



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 16-01253
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2017

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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 denied.

**Statement of the Case**

Applicant submitted a security clearance application on October 16, 2014. On July 10, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by 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. The SEAD 4 guidelines apply to 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 November 4, 2016, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on November 30, 2016. On December 5, 2016, a complete copy of the file of relevant material (FORM), consisting of Items 1 through 6, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 23, 2016, and did not respond. The case was assigned to me on October 1, 2017.

The FORM included Item 3, a summary of a personal subject interview (PSI) conducted on December 18, 2014. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. I conclude that Applicant waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

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

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 37-year-old information technology specialist employed by a defense contractor since May 2014. He served on active duty in the U.S. Navy from March 1999 to March 2013 and received an honorable discharge. He married in August 2001, divorced in June 2008, and remarried in March 2010. He has custody of a 14-year-old daughter from his first marriage, and he has two stepchildren, ages 17 and 15. He was unemployed for about a month before being hired by his current employer. He held a security clearance in the Navy and retained it as an employee of a defense contractor.

The SOR alleges seven delinquent debts totaling about \$39,648. The debts are reflected in credit reports from November 2014, March 2016, and November 2016. (Items 4, 5, and 6.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: mortgage loan past due for \$16,537, with a balance of \$290,149.** Applicant stated that he talked to a bank representative, who informed him that his automatic allotment was for an amount sufficient to pay the interest on the loan but not the principal. He stated that the allotment was adjusted and the issue resolved. He submitted a printout of his bank account reflecting several adjustments in his allotment to the lender between February and April 2016. The past-due payments are resolved.

**SOR ¶ 1.b: deficiency after repossession, charged off for \$8,150.** Applicant stated that the lender agreed to accept \$114 payments twice a month. He provided the

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

names of the persons he contacted but submitted no documentation of a payment agreement or payments made under an agreement.

**SOR ¶ 1.c: credit-card account charged off for \$5,615 in November 2012.** Applicant stated that the creditor had no record of this debt and advised him to dispute it with the credit bureau. He submitted no documentary evidence of his efforts.

**SOR ¶ 1.d: cellphone account referred for collection of \$3,713 in September 2014.** Applicant stated that the debt was for unreturned equipment, but that the provider had changed and he could not find someone to receive the equipment. He stated that he had disputed the debt, but he submitted no documentary evidence of a dispute.

**SOR ¶ 1.e: cellphone account referred for collection of \$619 in November 2012.** Applicant stated that he made a payment agreement providing for payments of \$51 per month. He provided the name of the person who agreed to a payment agreement, but he submitted no documentation of an agreement or payments made under an agreement.

**SOR ¶ 1.f: debt to city government referred for collection of \$129 in October 2013.** Applicant stated that a city representative told him the debt was paid in April 2015 by a tax offset. He provided the name of the city representative but no documentation showing that the debt was paid.

**SOR ¶ 1.g: account referred for collection of \$4,984 in October 2014.** Applicant stated that a representative of the collection agency informed him that the debt had been sold to another collection agency. He provided the first names of representatives from both agencies, both of whom told him that their agency had no record of the debt. He stated that he disputed the debt, but he provided no documentary evidence of a dispute.

### **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. 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. . . .

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 FORM establish the following disqualifying conditions: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

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(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(d) is established for the debt alleged in SOR ¶ 1.a. However, none of the above mitigating conditions are established for the debts alleged in SOR ¶¶ 1.b-1.g. They are numerous, recent, and were not incurred under circumstances making recurrence

unlikely. He has presented no evidence of conditions beyond his control or responsible conduct. He has presented no evidence of financial counseling. He stated that he disputed the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.g, but he submitted no documentary evidence of a dispute. He claimed that he had resolved the debts in SOR ¶¶ 1.b, 1.d, 1.f, and 1.g, but he provided no documentary evidence to support his claims. Instead, he merely provided names of individuals with whom he dealt.

It is reasonable for an administrative judge to expect an applicant to present documentary evidence showing resolution of specific debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). Providing investigative leads such as the names of individuals who can verify a transaction does not suffice. Under the Directive, an administrative judge has no obligation to gather information for either party in a case. The Directive makes it clear that it is responsibility of the parties to present evidence for the administrative judge's consideration. ISCR Case No. 08-10170 (App. Bd. Jul. 8, 2011). Furthermore, the Directive does not authorize an administrative judge to act as an investigator for either party in a security clearance proceeding. ISCR Case No. 15-01515 at 3 (App. Bd. Aug. 17, 2016).

### **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 and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's honorable Navy service. I have considered that he was previously entrusted with a security clearance while in the Navy. Because he requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

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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.

### **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: For Applicant

Subparagraphs 1.b-1.g: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge