup> Accordingly, I have applied the 2017 AG.<sup>2</sup> However, I have also considered the 2006 AG, because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

### **Findings of Fact<sup>3</sup>**

Applicant, age 53, has been married for 10 years. He has one child, age seven. Since obtaining a high school diploma and vocational certificate in 1982, he has taken some college courses. Applicant honorably served in the Navy from 1984 through 1991 and 1999 through 2002, and in the Army National Guard from 1992 through 1993 and 2003 through 2006. As a civilian, he has been employed primarily by defense contractors since 2008; and with his current employer since 2016. He was unemployed for an eight month period between 2009 and 2010 due to unforeseen circumstances.<sup>4</sup> Applicant seeks to regain the security clearance that he has held for approximately ten years.<sup>5</sup>

The SOR alleges three delinquent debts totaling \$14,555 (SOR ¶¶ 1.a, 1.f, and 1.g), four accounts charged-off in unspecified amounts (SOR ¶¶ 1.b through 1.e), and failure to file, as required, federal and state income tax returns for tax years 2010 through 2012 (SOR ¶¶ 1.h and 1.i). In his SOR answer, Applicant admitted each of the SOR allegations except for SOR ¶¶ 1.e through 1.g, which are established by credit reports submitted by each party.<sup>6</sup>

For each of the debts alleged in SOR ¶¶ 1.b through 1.e, credit reports show a \$0 balance. In the 2014 and 2016 credit reports, the debt alleged in SOR ¶ 1.b is noted

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD 4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD 4 ¶ B, *Purpose*). The SEAD 4 became effective on June 8, 2017 (SEAD 4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD 4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD 4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

<sup>3</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer, SCA (GE 1), and the summary of his subject interview (GE 7).

<sup>4</sup> See also Tr. at 7-10, 30-42, 87-90.

<sup>5</sup> Tr. at 10.

<sup>6</sup> GE 4 through 6. AE G through K.

as “paid” and “closed by consumer.” In his SCA, Applicant reported approximate balances of \$134 and \$1,433 for the debts alleged in SOR ¶¶ 1.c and 1.d, respectively, and confirmed same during his security clearance interview. He did not report in his SCA the debt alleged in SOR ¶ 1.e, and denied knowledge of it during his interview. In the 2014 credit report, the debt alleged in SOR ¶ 1.e is noted as “in dispute,” “transferred” and in “collection” status with a high credit of \$319. The 2015 credit report does not reflect that dispute, but shows the same high credit and that it was charged off and then either transferred or sold. SOR ¶ 1.e is not shown on the 2016 credit report.<sup>7</sup>

The debt alleged in SOR ¶ 1.f was resolved by involuntary garnishment,<sup>8</sup> and the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.g are unresolved. Applicant attributes his financial indebtedness to his period of unemployment between 2009 and 2010 after the job that he was promised fell through at the last minute. At that time, he immediately communicated his circumstances to his creditors, to no avail. He depleted savings of approximately \$10,000 in an attempt to keep current with his bills, but eventually fell behind. In approximately 2011, after he became gainfully employed and had sufficient funds to do so, he reinitiated efforts to resolve his debts, but by then, they had been transferred to collection agencies with whom Applicant chose not to negotiate. During his September 2014 security clearance interview, Applicant described a plan to resolve his debts with the assistance of a debt consolidation company. At the hearing, Applicant acknowledged that he had not followed through with that plan despite having been in contact with at least one firm to assist him. Applicant did not assert nor did the record reveal any reasonable bases to dispute any of his unresolved debts.<sup>9</sup>

While he and his wife file joint tax returns, Applicant accepted full responsibility for their failure to timely file them for tax years 2010 through 2012, due to him losing paperwork and being exhausted from his workload and commute. Applicant filed those delinquent tax returns in 2016. He owed the IRS for unpaid taxes in an unspecified amount from tax years 2010 through 2012, the current balance of which is approximately \$1,500. Applicant made seven payments to the IRS for tax year 2011, between October 2016 and June 2017, in the total approximate amount of \$1,270. Applicant’s unpaid 2010 and 2012 taxes were resolved either through his direct payment or the withholding of his tax refunds. He understood then and now that he is obligated to timely file his tax returns, which he has done for tax years 2013 through the present.<sup>10</sup>

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<sup>7</sup> See also GE 4 through 6; AE G through L.

<sup>8</sup> GE 4; Tr. at 50-62, 109.

<sup>9</sup> See also AE A; Tr. at 28-30, 50-62, 92-106.

<sup>10</sup> Tr. at 62-73. Because Applicant’s IRS debt was not alleged in the SOR, I will consider it only to evaluate mitigation and the whole person.

Applicant nets a salary of approximately \$4,000 per month.<sup>11</sup> He estimated that he has a surplus of approximately \$200 or \$300 per month after paying his expenses.<sup>12</sup> He has not had any financial counseling.<sup>13</sup>

Applicant has worked in combat zones four times as a defense contractor.<sup>14</sup> His employer opined that Applicant is honest and trustworthy, and praised his character and work performance.<sup>15</sup> A friend of 30 years described Applicant as a true patriot with “unimpeachable” character, and averred that he is a man of integrity and good character.<sup>16</sup> A colleague of over four years commended the efficient, detail-oriented, and extremely competent and organized manner in which Applicant accomplishes tasks. He lauded Applicant’s value and contributions to their company and to the survival and safety of troops serving in hazardous battlefield conditions.<sup>17</sup> Several other colleagues and friends echoed similar positive comments.<sup>18</sup>

### **Policies**

“[N]o one has a ‘right’ to a security clearance.”<sup>19</sup> 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.”<sup>20</sup> 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.”<sup>21</sup>

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

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<sup>11</sup> Tr. at 40.

<sup>12</sup> Tr. at 80.

<sup>13</sup> Tr. at 124.

<sup>14</sup> See *a/so* Tr. at 85-87.

<sup>15</sup> AE B.

<sup>16</sup> AE C.

<sup>17</sup> AD D.

<sup>18</sup> AE E, F, and M.

<sup>19</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>20</sup> *Egan* at 527.

<sup>21</sup> EO 10865 § 2.

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.”<sup>22</sup> 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.<sup>23</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>24</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>25</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>26</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>27</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>28</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>29</sup>

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<sup>22</sup> EO 10865 § 7.

<sup>23</sup> See *Egan*, 484 U.S. at 531.

<sup>24</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>25</sup> See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

<sup>26</sup> Directive ¶ E3.1.15.

<sup>27</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>28</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>29</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 failure to timely file his federal and state income returns and his financial indebtedness establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has mitigated the concern regarding his failure to timely file tax returns for tax years 2010 through 2012. He filed the tax returns before the SOR was issued, established a meaningful track record of repaying his tax debt to the IRS, and timely filed his tax returns since tax year 2013. I conclude that this issue is not likely to recur. AG ¶¶ 20(a), (b), (d) and (g) are established.

Applicant did not, however, meet his burden to mitigate the concern regarding his financial indebtedness. I credit Applicant with resolving the debt alleged in SOR ¶ 1.f via wage garnishment. I also find that the debt alleged in SOR ¶ 1.b has been resolved. While the Government met its burden to prove that the debt alleged in SOR ¶ 1.e was charged-off, it did not establish any associated liability. The record does not otherwise reveal that Applicant remains monetarily obligated to the creditor. I considered the fact that the account was among those charged-off, and I find SOR ¶ 1.e in favor of Applicant.

The debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.g, totaling approximately \$14,140, remain unresolved.<sup>30</sup> While his period of unemployment between 2009 and 2010 was a circumstance largely beyond his control, since then, he has not acted responsibly to address these debts. I credit his earlier efforts to resolve them with the original creditors. However, in the years following his gainful employment, Applicant chose not to negotiate with the collection agencies to whom they were transferred, and otherwise failed to demonstrate any progress in addressing them (including after the month-long period during which the record remained open after the hearing). AG ¶¶ 20(a), (b), and (d) are not established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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<sup>30</sup> Despite the fact that the SOR did not allege amounts for the debts alleged in SOR ¶¶ 1.c and 1.d, I based my finding on Applicant's admissions as to the approximate amounts: \$134 and \$1,433, respectively. I considered that the debt alleged in SOR ¶ 1.g. could be a duplicate of one or more of the debts alleged in SOR ¶¶ 1.c through 1.e given that the original creditors are the same. However, Applicant did not meet his burden to prove such, nor was it otherwise established by the record.

(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(d). Applicant has served the military honorably on active duty and as a civilian contractor. He was candid and sincere at the hearing, and is highly regarded by his colleagues and friends for his trustworthiness and good character. 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 Applicant mitigated the security concerns raised by his failure to timely file his tax returns, but not his financial indebtedness. Accordingly, Applicant 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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.d:	Against Applicant
Subparagraph 1.e – 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h – 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.

Gina L. Marine  
Administrative Judge