



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-00672
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

05/14/2018

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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**

On May 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant 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 July 10, 2017, and requested a hearing on August 9, 2017. Department Counsel was ready to proceed on September 1, 2017, and the case was assigned to me on October 23, 2017. On February 7, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 1, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or any documentary evidence. I kept the record open until March 21, 2018, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. DOHA received the transcript (Tr.) on March 9, 2018.

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

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.d and 1.f. He denied the allegations in SOR ¶¶ 1.e, 1.g, and 1.h. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 53-year-old training manager employed by a defense contractor. He served on active duty in the U.S. Navy from September 1983 to September 2003, when he retired as a first class petty officer (pay grade E-6). He has worked for his current employer since his retirement. He married in September 1986, divorced in March 2005, remarried in the same month, separated in November 2012, and divorced in November 2016. He has two adult children from his first marriage. He received a bachelor's degree in November 2007 and recently completed a master's degree program. He held a security clearance while in the Navy and retained it as a civilian employee of a defense contractor.

The SOR alleges eight delinquent debts, which are reflected in credit reports from May 2015 and February 2017. (GX 2; GX 3.) The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶¶ 1.a-1.d: student loans placed for collection of \$20,865; \$18,369, \$8,302; and \$6,027.** Applicant testified that he fell behind on his student loan payments after his divorce in 2005. His ex-wife was employed during the marriage, but they had financial problems because he entrusted her to pay the bills and she neglected them. (Tr. 28.) After the divorce, he was left with a single income. His second wife retired from the Navy in 2004 and was working as a civilian until she was laid off in 2006, was unemployed for a year and a half, found employment, and was laid off again a year later. (Tr. 29.) His financial problems were compounded when he took a 26% pay cut in 2009-2010. (Tr. 19, 22-24.)

Applicant made monthly \$87 payments to the collection agency for his student loans from March to December 2013. (AX D.) In March 2015, Applicant's pay was garnished for \$8,146 in delinquent student loans. The collection agency issued an Order

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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.

of Withholding from Earnings in December 2016. (GX 4; AX D through AX I.) The Order of Withholding from Earnings was released in February 2017. (AX J.)

Applicant's student loans are now in deferment because he has been enrolled in a master's degree program since September 2016 and recently completed it. (Tr. 34.) He intends to start a second master's degree program in April 2018 to fully utilize his GI Bill benefits before they run out in 2019. (Tr. 33.)

**SOR ¶ 1.e: cellphone account placed for collection of \$224.** Applicant testified that he disputed this debt but then decided to pay it in order to qualify for his home loan. (Tr. 20-21; AX B.)

**SOR ¶ 1.f: medical debt placed for collection of \$118.** This debt was paid in full in August 2017. (AX A.)

**SOR ¶ 1.g: credit-card account charged off for \$1,376.** The May 2015 credit report reflects that this account was opened in December 2002 and charged off in March 2009. Applicant stated that he disputed this debt on the ground that he had not had an account with this creditor since 2004. (Tr. 42.) He provided no documentation of the dispute or evidence to support it.

**SOR ¶ 1.h: credit-card account placed for collection of \$2,540.** The May 2015 credit report reflects that this account is with the same creditor as alleged in SOR ¶ 1.g, but it has a different account number. It was opened in June 2005, charged off, and sold to a collection agency in March 2009. Applicant stated that he disputed this debt on the same ground as SOR ¶ 1.g, but he provided no documentation of the dispute or evidence to support it. Both debts would have "aged off" the February 2017 credit report, because more than seven years had elapsed since they were charged off.<sup>3</sup>

Applicant currently earns about \$66,000 per year, and his net pay per two-week pay period is about \$1,356. His military retired pay is about \$1,600 per month, and his VA disability pay is about \$855 per month. (Tr. 25-26.) He has about \$13,000 in savings and \$320,000 in a retirement account. (Tr. 51.)

Applicant recently purchased a new luxury vehicle for about \$43,000, with loan payments of about \$876 for 60 months. He also purchased a house for \$431,000, using a VA loan, with monthly payments of \$2,765. (Tr. 46.) His balance due on student loans totaled about \$81,477 as of March 2018. (AX C.) He is counting on his recently-earned master's degree to find jobs that will increase his income. (Tr. 47.)

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<sup>3</sup> Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to these debts. 15 U.S.C. § 1681c.

## 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 submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

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

AG ¶ 20(b) is not fully established. Applicant encountered several conditions largely beyond his control: two marital break-ups, financial irresponsibility by his first wife, periods of unemployment by his second wife, and a substantial pay cut in 2009-2010. However, he has not acted responsibly. He has been steadily employed since his retirement from the Navy, albeit at a reduced income after 2010. He made payments on his student loans from March to December 2013, but he has presented no evidence of any further payments until his pay was garnished. He has not resolved the two credit-card accounts that were charged off in 2009. He recently purchased an expensive new vehicle and a house, thereby obligating about 70% of his income for at least the next five years.

AG ¶ 20(c) is not established. Applicant has not presented evidence of the type of financial counseling contemplated by this mitigating condition, and he has not presented "clear evidence" that his financial situation is under control.

AG ¶ 20(d) is not established. Applicant paid the debts in SOR ¶¶ 1.e and 1.f in order to qualify for a home loan, not because of a sense of obligation to the creditor. Except for the brief period from March to December 2013, his payments on his student

loans were collected by involuntary garnishment, which does not constitute a good-faith effort. See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). The two credit-card debts alleged in SOR ¶¶ 1.g and 1.h are unresolved. The fact that they have “aged off” Applicant’s credit record is not meaningful evidence that they have been resolved. See ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016).

AG ¶ 20(e) is not established. Applicant claimed that his connection to the creditor alleged in SOR ¶¶ 1.g and 1.h terminated around 2004. He presented no evidence to support his claim and no evidence that he disputed the debts with the original creditor, the collection agency, or the credit bureaus.

### **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>4</sup>

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, 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.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant

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<sup>4</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.

### **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