



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-00677
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

08/31/2018

---

**Decision**

---

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond his control, Applicant experienced financial difficulties. However, Applicant is resolving all his remaining delinquent accounts through Chapter 13 Bankruptcy and has mitigated the potential financial security concern. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on December 30, 2015. On April 7, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. 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.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 15, 2017, and the case was assigned to me on May 26, 2017. On November 9, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 28, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A and B, which were admitted without objection. Applicant called one witness. I kept the record open until February 15, 2018, to enable him to submit additional documentary evidence. He timely submitted AX C and D, which I have admitted without objection. Additionally, Applicant submitted by email an update on his financial status on March 12, 2018. I have admitted this email as AX E. DOHA received the transcript (Tr.) on December 6, 2017.

While this decision was pending, the DOD implemented the amended AG on June 8, 2017. This decision is based on the amended AG.

### **Findings of Fact**

Applicant, 49, is a change-management analyst currently employed by a Federal contractor since April 2015. He has worked as a Federal contractor since June 2011. He served honorably in the U.S. Air Force from October 1987 until August 2011. He was first granted a security clearance in about 1988. He and his wife married in 2001, separated in 2014, and have a 16-year-old daughter. (Tr. 26; GX 1; Tr. 35-36.)

The SOR alleges four debts totaling approximately \$25,507, three charged-off debts with unspecified balances, and a 2001 Chapter 7 Bankruptcy. Applicant admits each of these allegations. The delinquent debts are reflected in Applicant's February 2017 and January 2016 credit bureau reports (CBR), and discussed on his e-QIP and during his personal subject interview (PSI). (GX 4; GX 3; GX 1; GX 2.) Applicant's admissions are incorporated in my findings of fact.

Applicant listed the three SOR debts that he was aware of on his e-QIP in 2015. (SOR ¶¶ 1.b, 1.c, and 1.h.) In early 2017, Applicant contacted a debt-consolidation company and a credit-restoration company in an effort to manage his debts. He worked with the credit restoration company for several months, but did not find their approach to debt resolution to be effective. He then determined that he needed to discuss his financial situation and options with an attorney. He contacted his current attorney and began the process of filing Chapter 13 bankruptcy in November 2017. Applicant filed his Chapter 13 petition in January 2018. The remaining unresolved SOR debts, including the 2014 tax debt (SOR ¶ 1.b) and the balance for the voluntarily repossessed vehicle (SOR ¶ 1.c), are included in his repayment plan which is \$1,100 per month for 57 months. (Tr. 93-96; AX E.) Applicant's past financial difficulties and the status of each of the SOR debts is discussed below.

Applicant was stationed overseas from 1994 until 1998. When he and his then-wife returned to the United States, Applicant encountered an increased cost of living.

Additionally, he bought a house and financed the furnishings and other necessities primarily through credit cards. Applicant divorced in 2000, and filed Chapter 7 Bankruptcy in early 2001 (SOR ¶ 1.a), due to significant marital debt. (Tr. 40-41; GX 1.)

Following his divorce, Applicant was again stationed overseas from February 2001 until May 2005. During a brief return to the United States, Applicant experienced difficulties maintaining his finances. He borrowed \$5,000 in February 2006 from the creditor of SOR ¶ 1.d to help with his higher living expenses. However, he made monthly payments through an allotment of over \$200 from February 2006 until February 2014 and has fully paid this account. Applicant's 2017 and 2016 CBRs show a \$0 balance. However, this creditor is listed in Applicant's Chapter 13 bankruptcy and any outstanding balance will be addressed through the bankruptcy rule. (GX 4; GX 3; AX E; Tr. 62-65.)

Applicant was again stationed overseas from 2005 until he retired in 2011, and employed by a Federal contractor overseas from 2011 until 2014. Upon returning to the United States, Applicant anticipated and was prepared for the higher cost-of-living expenses he would encounter stateside. Despite this knowledge, Applicant began experiencing financial difficulties that ultimately resulted in the SOR debts, due to several unanticipated factors. First, Applicant was unemployed from April until June 2014 while his new employer was awaiting funding for the contract on which Applicant would be working. Second, when Applicant started his new job, he earned significantly less money than he had while working abroad. Third, Applicant and his current wife separated in September 2014. The separation resulted in Applicant's having to support two households. Further, Applicant assisted his mother and siblings with their expenses. (GX 1; GX 2; Tr. 29; Tr. 57.)

The \$19,818 debt alleged in SOR ¶ 1.c, is for a delinquent vehicle-loan deficiency balance. In 2007 while living abroad, Applicant purchased a vehicle for approximately \$20,500 and consistently made timely payments. However, after returning to the United States in 2014 and encountering unforeseen financial strains, he was unable to maintain the payments, and the vehicle was voluntarily repossessed and sold at auction for an unknown amount. Applicant has not been contacted by the creditor since the repossession. However, the account is listed on Applicant's February 2017 CBR as having been charged off in the amount of \$19,818. Applicant disputes the amount of this debt because it does not reflect the payments he made on the vehicle or the sale price. This debt is included in the current Chapter 13 bankruptcy. (Tr. 57-61; AX E.)

Upon permanently returning to the United States, Applicant did not properly calculate his Federal tax deductions for tax year 2014, and ended up owing approximately \$3,000. He entered a repayment plan with the IRS in 2015, under which he paid approximately \$120 per month for several months. However, due to other financial obligations and overall financial strain, including assisting his wife and daughter with their living expenses, Applicant was unable to maintain the payments. His Federal tax debt is now approximately \$3,697. (SOR ¶ 1.b.) Applicant most recently contacted the IRS in October 2017 to ascertain an accurate amount due. He also contacted several tax relief companies that he had seen advertised, but concluded that such companies were not

legitimate due to the high cost of up-front fees. (Tr. 51-54.) Additionally, as a result of incurring the 2014 unanticipated tax debt, Applicant has engaged the services of an Air Force legal office to prepare his taxes since 2015. He has timely filed and met his tax obligations since that time. (Tr. 55-56.) This debt is included in the current Chapter 13 bankruptcy.

The debt alleged in SOR ¶ 1.e is for a credit card. Applicant made payments on the \$8,258 balance through a monthly allotment of \$232 beginning in June 2014. Applicant has paid \$7,671, and the remaining balance is \$3,231 as of April 2017. (Tr. 65-67; Answer.) The balance of this debt is included in the Chapter 13 bankruptcy.

Applicant paid the consumer credit-card debt alleged in SOR ¶ 1.f in May or June 2014. The February 2017 and January 2016 CBRs show no balance due. Applicant disputed this debt and it has been removed from his CBR. This debt is resolved. (GX 4; GX 3; Tr. 72-74.)

Applicant paid the foreign utility bill alleged in SOR ¶ 1.g before returning to the United States. Applicant credibly testified that in order to be permitted to out-process from the military installation where Applicant worked, he was required to clear all living-expense related debts before he could receive his orders to be released from the installation. (Tr. 71.) This debt is resolved.

The \$952 debt alleged in SOR ¶ 1.h is for a fee levied by Applicant's former landlord. Applicant resided in an apartment where the upstairs neighbors were noisy and disrespectful. Applicant complained multiple times, his complaints were not responded to, and Applicant ultimately moved out before the expiration of the lease. Applicant disputed this debt and it has been removed from his CBR. (GX 4; GX 2.)

Applicant's former supervisor and current coworker, who has known Applicant since he hired him for over four years ago, testified that Applicant is a dependable and trustworthy employee with the utmost integrity, and a dedicated father who is active in the community. (Tr. 21-25.)

A former colleague of Applicant's, who has known him for over 17 years, met Applicant while he was a non-commissioned officer serving as a courier abroad. Applicant's former colleague states that Applicant was selected for this position due to his "trustworthiness and dependability to safeguard and deliver our nation's secrets to their destination without fear of being compromised." Applicant's former supervisor while in this position, who has known Applicant for over 14 years, states that Applicant was always professional, trustworthy, and reliable. (AX B.)

Applicant's former supervisor of three years, who has known Applicant for over nine years, worked with Applicant to develop and implement an information technology system. She states that Applicant has an unrivaled work ethic, which includes disclosing his work-related mistakes in order to improve the quality of the work product. She states

that Applicant's "integrity is above reproach, he is dependable, reliable, efficient, and highly effective." (AX B.)

Applicant's former co-worker of two years, who has known Applicant for more than seven years, views him as a friend and mentor who displays loyalty, leadership and integrity. Another of Applicant's former co-workers, who was known Applicant for more than three years, states that Applicant possesses a high degree of honesty and integrity, and highly recommends Applicant for security clearance. (AX B.)

Applicant completed a financial counseling course in January 2018. He has not incurred any recent delinquent debt and lives within his means. (GX 4.) He took two personal loans in 2017 to organize his finances. He timely paid these accounts through allotment, and the creditors are listed in his Chapter 13 payment plan. (GX 4; Tr. 80-90.) He has approximately \$3,000 in his 401(k) account. (Tr. 91.) He provides financial support to his wife and daughter, including for his daughter's health insurance, and to his mother as needed. His brother and his brother's fiancée reside with Applicant, but remain unable to contribute to the household expenses. (Tr. 35-36; Tr. 89.) Applicant is financially capable of meeting his monthly payment of \$1,100 for his Chapter 13 Bankruptcy payment. (Tr. 101; AX C; AX E.) Applicant's testimony was straightforward, sincere, and credible.

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's 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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The record evidence establishes the following 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 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;

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; 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 experienced two distinct periods of financial difficulty. The first arose in 2001 when Applicant returned to the United States after having worked abroad, and

suffered a significant decrease in income, an overall cost-of-living increase, and difficulties in his marriage that led to divorce. Applicant discharged his marital debt through the legal course of Chapter 7 Bankruptcy. (SOR ¶ 1.a.) The conditions that led to these financial difficulties were largely beyond Applicant's control and he acted responsibly under the circumstances.

The second period of financial difficulty arose in 2014, when Applicant permanently returned to the United States after having worked abroad for many years. First, Applicant experienced several months of unemployment. Once gaining employment, he experienced a significant decrease in income. His financial strains were exacerbated by separating from his wife in September 2014. The separation resulted in Applicant's becoming responsible for financing two households, as well as supplementing his wife's and daughter's expenses. Additionally, upon his return to the United States, Applicant's mother and siblings required financial assistance from Applicant. As a result of the change in Applicant's financial circumstances and obligations, he fell behind on paying his debts, which ultimately resulted in the voluntary repossession of his vehicle in 2014 (SOR 1.c), and the other SOR debts.

Due to a misunderstanding on Applicant's part, he improperly calculated his Federal tax deductions, which resulted in an approximately \$3,000 tax debt for 2014. (SOR ¶ 1.b.) He initially set up an installment payment with the IRS, but was unable to maintain the payments. He maintained contact with the IRS, and proactively engaged professional tax preparers in 2015 to prevent future mistakes on his taxes. He has timely filed and paid his taxes since 2015.

Applicant initially sought financial assistance through a debt-consolidation company and a credit-restoration company, and successfully disputed SOR debts 1.f and 1.h. However, Applicant determined that it was necessary to contact an attorney, and after completing credit counseling, filed Chapter 13 Bankruptcy in January 2018. His monthly payments of \$1,100 are within his means. The remaining SOR debts, including the tax debt, are included in the bankruptcy.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

While Applicant's finances are not perfect, he began addressing his delinquent accounts, as his finances would permit, beginning in 2014. Applicant completed financial counseling, and has instituted and executed a plan for repaying all his remaining delinquent accounts. His debts were not due to irresponsible spending, and he has not



incurred any recent delinquent debt. Applicant's past financial difficulties do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) through 20(e).

### **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. 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 I have also considered the following:

Applicant served on active duty in the Air Force for over 23 years. He has held a security clearance for over 29 years, and is a highly regarded and trusted employee, co-worker, and friend. He was straightforward, sincere, and credible in his testimony.

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 mitigated the potential security concerns raised by his past financial issues. Accordingly, I conclude he 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a through 1.h: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge