



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-02085
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2018

---

**Decision**

---

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on January 4, 2016. On June 27, 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 (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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on July 11, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 6,

2017, and the case was assigned to me on October 23, 2017. On November 13, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 6, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until December 21, 2017, to enable him to submit additional documentary evidence. He timely submitted AX C and D, which were admitted without objection. DOHA received the transcript (Tr.) on December 11, 2017.

### **Findings of Fact<sup>1</sup>**

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

Applicant is a 36-year-old technical trainer employed by a defense contractor since December 2015. His SCA does not list any full-time employment or unemployment between January and December 2015. He served on active duty in the U.S. Air Force from August 2000 to June 2003. He joined the Army National Guard (ARNG) in 2005 and served on active duty from February 2009 to February 2012. After he was released from active duty, he continued to serve in the ARNG from February 2012 to the present. While on active duty, he deployed overseas in support of combat operations. His current rank in the ARNG is sergeant first class (pay grade E-7). (Tr. 20-21.) He testified that he has been awarded the Army Commendation Medal and the Army Achievement Medal. (Tr. 21.) He received a security clearance in May 2001.

Applicant married in June 2001 and divorced in January 2007. He remarried in June 2013 and divorced in September 2015. He has three children, ages 16, 15, and an infant. He pays court-ordered child support for the two older children and has a voluntary arrangement for the infant. (Tr. 23.)

The SOR alleges eight delinquent debts totaling about \$43,000, which are reflected in credit reports from January 2016 and May 2017. (GX 2; GX 3.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: deficiency after automobile repossession charged off for \$17,597 in May 2014.** Applicant testified that he voluntarily surrendered this vehicle in 2014 because he could not afford it. (Tr. 22.) He telephonically disputed the amount due after the repossession sale, but the debt is not resolved. He testified that he believed the debt was included in the judgment alleged in SOR ¶ 1.h (Tr. 25.) However, the credit reports reflect different creditors and different amounts for the debt alleged in SOR ¶ 1.a and the judgment alleged in SOR ¶ 1.h.

---

<sup>1</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

**SOR ¶ 1.b: college tuition placed for collection of \$7,686 in December 2012.** Applicant testified that he registered for a class, attended class for one day, found that it was not the class he had intended to take, and informed the registrar that he was dropping the class. (Tr. 27.) He has telephonically disputed the debt with the college, but he has not filed a dispute with the credit bureaus. (Tr. 28.) The debt is not resolved.

**SOR ¶ 1.c: child-support arrearage of \$5,803.** The May 2017 credit report reflects the arrearage alleged in the SOR. (GX 3 at 2.) Applicant's pay vouchers reflect two child-support garnishments, one for \$91 per two-week pay period and the other for \$263 per pay period, for his two older children. (AX C; AX D.) He pays about \$200 per month for his infant child's support. (Tr. 36.) At the hearing, he admitted that the arrearage is not resolved. (Tr. 29.)

**SOR ¶ 1.d: debt for purchase of a vehicle charged off for \$3,482.** Applicant testified that this debt was for a motorcycle, and that it should not be reflected as a charged-off debt because he traded in the motorcycle to purchase the vehicle involved in the judgment alleged in SOR ¶ 1.h. (Tr. 29-30.)

**SOR ¶ 1.e: telecommunications debt placed for collection of \$526 in December 2015.** Applicant testified that this debt was resolved, but it has not been removed from his credit record. (Tr. 30.) He testified that the debt was for unreturned equipment, but that it was resolved when he showed a customer service representative the receipts for the equipment. He no longer has the receipts. (Tr. 46.) He provided no documentary evidence showing that this debt was resolved. He has not disputed this debt with the credit bureaus. (Tr. 46.)

**SOR ¶¶ 1.f and 1.g: medical debts for \$319 and \$122.** Applicant denied these debts on the ground that he had not received any medical care outside his local area and any medical care received by his children would have been covered by TRICARE. He has not disputed the debts with the creditors or the credit bureaus. He admitted that he has not given these debts high priority. (Tr. 31-32.)

**SOR ¶ 1.h: judgment for \$7,041 filed in September 2014.** This judgment was for a deficiency after a repossession. The judgment was obtained by the same creditor as alleged in SOR ¶ 1.d, and it is likely that the debt in SOR ¶ 1.d is included in this judgment. It is being collected by garnishment of \$131 per two-week pay period. (Tr. 26; AX A; AX B.)

Applicant's annual salary from his job as a contractor employee is about \$71,000. His pay for ARNG service is about \$5,000 per year. He receives about \$300 per month for a service-connected disability. (Tr. 34-35.) He estimates that he has a net monthly remainder of \$300 or \$200 after paying all his bills. (Tr. 38.) He received financial counseling in 2015. (Tr. 40.)

Applicant's former commander has known him for five years and considers him "highly professional," trustworthy, an upstanding citizen, and a proactive member of the

community. (AX A.) Applicant's deployment manager considers him highly qualified, dedicated, loyal, and ethical. He describes Applicant as "a package of high caliber" to any organization. (AX B.)

## **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).

The evidence indicates that the judgment alleged in SOR ¶ 1.h includes the delinquent debt alleged in SOR ¶ 1.d. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.d for Applicant.

Applicant's admissions and the documentary submitted at the hearing establish the allegations in SOR ¶¶ 1.a-1.c and 1.e-1.h, and they raise 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”); and AG ¶ 19(c) (“a history of not meeting financial obligations”). The following mitigating conditions are potentially relevant:

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, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's employment history as reflected in his SCA has a gap between January and December 2015, but he did not testify about a period of unemployment, which would be a condition beyond his control. His two divorces were conditions beyond his control. However, he has not acted responsibly. Except for the debts being collected by garnishment, he submitted no evidence of serious efforts to resolve his delinquent debts. He admitted at the hearing that some of his delinquent debts were not a high priority.

AG ¶ 20(c) is not established. Applicant testified that he received financial counseling, but the record falls short of "clear indications" that his financial problems are being resolved.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments or other resolution of his delinquent debts, except for those being paid by garnishment. Payment by involuntary garnishment is not a good-faith effort to pay delinquent debts. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011).

AG ¶ 20(e) is not established. Applicant testified that he disputed the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.e-1.g, but he provided no documentary evidence supporting his testimony.

### **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>2</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.c and 1.e-1.h:	Against Applicant
Subparagraph 1.d:	For 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

---

<sup>2</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.