



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-00727
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq.

10/17/2018

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**Decision**

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HESS, Stephanie C., Administrative Judge:

While Applicant's inability to resolve his delinquent debts was the result of his 2010 divorce, he failed to act reasonably under the circumstances and did not mitigate the security concerns raised by his finances. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on February 1, 2016. On April 11, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations). 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 DOD on September 1, 2006.

Applicant submitted his Answer to the SOR, through counsel, on May 19, 2017, and requested a hearing before an administrative judge. Department Counsel was ready

to proceed on June 15, 2017, and the case was assigned to me on December 14, 2017. On February 14, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 8, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted into evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through AA, which were admitted without objection. DOHA received the transcript (Tr.) on March 19, 2018.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision is based on the amended AG effective June 8, 2017.

### **Findings of Fact**

Applicant, 46, is an information technology operations manager currently employed by a defense contractor since September 2015, and in the defense industry since 2001. He earned an associate's degree in 2002, a bachelor's degree in 2005, and a master's degree in 2008. He and his first wife married in 1995 and divorced in 2010. They have two adult children and one minor child. He and his second wife married in 2012 and divorced in 2014. He has held security clearance for more than 10 years. (GX 1; AX B; Tr. 19.)

Under Guideline F, the SOR alleges 12 debts totaling \$26,432 and a Chapter 7 bankruptcy discharged in 1999. Applicant admits each of these allegations. The delinquent debts are reflected in Applicant's February 2016 credit bureau report (CBR) and discussed during November 2016 personal subject interview (PSI). (GX 3; GX 4.) Applicant's admissions are incorporated in my findings of fact.

Applicant attributes his financial difficulties to his 2010 divorce from his first wife. Specifically, when he and his ex-wife separated in 2008, Applicant was required to pay child support, alimony, and the mortgage-loan payment for his marital home. Upon his divorce, Applicant was ordered to pay \$600 biweekly in child support, \$500 a month in alimony for 30 months, and the monthly mortgage loan payment of \$575 for 30 months. Applicant stated that the payments from the time of separation took 60% of his salary and he was unable to maintain his financial obligations. (GX 2; Tr. 25; AX M.)

Additionally, Applicant asserts that 10 of the 11 SOR debts are marital debts from his first marriage. He states that "the judge ordered that I pay all marital debt except for one account," a specific cell phone account. (Tr. 44.) However, while the divorce decree designates 12 of the 22 listed debts as marital debts, including 8 of the SOR debts, it also states: "Regarding marital debt, the Court recognizes this marital debt is burdensome for both Parties . . . The court is aware that the Parties may consider bankruptcy as one of the options for resolving marital debt. The Court admonishes the Parties to cooperate in any efforts to reduce or resolve marital debt." The divorce decree does not state that Applicant was solely responsible for the marital debt. (AX M.)

Applicant listed one debt on his e-QIP, a non-SOR 2012 judgment for \$2,574, for which Applicant entered a stipulated payment agreement with the creditor and the judgment was satisfied and dismissed in January 2016. On November 14, 2016, immediately prior to his PSI, Applicant obtained two CBRs, neither of which listed any currently delinquent accounts, to include the SOR debts. (GX 2; Tr. 36-37.) Based on these CBRs, he told the background investigator that he had no additional financial issues to report. The investigator was in possession of a February 2016 CBR obtained at the time that Applicant submitted his e-QIP, which listed 17 derogatory accounts. The investigator confronted Applicant with these accounts, and Applicant acknowledged them as his. Applicant stated that he had intended to pay the delinquent accounts, "but then the debt fell off his credit report and he [did] not think he [had] to pay the debt." He further stated that the collection accounts were listed on his CBRs through the summer of 2016.

Additionally, Applicant stated that he had not wanted to file bankruptcy "due to his security clearance." Applicant attributed his delinquent debts to separation and divorce-related costs, including legal fees, additionally stating that "he stopped paying on his credit cards due to now living beyond his means with his new girlfriend." Applicant did not assert during his PSI that his delinquent accounts were due to the fact that he was ordered to pay all the marital debt. (GX 2.) Applicant attributes the 1999 bankruptcy to having been newly married and living beyond his means. (GX 2.)

In his Answer, Applicant stated in response to 11 of the alleged debts:

I accepted this debt as it was part of my first divorce when I was ordered to pay a large amount of alimony and child support and I was unable to make payments on this account. It was sent to collections while I was still trying to get to a point that I can afford to pay back the debt and then was removed from my credit report while I was updating my latest investigation. I thought at that time that the debt was forgiven and I did not pursue it any further.

Applicant testified that in approximately 2010, he contacted the creditors to notify them that he was unable to pay the debts. The creditors were not willing to work with him. At that time, Applicant also notified the creditors of his new address, and Applicant received bills from the creditors. Applicant stated that his divorce attorney advised him to use his financial resources to pay the court-ordered alimony, child support, and mortgage-loan payments, and to stop paying his consumer debt until he was able to do so. (Tr. 45-48.) Applicant testified that after he received the SOR, he contacted the creditors of the SOR debts, but that none of the creditors was able to identify any accounts belonging to Applicant. (Tr. 34-39.) Applicant testified that he had intended to begin paying his delinquent debts three years after the divorce when he was no longer required to pay the mortgage loan payments and his child support would be reduced. However, he was financially unable to do so. (Tr. 49-50.) Applicant has not paid any of the SOR debts.

Applicant submitted five letters of recommendation. His friends, coworkers, and colleagues collectively highly recommend Applicant for a security clearance, citing his integrity, trustworthiness, and patriotism. Applicant's is well-regarded in the workplace

and is considered to have invaluable leadership qualities. (AX L.) Applicant has completed numerous training certifications to enhance his knowledge and skills. (AX B.) His 2016 and 2017 employee performance reviews show that, overall, Applicant frequently exceeded performance expectations and that his work was outstanding. (AX G; AX Z.)

Applicant submitted a personal financial statement that he completed in May 2017 that shows a monthly net remainder of \$235. (AX C.) Applicant testified that his net remainder has increased to about \$500, but the personal financial statement is overall accurate. (Tr. 41; Tr. 31.) In May 2017, Applicant completed an online credit-counseling session. (AX I.) In August 2017, Applicant borrowed \$37,844 as a personal loan. (AX N; AX O.) Applicant used the money from the loan to pay off multiple credit cards and two other personal loans with higher interest rates, as advised during his credit counseling session. (Tr. 39-42; AX Q - AX U.) He has made five \$822 monthly payments on this account with the recent balance of \$35,404.

Applicant's balances on his six revolving accounts total \$18,018. (AX AA.) Applicant testified that he maintains a budget, but did not submit a written budget. (Tr. 27.) Applicant testified that he cosigned a \$47,522 car loan for his daughter. (Tr. 48-49.) However, the loan is listed as an individual account in Applicant's name and he listed the \$713 monthly payment on his personal financial statement. The balance on the account is approximately \$40,000. (AX AA; AX C.) Applicant borrowed \$11,258 in January 2017 to purchase a car. The Monthly payment is \$216 and the balance on the account is approximately \$9,000. (AX AA.) He has not incurred any significant recent delinquent debt, and is current on his student loan payments. (AX AA.) He has a savings account of approximately \$1,000 and a 401(k) with the balance of approximately \$13,000. (Tr. 31.)

### **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 two disqualifying conditions:

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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant incurred significant delinquent debt and filed Chapter 7 bankruptcy in 1999. By the time he and his ex-wife separated in 2008, Applicant had again incurred significant debt. While Applicant's inability to pay the SOR debts arose as a result of his separation and later divorce in 2010, he did not act responsibly regarding the debt. The \$26,432 of SOR debt remains outstanding. Regardless of whether the marital debt was divided between the parties, or Applicant was required to pay all of it, he had a legal obligation to resolve the accounts and did not do so. Applicant opted not to seek relief through bankruptcy out of concern for how it would affect his security clearance. However, he did not take any other affirmative steps to resolve the debt. Applicant's first effort to contact the creditors to attempt to resolve the delinquent accounts was after he received the SOR, by which point the delinquent accounts no longer appeared on his credit bureau reports. "[R]eliance upon the non-collectibility of a debt does not constitute a good-faith

effort to resolve that debt within the meaning of the Directive.” ISCR Case No. 07-06841 at 4 (App. Bd. Dec. 19, 2008).

Although Applicant does not have any recent delinquent accounts, he recently borrowed approximately \$37,000 to pay down his credit-card debt and two other personal loans. His consumer debt, including two car loans and \$18,018 owed on six revolving accounts, totals more than \$67,000. Despite completing an online credit-counseling course, there is no indication that Applicant’s finances are under control. None of the mitigating conditions apply.

### **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. 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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but I have also considered the following:

Applicant has held a security clearance for more than 10 years. He is considered to be trustworthy and is respected by his colleagues and friends. However, while he has not incurred any significant recent delinquent debt, the unresolved delinquent SOR debts remain a concern.

After weighing the applicable 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. Accordingly, I conclude he has not 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): AGAINST APPLICANT

Subparagraphs 1.a – 1.m:

Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess  
Administrative Judge