



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-02109  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

12/03/2018

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**Decision**

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CERVI, Gregg A., 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**

Applicant submitted a security clearance application (SCA) on April 24, 2014. On August 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.<sup>1</sup> Applicant responded to the SOR on September 1, 2017, and requested a hearing before an administrative judge. The case was assigned to me on May 7, 2018.

The Defense Office of Hearings and Appeals issued a notice of hearing on June 11, 2018, and the hearing was convened on July 10, 2018. Government Exhibits (GE) 1

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<sup>1</sup> 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

through 9 were admitted in evidence. Applicant testified. The record was held open so that Applicant could submit additional evidence. He did not submit any post-hearing documentation.<sup>2</sup> DOHA received the hearing transcript (Tr.) on July 19, 2018.

### **Findings of Fact**

Applicant is a 35-year-old communications and electronics maintenance technician employed by a defense contractor since 2012. He graduated from high school in 2001 and completed some college courses. He married in 2004 and divorced in 2012. He has four children, two of whom live with him. He served in the U.S. Marine Corps from 2002 to 2006, including service in Iraq in 2004. He was honorably discharged in 2006. He currently has a security clearance.

The SOR alleges 11 delinquent debts totaling about \$27,000, including a garnishment for child support arrearages. In his answer to the SOR, Applicant admitted the SOR debts except for two collection accounts owed to the U.S. Department of Veterans Affairs (VA) (SOR ¶¶ 1.j and 1.k). The SOR debts are supported by credit reports, subject interviews, and an employer incident history report.

Applicant testified that he was laid off from a job in 2011 until 2012. During that time, he attended school. Because of his loss of income, he requested an adjustment of the amount he was required to pay for child support. The adjusted amount was granted in 2012, but he fell behind in payments in the interim. He found a new job in February 2012, and worked that job until September 2012, at which time he moved to his current position. He testified that since February 2012, he pays \$1,350 per month for child support in a voluntary garnishment. This amount includes a portion to be applied toward arrearages. Government documents show his employer reported a wage garnishment for a student loan repayment in March 2014, and one for child support enforcement beginning in April 2015. Although discussed at the hearing, Applicant did not submit documentation of his current child support payment schedule, a history of payments, or his current balance. (SOR ¶ 1.a)

SOR ¶ 1.b alleges a delinquent vehicle loan debt for \$9,841. The vehicle was repossessed after Applicant lost his job in 2011 and could not pay the loan. Applicant spoke to the lender in April 2011 about the debt, but has not since. He has not made any other attempts to settle the debt, and it remains unresolved. SOR ¶¶ 1.c-1.i are medical collection debts owed to various creditors. Applicant claims they were for approximately 10 emergency room visits. He claimed to have paid some, and not others, but was unable to provide evidence of resolution of any of the debts despite his opportunity to do so post-hearing. SOR ¶¶ 1.j and 1.k are VA education related debts, incurred when Applicant dropped classes after the VA paid tuition. Applicant disputed the debts, claiming that he repaid them via garnishment from his paycheck. He indicated at the hearing that he could provide documentation of their settlement, but did not submit anything.

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<sup>2</sup> Confirmed with Department Counsel on November 30, 2018, that no post-hearing documents were submitted.

Applicant noted that he has an opportunity to catch up on his debts because he has no rent or utility bills while living with his parents. He indicated that he has about \$400 to \$500 per month net remainder each month, and \$3,120 in savings. He has not pursued financial counseling.

### **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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. 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 ¶ 1(d).

## **Analysis**

### **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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant suffered a period of unemployment while attending school. He fell behind on financial obligations, including his child support. He stated in testimony, that he would provide documentation of actions taken to resolve his SOR debts, but did not do so. Applicant's credit reports show that his debts both pre-date and post-date his period of unemployment, and there is insufficient documentary evidence showing efforts to address his delinquent debts since regaining employment. Two wage garnishments are ensuring collection of child support and student loan obligations, but the remaining debts have not been resolved. Applicant has not shown a consistent record of financial responsibility and has not sought credit counseling or professional assistance with his finances. I am unable to determine his current financial condition and whether further delinquencies will recur.

Based on the record evidence, Applicant has not shown that he has control of his finances, can live within his means, and that further delinquencies are unlikely to recur. Perhaps with more time and attention, Applicant will be able to show a positive financial record, but to date, no such showing has been made. No mitigating condition fully applies.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis.

Applicant claimed during testimony that he could show how he has addressed his delinquent debts, but no such evidence was submitted. His debts were incurred several years ago, and should have been addressed once he regained employment in 2012, or

at least since he received the SOR. Applicant has not shown that he is now financially stable and able to adequately address his financial responsibilities in a timely manner. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant his eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.j, and 1.k:	For Applicant
Subparagraphs 1.b-1.i:	Against Applicant

### **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge