



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-02107
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2018

Decision

MARINE, Gina L., 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 June 25, 2015. 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 (EO) 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 June 8, 2017.

Applicant answered the SOR on August 18, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on October 2, 2017, and the case was assigned to me on March 15, 2018. On April 13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 16, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 were admitted into evidence, without objection. I appended to the record correspondence the Government sent to Applicant as Hearing Exhibit (HE) I, and the Government's exhibit list as HE II. At the hearing, Applicant testified and did not present any documents for admission into the record. At Applicant's request, I left the record open until June 13, 2018. Applicant provided additional documents that were admitted into evidence as AE A, without objection. DOHA received the transcript (Tr.) on June 5, 2018.

Findings of Fact¹

Applicant, age 34, has never married. He has an 11-year-old child. He was one credit short of earning a bachelor's degree after having attended four years of college. This is his first application for a security clearance. He is awaiting a security guard position with a defense contractor (Defense Contractor A) that is contingent on a favorable resolution.²

Applicant admitted each of the 10 delinquent debts, totaling \$22,445, alleged in the SOR. Applicant underwent training with Defense Contractor A for three weeks in May 2015, during which time he earned \$10 per hour and worked 40 hours per week. In June 2015, he used that income to make some payments towards his delinquent debts.³ He has not otherwise had the funds to pay them. The post-hearing status of each alleged debt is set forth in the following table:

SOR ¶	Description	Status
1.a/\$11,452 (auto loan account). ⁴	Applicant financed a 2007 used sedan in May 2011. Its transmission broke 10 miles outside of warranty, at which time he was unemployed but current with his payments. He surrendered the vehicle because he could not afford the repair. He paid \$53 in June 2015. He claimed, without corroborating documents, that the creditor told him he owed a \$0 balance.	No plans to pay.
1.b/\$3,452 (auto loan account). ⁵	Applicant financed a 2009 used sedan in Sept. 2012. In Nov. or Dec. 2013, a drunk driver totaled it. The driver's insurance did not pay full balance owed. He claimed, without corroborating documents, that the creditor told him he owed a \$0 balance.	No plans to pay.

¹ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer, his SCA (GE 1), and the summary of his 2017 for his security clearance background investigation (GE 2).

² Tr. at 7-8, 37, 42-43, 54, 58.

³ Tr. at 32-33. Applicant paid \$20 to United Recovery Systems (URS) in June 2015. However, there is insufficient information in the record to conclude that URS relates to any of the alleged debts.

⁴ AE A; Tr. at 29-30, 31-32, 33-34.

⁵ Tr. at 29-30, 34-35.

SOR ¶	Description	Status
1.c/\$584 (cell phone account). ⁶	Applicant transferred this account to his child's mother in her sole name. He was charged a cancellation fee after being told that he would not be charged one. Applicant claimed, without corroborating documents, that he paid \$50 to \$75 in June 2015.	Plans to pay.
1.d/\$494 (cell phone account). ⁷	Applicant fell behind on this account because he could not afford payments or the cancellation fee. He paid \$10 in June 2015.	Plans to pay.
1.e/\$474 (cable account). ⁸	Applicant fell behind on this account because he could not afford payments. Applicant claimed, without corroborating documents, that he paid approximately \$50 to \$75 in June 2015.	Plans to pay.
1.f/\$2,409 (apartment lease account). ⁹	Applicant cosigned a lease for his child's mother in 2012. She lost her job and could not afford rent, for which the creditor obtained a judgment in Feb. 2014. He claimed, without corroborating documents, that he paid approximately \$200 in June 2015.	Plans to pay.
1.g/\$680 (bank overdraft fees). ¹⁰	Applicant incurred overdraft fees when automatic payments were debited during a period of unemployment. He claimed, without corroborating documents, that he paid \$50 in June 2015.	Plans to pay.
1.h/\$2,369 (cell phone account). ¹¹	Applicant, who shared this joint account with a friend, immediately cancelled the contract when he discovered that the friend made several international calls without his permission. His attempts to collect money from the friend have been unsuccessful. Applicant paid \$50 in June 2015. Without providing corroborating documents, he claimed that he successfully disputed the debt.	Disputed. No plans to pay.
1.i/\$371 (cell phone account). ¹²	Applicant switched his service on the promise that the new carrier would pay the cancellation fee of his former carrier. The new carrier did not pay the fee as promised. Applicant paid \$50 in June 2015. Without providing corroborating documents, he claimed that he successfully disputed the debt.	Disputed. No plans to pay.

⁶ Tr. at 30, 35-36.

⁷ AE E; Tr. at 36.

⁸ Tr. at 30, 36-37.

⁹ Tr. at 30, 37-39.

¹⁰ Tr. at 30, 39.

¹¹ AE A; Tr. at 30-31, 39-40.

¹² Tr. at 31, 40.

SOR ¶	Description	Status
1.j/\$160 (unpaid traffic tickets). ¹³	A person that Applicant allowed to use his car received traffic tickets. No payments made.	Plans to pay.

Applicant does not have a formal or court-ordered arrangement for the custody or support of his child. Informally, the child's mother has agreed to give Applicant liberal visitation rights and to accept \$300 per month for child support. Applicant has made those monthly child-support payments to the mother since the child was born.¹⁴

In May 2017, Applicant had been residing with his father when a search warrant (involving his father only) was executed in the home. Applicant was not home at the time of the search. He returned to the home immediately upon learning from a neighbor about the search. Upon his return, he discovered that "everything" in the home had been destroyed during the search. Applicant was only able to salvage a few clothes and "things of that nature," and lost "a lot" of the documentation relevant to the SOR debts.¹⁵

Applicant was previously employed as a security guard by a defense contractor from June 2010 through February 2013, when his contract ended. He was unemployed for approximately six months until September 2013 when he was hired for a part-time retail position that ended in April 2017 because the retailer went out of business. He earned a bi-weekly salary of approximately \$1,300 for the security-guard position, and approximately \$500 bi-weekly for the retail position. From his two current part-time positions, he earns approximately \$400 weekly for his "night job" (started in May 2017), and \$500 bi-weekly for his "day job" (started in September 2017).¹⁶

Applicant began to experience financial problems after his contract position ended in February 2013. While he received a "couple hundred dollars" of unemployment compensation, it did not suffice to meet his expenses. Despite his best efforts to try to find "any type of work," he has not yet been able to secure gainful employment. Applicant expects to earn \$33 to \$35 per hour for his pending full-time security guard position, which will provide him with the income necessary to address his delinquent debts. If he is unsuccessful in obtaining a security clearance, he plans to pay his delinquent debts using a combination of his salary and his mother's help.¹⁷

Applicant has not sought financial counseling. However, he utilizes a budget to manage his finances, and a web application to monitor his credit. In order to live within

¹³ AE A; Tr. at 31, 40-41, 67-68.

¹⁴ Tr. at 37-38.

¹⁵ Tr. at 20-21, 35, 41-42, 45-46.

¹⁶ Tr. at 8-9, 42-45, 51, 56-57.

¹⁷ Tr. at 51, 52-54, 59, 66-67.

the means of his limited income, Applicant reduced all of his expenses and works two part-time jobs (totaling approximately 70 hours per week). He moved in, for a time, with his father, for which he did not pay rent and had minimal expenses. He now lives with his mother and niece. His mother had been unemployed for a year until approximately February 2018 (during which time Applicant financially supported her), when she began contributing to the household expenses (approximately \$1,000 per month) and helping Applicant “catch back up with things.” He is managing his current expenses responsibly and has not accumulated any new delinquent debts.¹⁸

Applicant is anxious to return to security guard work because it gives him a chance to be able to “do something” and “accomplish something.” The niece (age three) with whom he and his mother live is the daughter of Applicant’s sister who passed away in November 2017. Applicant has taken an active role in her daily care and shares the “primary caregiver” role with his mother.¹⁹

Policies

“[N]o one has a ‘right’ to a security clearance.”²⁰ 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.”²¹ 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.”²²

Eligibility for a security clearance is predicated upon the applicant 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

¹⁸ Tr. at 45, 47-52, 55, 59-61.

¹⁹ Tr. at 55-56.

²⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²¹ *Egan* at 527.

²² EO 10865 § 2.

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.”²³ 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.²⁴ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²⁵ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁶ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁷ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.²⁸

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”³⁰

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

²³ EO 10865 § 7.

²⁴ See *Egan*, 484 U.S. at 531.

²⁵ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁶ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

²⁷ Directive ¶ E3.1.15.

²⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

³⁰ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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 delinquent debts, which are corroborated by his admissions and credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

None of the following potentially applicable factors have been fully established to mitigate the concerns raised under this guideline:

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(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.

Applicant's financial indebtedness is largely attributed to circumstances beyond his control. While he is credited with initiating action to resolve his debts in 2015 when he had the means to do so, he has not made any progress since then. Because he did not provide corroborating documentation, I cannot conclude that the debts alleged in SOR ¶¶ 1.a, 1.b, 1.h, and 1.i have been resolved. Applicant articulated a reasonable basis to dispute the debt alleged in SOR ¶ 1.i, but not SOR ¶ 1.h. He did not provide

documentary proof to substantiate the basis of either dispute or sufficient evidence of actions to resolve the dispute as to either debt.

Applicant has done a commendable job trying to address his financial indebtedness by making some payments as soon as he had the means to do so, taking on extra jobs, and reducing his expenses. I have considered the fact that he is not required to be debt-free in order to qualify for a security clearance.³¹ Unfortunately, the promise of gainful employment is not sufficient mitigation on its own. While Applicant's plan to repay his debts rested primarily on his pending security guard position, he also articulated a reasonable alternative plan to repay his debts through a combination of his current part-time salary and his mother's help. While he may very well be successful with that plan, without a demonstrated track record of consistent payments, it is too soon to conclude that his finances are under control and not likely to recur. However sincere, promises to pay debts cannot alone suffice to establish mitigation. Therefore, I cannot find that Applicant has met his burden to overcome the Guideline F concerns at this time.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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, and I have considered the factors 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 that Applicant has not mitigated security concerns raised by his financial indebtedness. Accordingly, Applicant 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.

³¹ ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

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.j: Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge