



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 16-03443
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert B. Blazewick, Esq., Department Counsel  
For Applicant: *Pro se*  
03/09/2018

**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 granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 9, 2014. On January 23, 2017, 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 February 17, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on March 21, 2017, and the case was assigned to me on November 9, 2017. On January 12, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 1, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted into evidence, without objection. The Government's exhibit list was appended to the record as Hearing Exhibit (HE I) and a letter that the Government sent to Applicant as HE II. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through X, which were admitted into

evidence, without objection. At Applicant's request, I left the record open until February 15, 2018. Applicant timely provided additional documents that were admitted into evidence as AE Y through DD, without objection. DOHA received the transcript (Tr.) on February 9, 2018.

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 the either version.

### **SOR Amendment**

At the hearing, I granted Department Counsel's motion, without objection, to amend the SOR to withdraw paragraph 1.n.<sup>3</sup>

### **Findings of Fact<sup>4</sup>**

Applicant, age 35, and his wife of 11 years divorced in 2013. They had been separated since 2012. He remarried in 2016. He has two children, ages nine and three. He has taken some college courses. Applicant honorably served in the Marine Corps from 2001 through 2010. He has been employed by a defense contractor since 2010, at which time he was granted a security clearance.<sup>5</sup>

The SOR alleged 13 delinquent debts totaling \$9,349 (SOR ¶¶ 1.a through 1.m), and that Applicant failed to file, as required, his federal and state income tax returns for tax years 2013 and 2014 and pay the associated taxes (SOR ¶¶ 1.o. and 1.p). In his SOR answer, Applicant admitted each of the SOR allegations except for SOR ¶¶ 1.b through 1.e and 1.m, which are established by credit reports submitted by the Government.<sup>6</sup> His admitted debt totals \$8,003.

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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 new 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> Tr. at 13-14.

<sup>4</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>5</sup> AE M; Tr. at 7-10, 38-39, 47, 50-51.

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

The status of Applicant's SOR debts is as follows:

<b>SOR ¶</b>	<b>Type</b>	<b>Amount</b>	<b>Status</b>
A	payday loan	\$640	Resolved. Settled in Jun 2017. <sup>7</sup>
B	medical	\$380	Resolved. Paid in Dec 2017. <sup>8</sup>
C	medical	\$144	Unresolved. Disputed on basis that creditor advised debt relates to a different person of the same name and would notify credit bureaus. Creditor never notified credit bureaus, as promised, so Applicant plans to initiate his own dispute with credit bureaus. <sup>9</sup>
D	medical	\$118	Same as C.
E	medical	\$62	Same as C.
F	medical	\$57	Unresolved. Applicant was unable to recall debt and could not locate information to contact creditor. He plans to pay if, or when, contacted by a collection company or he is otherwise able to find contact information for creditor. <sup>10</sup>
G	credit card	\$1,099	Resolved. Paid via garnishment in Jan 2017. <sup>11</sup>
H	child support	\$2,402	Resolved. Applicant established a payment agreement (\$50 per month), and has been making timely payments pursuant to that agreement. Account is no longer in delinquent status. <sup>12</sup>
I	child support	\$1,261	Same as H, except monthly payment is \$30.
J	furniture charge card	\$1,583	Resolved. Creditor cancelled debt in Dec 2017, for which Applicant received a 1099-C (IRS Cancellation of Debt form). <sup>13</sup>

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<sup>7</sup> AE A and N; Tr. at 31.

<sup>8</sup> AE B and O; Tr. at 31-32.

<sup>9</sup> AE C and P; Tr. at 32.

<sup>10</sup> AE D and Q; Tr. at 32-33.

<sup>11</sup> AE E and R; Tr. at 33, 67.

<sup>12</sup> AE F and S; Tr. at 33-34, 49, 67-68.

<sup>13</sup> AE G, T, and BB; Tr. at 34-35, 46-47, 69-70.

SOR ¶	Type	Amount	Status
K	school course not covered by G.I. bill	\$584	Resolving. Applicant established a payment agreement in Feb 2017 (balance then \$760): \$50 per month via auto-pay. When he realized auto-pay stopped, he re-established the agreement again in Jan 2018 (balance then \$518). His monthly payments are scheduled to begin on Jan 31, 2018 via automatic payments. <sup>14</sup>
L	medical	\$467	Resolved. Applicant made payments pursuant to an agreement, which resolved the debt by Jan 2018. <sup>15</sup>
M	medical	\$642	Resolved. Paid in Feb 2017. <sup>16</sup>

Applicant initially failed to timely file his 2013 federal and state income tax returns because he forgot. He anticipated filing them with his 2014 tax returns, but then realized that he needed more time to get his finances in order so that he could afford to pay the anticipated taxes. He eventually filed for both years in early 2017, at which time he also proposed an installment agreement to the IRS to pay the approximately \$4,534 that he owed. Instead, it was resolved by the IRS's interception of Applicant's tax year 2016 refund. He intends to file future tax returns on time, as he did in tax years 2015 and 2016.<sup>17</sup> In March 2017, the IRS accepted the earlier-proposed installment agreement to repay 2012 taxes owed, of which Applicant had previously been unaware. He was current with those payments as of January 2018. Applicant did not owe the state for any unpaid taxes.<sup>18</sup>

Applicant attributed his failure to timely file tax returns and his delinquent tax and other debts to his 2012 separation, at which time he had to maintain two households on a single income and pay child support. His tax bills were also higher than usual because his ex-wife claimed their daughter as a dependent. Because his ex-wife bore primary responsibility for the family's finances, Applicant had not been aware that they had so many unpaid bills. As he became aware of the debts (mostly after receiving the SOR), he initiated efforts to resolve them. Together with his new wife, Applicant has developed a financial management plan to ensure that they are debt-free within the next two to three years.<sup>19</sup>

<sup>14</sup> AE H, U, and CC; Tr. at 35-36, 46, 70-72.

<sup>15</sup> AE I and V; Tr. at 36, 44-46.

<sup>16</sup> AE J and W; Tr. at 36, 44-46.

<sup>17</sup> SCA at 33-34; AE K and X; Tr. at 36-37, 40-43, 51-57.

<sup>18</sup> AE K, X, and DD; Tr. at 36-37, 57-61. The Government did not alleged the 2012 tax debt in the SOR so I will consider it only to evaluate mitigation and whole person.

<sup>19</sup> AE M; Tr. at 28-29, 37, 39-40, 42, 53.

Applicant was deployed to combat zones three times, and received numerous commendations and medals for his outstanding military service.<sup>20</sup> Applicant's current supervisor praised his character, work performance, and trustworthiness.<sup>21</sup>

## **Policies**

"[N]o one has a 'right' to a security clearance."<sup>22</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>23</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>24</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 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>25</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.

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<sup>20</sup> AE Y and AA; Tr. at 47-49.

<sup>21</sup> AE Z.

<sup>22</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>23</sup> *Egan* at 527.

<sup>24</sup> EO 10865 § 2.

<sup>25</sup> EO 10865 § 7.

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>26</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>27</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>28</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>29</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>30</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>31</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>32</sup>

## **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.

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<sup>26</sup> *Egan*, 484 U.S. at 531.

<sup>27</sup> *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>28</sup> ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

<sup>29</sup> Directive ¶ E3.1.15.

<sup>30</sup> ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>31</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>32</sup> *Egan*, 484 U.S. at 531; *See also* AG ¶ 2(b).

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 pay the associated taxes, 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 have been mitigated by the following 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 filed his 2013 through 2014 tax returns and resolved the associated tax debt well before the hearing. He established a meaningful track record of repaying his 2012 taxes to the IRS. Applicant intends to file future tax returns on time, as he did in tax years 2015 and 2016. I conclude that these issues are not likely to recur.

Applicant made substantial progress in resolving his SOR debts, which largely resulted from circumstances beyond his control. He resolved the debts alleged in SOR ¶¶ 1.a, 1.b, 1.g through 1.j, 1.l, and 1.m, and is in the process of resolving the debt alleged in SOR ¶ 1.k. There remain only four unresolved medical debts totaling \$381 (SOR ¶¶ 1.c through 1.f), for which Applicant has a good faith basis to dispute. Given the facts and circumstances underlying his financial issues, and in light of the responsible manner in which he addressed them, I conclude that they are not likely to

recur. Even if the unresolved debts were deemed security significant, Applicant's actions with respect to his previous delinquent debts and tax issues demonstrate that he would resolve them as necessary. He is otherwise managing his finances responsibly. I have no doubt about Applicant's current reliability, trustworthiness, or good judgment.

### **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):

(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, including three combat tours, and as a civilian contractor. He was candid and sincere at the hearing, and is highly regarded 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 tax returns, and to pay taxes and other debts. Accordingly, Applicant has 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): FOR APPLICANT

Subparagraphs 1.a – 1.m: For Applicant

Subparagraph 1.n: Withdrawn

Subparagraphs 1.o – 1.p: For Applicant



## **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine  
Administrative Judge