



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 16-01191
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany Muetzel, Esq., Department Counsel  
For Applicant: Tokay T. Hackett, Esq.

10/09/2018

**Decision**

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 on April 6, 2015. On July 5, 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.<sup>1</sup>

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<sup>1</sup> Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on August 1, 2016, and requested a decision on the written record without a hearing before an administrative judge. On November 13, 2017, Applicant changed his mind and requested a hearing. Department Counsel was ready to proceed on February 28, 2018, and the case was assigned to me on April 12, 2018. On May 21, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 12, 2018. On May 24, 2018, Applicant requested a change of venue, which was granted. On June 25, 2018, DOHA notified Applicant that the hearing was rescheduled for July 25, 2018. I convened the hearing as scheduled at the new venue. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through Y, which were admitted without objection. I kept the record open until August 27, 2018, to enable him to submit additional documentary evidence. He timely submitted AX Z through JJ, which were admitted without objection. DOHA received the transcript (Tr.) on August 3, 2018.

### **Findings of Fact<sup>2</sup>**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.e, 1.k, 1.l, 1.n, 1.o, and 1.q-1.t. He denied the allegations in SOR ¶¶ 1.b-1.d, 1.f-1.j, 1.m, and 1.p. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 48-year-old maintenance analyst employed by a defense contractor since July 2004. He married in September 1993. He and his wife have three sons, ages 25, 23, and 20. He served on active duty in the U.S. Navy from November 1994 to July 2004 and received an honorable discharge. He attended online college courses from September 2009 to June 2011 and received a bachelor's degree in business administration. (GX 1 at 8; Tr. 14.) His youngest son is on active duty in the U.S. Navy. (Tr. 92.) Applicant has held a security clearance since August 2005.

Applicant's middle son began showing symptoms of facial paralysis in 2006. After multiple tests and medical procedures, his son was diagnosed with a brain aneurism. When Applicant left active duty, he obtained medical insurance with a high deductible. Consequently, he incurred about \$14,000 in uninsured medical expenses for his son's treatment. He and his wife used credit cards and savings to pay the medical bills. They exhausted his wife's retirement account of about \$14,000 to pay off some of their other bills. (Tr. 105, 129-30.) They refinanced their home to use the equity to pay bills, not realizing at the time that they had agreed to an interest-only loan with a balloon payment that later exacerbated the financial difficulties. (Tr. 30-33.)

Applicant's wife began experiencing problems with a hiatal hernia in 2009 and successfully underwent corrective surgery. In 2013, she suffered a severe recurrence that required a revision of the previous surgery. While she was being treated, Applicant

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<sup>2</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

stayed with her day and night, watching her deteriorate while medical professionals looked for a solution. She underwent corrective surgery in 2014. She was unable to work for about eight months. (Tr. 23-24.)

Applicant was diagnosed with leukemia in November 2011, treated with chemotherapy in October 2012, and went into remission in January 2013. (Tr. 18.) Because his employer allowed him to work at home with flexible hours, he lost only about 8-12 hours of work time, minimizing the financial impact of his illness and medical treatment in 2011-2013. (Tr. 20.)

In July 2017, Applicant was diagnosed with stage-four colon cancer. He received nine months of chemotherapy, underwent major surgery in August 2017, and resumed chemotherapy in November 2017. He has experienced side effects from his treatment that require ongoing medical interventions. (AX N.) He has been unable to work since July 2017, and he is receiving \$1,931 per month in Social Security disability. He has been on Federal Family and Medical Leave (FMLA) since August 2017. He exhausted his entitlement to disability pay from his employer in February 2018. (AX Y.) His wife is now the primary income-producer in the family. (Tr. 52, 59.) At the time of the hearing, he hoped to return to work in mid-October 2018. (Tr. 89.)

Applicant was earning about \$62,000 per year before his disability. (Tr. 86.) He testified that he and his wife were distracted from dealing with their debts by all the family medical problems, but that the SOR was a catalyst for seriously addressing their debts. (Tr. 79.)

Applicant's wife is employed by the same defense contractor as Applicant. She received a bachelor's degree in business administration in 2006 and a master's degree in management in 2008. She, like her husband, financed her education with student loans. Her student loans total about \$65,000. (Tr. 128.) Her loans are in forbearance because of their limited income. (Tr. 108-11.) She consolidated her student loans in June 2016. (Tr. 128.)

When Applicant's wife became ill, she was a manager of a credit union, earning about \$100,000 per year. After she became ill, her employer assigned her to a lower-paying job and reduced her pay by about 15%, and she began receiving short-term disability pay, which was about 75% of her reduced annual pay. Although she had medical insurance, she incurred about \$15,000 in uninsured medical bills. (Tr. 113.) Because her job was demanding, stressful, and not conducive to recovering, she sought other employment. In her current job, she earns about \$54,000 per year. (Tr. 123.)

Applicant and his wife live modestly. They live in a small three-bedroom home and drive two cars that are 11-12 years old and paid for. (Tr. 54-55.) Their current net monthly remainder after paying all their living expenses and financial obligations is about \$120. (Tr. 145.) Their financial situation will improve significantly when Applicant is able to return to work. (Tr. 146.)

The SOR alleges that Applicant failed to timely file his federal income tax return for tax year 2013. It also alleges 19 delinquent debts that are reflected in his credit reports from April 2015 (GX 2), March 2016 (GX 3), and February 2018 (GX 4). The evidence concerning the allegations in the SOR is summarized below.

**SOR ¶ 1.a: failure to file federal income tax return for 2013.** Applicant requested an extension of time to file in April 2014. However, he and his wife missed the extended filing deadline due to her medical problems. He testified that his wife developed serious complications during her surgery and he stayed with her in the hospital every day and frequently at night. (Tr. 27.) He filed his return in September 2016 and paid the taxes due. He has filed all subsequent tax returns as required and does not owe any federal, state, or local income taxes. (AX C; Answer to SOR.)

**SOR ¶ 1.b: home mortgage loan payments past due for \$10,868, with a total outstanding balance of \$210,107.** When Applicant and his wife refinanced their home in 2006, it was for an interest-only loan, and it ballooned into a fixed-rate loan at 12%, increasing their payments from about \$1,600 to \$2,700 per month. (Tr. 118.) In February 2016, they obtained a loan modification that reduced their monthly payment by about \$150 per month, but they did not realize that it increased the escrow requirement by about \$200. In July 2016, they applied for another loan modification under the Home Affordable Refinance Program (HARP), and they made the required three payments during the trial period in September, October, and November 2016. (AX E; AX Z.) The credit report from February 2018 reflected that the payments were past due for \$7,468, with the last payment being made in August 2017. They intentionally allowed the payments to become delinquent in order to qualify for a loan modification. (Tr. 132.) They obtained another loan modification in May 2018 and made the three trial-period payments in May, June, and July 2018. (AX FF.)

**SOR ¶¶ 1.c-1.m: delinquent student loans.** While attending college classes, Applicant signed multiple loan applications without paying attention to the amount he was borrowing or maintaining records of his growing indebtedness. He was receiving GI Bill benefits, but the checks came to him and not to the educational institution. (Tr. 63-65.) Applicant's student-loan payments became delinquent because of his son's uninsured medical expenses. In July 2016, his loans were consolidated and he began a nine-month rehabilitation program. He made the required payments from July 2016 through February 2017. (AX F; AX AA.) He testified that the consolidated loans were in forbearance at the time of the hearing because of his inability to work, but that the payments would be \$250 per month when the forbearance ended. (Tr. 42, 76.) A July 2018 credit report reflects a balance of \$51,583 and that payments are deferred. (AX X at 1.)

**SOR ¶ 1.n: delinquent medical bill for \$100.** Applicant was unaware of this debt until he received the SOR. He paid it on August 1, 2016. (AX G; AX BB.)

**SOR ¶ 1.o: delinquent debt for furniture, charged off for \$5,407.** Applicant did not recognize this debt, identified only by a series of capital letters, when he

received the SOR. He was able to find the original creditor, and he settled the debt for \$2,500. (Answer to SOR; AX H.)

**SOR ¶ 1.p: delinquent credit-card account, referred for collection of \$1,472.** Applicant paid this debt in February 2012. (AX I.)

**SOR ¶ 1.q: delinquent credit-card account, referred for collection of \$3,996.** Applicant settled this account in July 2016. (AX J.)

**SOR ¶¶ 1.r-1.t: delinquent medical bills, referred for collection of \$120, \$98, and \$83.** Applicant was unaware of these bills until he received the SOR. He paid all three bills on August 1, 2016. (AX K-M; AX CC-EE.)

A July 2018 credit report submitted by Applicant reflects three additional medical debts for \$351, \$65, and \$451 that are not alleged in the SOR. (AX X.) On July 6, 2018, Applicant began making payments under agreements for all three debts. (AX II.)

The vice-president of Applicant's employer, his division manager, a former supervisor, and a co-worker since 2005 submitted strong letters attesting to Applicant's integrity, trustworthiness, honesty, and reliability. (AX P; AX U; AX V; AX O.) Applicant's neighbor for five years, an active-duty Navy petty officer, regards him as honest and trustworthy. (AX Q.) A retired Navy captain who has worked with Applicant since 2003 on Boy Scout activities, regards him as "beyond reproach." (AX R.) Applicant's pastor, who has known him for four years, commends him for his honesty, trustworthiness, and active involvement in the church. (AX S.) A fellow church member, who has known Applicant for three years, regards him as a devoted, trustworthy, and active member of the congregation. (AX T.) Applicant's security manager, who has known him for almost nine years, became aware of Applicant's financial problems when he self-reported them. The security manager is aware that Applicant and his wife live a "conservative life style," and he regards Applicant as trustworthy, honest and dependable. (AX W.)

## **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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

## **Analysis**

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

The security 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 in the record raise the following potentially disqualifying conditions:

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 following mitigating conditions are potentially relevant:

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. The medical problems experienced by Applicant and his family were conditions beyond his control. He has acted responsibly by refinancing his home, using the equity in the home to defray medical expenses, using his wife's retirement account to pay bills, consolidating and rehabilitating his student loans, living modestly, and paying off smaller debts as funds become available.

AG ¶ 20(d) is established. Applicant has filed his federal income tax return and paid the taxes due for tax year 2013. He is making payments on his refinanced home mortgage loan. He made the required payments to rehabilitate his student loans, and he paid or settled the medical and consumer debts alleged in SOR ¶¶ 1.n-1.t.

AG ¶ 20(g) is established. Applicant filed his overdue federal income tax return and paid the taxes due.

### **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 and applying the adjudicative factors in AG ¶ 2(d).<sup>3</sup>

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant's failure to timely file his federal income tax return for tax year 2013 is not excusable, but it is understandable and not likely to recur. His dereliction occurred when he was under extreme emotional pressure as he watched his wife waste away while medical professionals attempted to correct her medical problems. He, his son, and his wife have undergone debilitating illnesses but have not stopped trying to cope with the financial problems caused by their medical problems.

Applicant was candid, sincere, and credible at the hearing. He served honorably in the U.S. Navy for more than nine years. He has worked for his employer for 14 years and held a security clearance for 13 years, apparently without incident. He is dedicated to his job and is anxious to return to work so that he can continue to address his financial problems. The testimonials from co-workers, supervisors, a neighbor, and his church community are powerful demonstrations of his reputation as an honest, trustworthy, and dependable person. After weighing the disqualifying and mitigating

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<sup>3</sup> The factors are: (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.



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 his single instance of failing to timely file his federal income tax returns.

### **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.t:

For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge