



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-02746
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

02/23/2018

**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 on (SCA) January 13, 2016. On August 22, 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 (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 September 14, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on October 13, 2017. On October 16, 2017, a complete copy of the file of

relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 23, 2017, and submitted a statement, which is included in the record as Appellant's Exhibit (AX) A.<sup>1</sup> The case was assigned to me on January 30, 2018.

### **Findings of Fact<sup>2</sup>**

In Applicant's answer to the SOR, he stated that he admitted the debt alleged in SOR ¶ 1.a, but he denied owing any money to the creditor. I have treated his answer as a denial. He admitted the delinquent debts alleged in SOR ¶¶ 1.b, 1.c, and 1.e-1.q. He denied the debts alleged in SOR ¶¶ 1.d, 1.r, and 1.s. His admissions are incorporated in my findings of fact.

Applicant is a 56-year-old employee of a defense contractor. He worked for a federal contractor from October 2006 to June 2007, when he quit to take care of his deceased mother's estate. He worked for a non-federal employer from June 2008 to June 2009, when he was terminated after his employer discovered his drug-related convictions.<sup>3</sup> When questioned by a security investigator in May 2017, he claimed that he appealed his termination and was awarded unemployment compensation for the period after his termination. (FORM Item 11 at 2.) He worked for a non-federal employer from August 2010 to August 2011, when he was terminated for absenteeism. In his SCA, he stated that his absenteeism was due to blood-sugar problems. (FORM Item 5 at 19.) He worked as a temporary employee for a city government from August 2011 to November 2011; worked for a non-federal employer from November 2011 to June 2014; and worked for a defense contractor from June 2014 to March 2015, when he was laid

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<sup>1</sup> The FORM included Item 11, a summary of an enhanced personal subject interview (ESI) conducted on May 1, 2017, as part of Applicant's background investigation. The ESI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the ESI summary; make any corrections, additions, deletions or updates; or object to consideration of the ESI on the ground that it was not authenticated. Applicant responded to the FORM but did not comment on the accuracy or completeness of the ESI summary, nor did he object to it. I conclude that he waived any objections to the ESI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

<sup>2</sup> Applicant's personal information is extracted from his security clearance application (FORM Item 5) unless otherwise indicated by a parenthetical citation to the record.

<sup>3</sup> The FORM includes documentation of convictions of felony possession of drugs in February 1999, felony possession of controlled substances in March 2003, and reckless driving in September 2005. (FORM Item 10.) Appellant's criminal record was not alleged in the SOR. Conduct not alleged in the SOR may not be an independent basis for denying or revoking a security clearance, but it may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered Applicant's criminal record for the limited purpose of explaining his period of unemployment from June 2009 to August 2010.

off due to a reduction in force. He has worked for his current employer since June 2015. He first received a security clearance in June 1982, when he was a federal employee. He left federal employment in 1996, and he is unsure whether his clearance was terminated at that time. (FORM Item 5 at 44.)

Applicant married in May 1980 and divorced in January 1999. He has two adult children from that marriage.

The SOR alleges 19 delinquent debts totaling more than \$16,700. Ten of the debts alleged are medical debts. The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a, deficiency of \$6,915 after automobile repossession.** Applicant admitted that his automobile was repossessed, but he has refused to pay the debt because he believes he was not given credit for the proceeds of the repossession sale. He provided no documentary evidence to support his claim. He has not disputed the debt with the creditor or the credit bureaus or taken any action to resolve it.

**SOR ¶ 1.b, charges of \$4,186 for early termination of apartment lease.** In his answer to the SOR, Applicant admitted that he terminated the lease early when he was laid off and could not find permanent employment. The date of last activity on this debt is October 2013. Applicant submitted no documentary evidence of efforts to pay, compromise, dispute, or otherwise resolve this debt.

**SOR ¶¶ 1.c, 1.f-1.l, and 1.n-1.p: medical bills in various amounts ranging from \$54 to \$1,733.** In his answer to the SOR, Applicant attributed his medical bills to preparing for and receiving quadruple bypass heart surgery in July 2016. The medical bills alleged in SOR ¶¶ 1.f, 1.g, 1.m, and 1.n were referred for collection in 2011, 2012, 2013, and 2015, well before his heart surgery. The medical debts in SOR ¶¶ 1.c, 1.h, 1.j, and 1.k were referred for collection in June and July 2016, shortly before his heart surgery. He provided no evidence connecting his medical debts to the surgery and no evidence of efforts to resolve these debts.

**SOR ¶ 1.d, collection account for an insurance company for \$403.** Applicant denied this debt and stated there is nothing in his credit report reflecting it. He submitted no documentary evidence that he had disputed the debt with the original creditor, the collection agency, or the credit bureaus.

**SOR ¶ 1.e, collection account for telecommunication services for \$346.** Applicant admitted this debt but submitted no documentary evidence of efforts to resolve it.

**SOR ¶ 1.m, collection account for cellphone service for \$111.** Applicant admitted this debt and stated that it was a balance of \$8 that grew to \$111 due to penalties and interest. He submitted no documentary evidence of efforts to resolve it.

**SOR ¶ 1.o, collection account for insurance company for \$70.** Applicant admitted this debt, explaining that it was the result of a cancelled policy. He submitted no documentary evidence of efforts to resolve it.

**SOR ¶¶ 1.r and 1.s, judgments for \$415 and \$765 filed in April and May 2012.** When Applicant was interviewed by a security investigator in May 2017, he told the investigator that he did not know who the creditor was and did not know what kind of property was involved. (FORM Item 11 at 7.) In his answer to the SOR, he stated that he knew nothing about these judgments and that they are not reflected on his credit report. The credit report from February 2016 reflects that this creditor obtained judgments against Applicant in August, September, and October 2011, which were satisfied in November 2011 and March 2012. As of the date the record closed, the two most recent judgments, alleged in SOR ¶¶ 1.r and 1.s, were unsatisfied. (FORM Item 7 at 3-4.) The fact that Applicant satisfied three judgments filed against him by the same creditor undercuts his claim that he knew nothing about the nature of the two most recent judgments. The dates of the most recent judgments indicates that they have “aged off” his recent credit reports but have not been resolved.<sup>4</sup>

### **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

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<sup>4</sup> Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to these debts. 15 U.S.C. § 1681c.

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. 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 admissions and the documentary evidence in the FORM establish the following disqualifying conditions: 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 established. Applicant had several periods of unemployment. However, his unemployment from June 2007 to July 2008 was voluntary. He claimed that his unemployment from June 2009 to August 2010 was due to a wrongful termination, but he submitted no evidence to support his claim. His unemployment from March to June 2015 was a condition beyond his control, as were his medical problems

in July 2016. However, he submitted no evidence to support his claim that his medical debts were related to his heart surgery. Furthermore, he has not acted responsibly. He has been employed since June 2015 and submitted no evidence of efforts to resolve his delinquent debts.

AG ¶¶ 20(c), 20(d), and 20(e) are not established. Applicant submitted no evidence of financial counseling, good-faith efforts to pay or resolve his debts, and no documentation of efforts to dispute any of the debts.

### **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>5</sup>

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's many years of service as a federal employee and as an employee of a federal contractor. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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.s:

Against Applicant

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<sup>5</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.

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge