



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-03391
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2018

**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 November 12, 2015. On October 12, 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, which he received on October 18, 2017, on or about November 4, 2017, and requested a decision on the record without a hearing. On November 22, 2017, Department Counsel submitted the Government's written case and sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 5. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on November 30, 2017, and timely submitted his response, to which the Government did not object. Item 1

contains copies of the pleadings in the case. Items 2 through 5 are admitted into evidence. I admitted into evidence the attachments to Applicant's SOR answer, as Applicant Exhibits (AX) A through D, and the attachments to his initial FORM response as AX E and F. The case was assigned to me on February 14, 2018.

On February 26, 2018, I emailed the parties to reopen the record in order to afford Applicant the opportunity to provide an updated FORM response. Applicant timely submitted a response with additional evidence that I admitted into evidence, without objection, as AX G.

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

Applicant, age 39, and his wife of 12 years have three minor children. He earned at least one associate's degree in 2006, a bachelor's degree in 2010, and two master's degrees in 2012 and 2013. He has been employed full time by a defense contractor since 2004. He worked part time for a hotel chain from 1999 through 2007. The record does not specify whether Applicant has maintained a security clearance before this application.

The SOR alleged 24 delinquent debts, including a \$33,018 home equity loan account, a \$20,500 credit card account, and 22 student loan accounts totaling \$174,184. In his SOR, Applicant admitted each allegation.

Applicant opened a home-equity loan account in February 2008 in the approximate amount of \$46,367 to be repaid over 180 months in monthly payments of \$388. In November 2015, the account was in current status. In August 2017, the account was in charged-off status in the amount of \$33,018 (SOR ¶ 1.a). In October 2017, Applicant paid \$7,628 from the proceeds of a partial 401k cash-out to settle the account in full.<sup>2</sup>

Applicant opened a credit card account in August 2006 with a credit limit of \$31,000. In November 2015, the account was in collection status in the amount of \$20,500. In August 2017, the account was in charged-off status in the same amount (SOR ¶ 1.b). Applicant received a 1099-C IRS Form (Cancellation of Debt) from the creditor, which noted that it had discharged the debt and decided to discontinue collection.<sup>3</sup>

---

<sup>1</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 1), his SCA (Item 2), and the summary of his March and May 2017 security clearance interviews (Item 3). Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 3. Applicant was also informed that he was entitled to object to consideration of Item 3 on the ground that it was not authenticated. Applicant did neither in his response to the FORM. Therefore, I conclude that he has waived any objection to Item 3.

<sup>2</sup> GE 4 and 5; AX A and E.

<sup>3</sup> GE 4 and 5; AX B.

Of the 22 student loan accounts, 16 are with a federal agency (totaling \$131,538 as of August 2017), and 6 are with a state agency (totaling \$42,556 as of August 2017). These accounts were opened between 2006 and 2013.<sup>4</sup>

In October 2017, Applicant initiated the process for rehabilitating his federal loans. In December 2017, the federal agency accepted Applicant into a rehabilitation program, which required that he make nine monthly payments of \$205 beginning January 2018. He made two payments in January and February 2018.<sup>5</sup>

In September 2017, Applicant proposed a monthly payment plan to resolve the state loans. In October 2017, a collection agent for the state agency agreed to accept \$300 per month to resolve them. Applicant made one payment in October 2017.<sup>6</sup>

Although it was not alleged in the SOR, Applicant has a delinquent student loan with a private entity in the approximate amount of \$25,000. In March 2017, he stated that he had been prioritizing other accounts, and would make arrangements to pay this account when he was able.<sup>7</sup>

Applicant attributed his financial indebtedness to the loss of his wife's income due to various unspecified periods of underemployment and unemployment beginning in 2012. Without providing any specific details or corroborating documents, in his SOR answer, he averred that he paid off "some other debts," including auto loans.<sup>8</sup> He also stated that he and his wife "have a better understanding of the importance of keeping debts low and maintaining good financial stewardship over [their] resources" to prevent "any further financial hardships moving forward." He travelled outside of the United States for vacation for 5 days in 2014 and 5 days in 2015. The record does not specify how Applicant funded those trips.<sup>9</sup>

## **Policies**

"[N]o one has a 'right' to a security clearance."<sup>10</sup> 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

---

<sup>4</sup> GE 4 and 5; AX C, D, F, and G.

<sup>5</sup> AX C, F, and G.

<sup>6</sup> AX D.

<sup>7</sup> Item 2 at 36; Item 3 at 5 and 7; Item 4 at 6; Item 5 at 5. Because this debt was not alleged in the SOR, I will consider it only to evaluate mitigation and whole person.

<sup>8</sup> Item 2 at 33-36; Item 3 at 4.

<sup>9</sup> Item 2 at 24-27; Item 3 at 3.

<sup>10</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

information.”<sup>11</sup> 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.”<sup>12</sup>

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 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.”<sup>13</sup> 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.<sup>14</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>15</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>16</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain,

---

<sup>11</sup> *Egan* at 527.

<sup>12</sup> EO 10865 § 2.

<sup>13</sup> EO 10865 § 7.

<sup>14</sup> See *Egan*, 484 U.S. at 531.

<sup>15</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>16</sup> See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

extenuate, or mitigate the facts.<sup>17</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>18</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>19</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>20</sup>

## **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. 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.<sup>21</sup>

Applicant's admissions and his 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”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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

---

<sup>17</sup> Directive ¶ E3.1.15.

<sup>18</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>19</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>20</sup> Egan, 484 U.S. at 531; See also AG ¶ 2(b).

<sup>21</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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; and

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

Two SOR debts (totaling \$53,518) have been resolved, one via a settlement that Applicant paid (SOR ¶ 1.a/\$33,018), and one via a passive cancellation of debt filed by his creditor (SOR ¶ 1.b/\$20,500). However, there remain substantial student loan debts alleged in the SOR totaling \$174,184, of which \$131,628 are federal. Applicant has another non-SOR student loan debt totaling \$25,000 that has not yet been resolved.

While I credit Applicant with initiating action to resolve his SOR student loan debts via agreements with the state and federal agencies, he has not established a meaningful track record of regular and timely payments pursuant to those agreements. Those periods of his wife's income loss were circumstances beyond his control. However, he has not met his burden to establish that he acted responsibly under those circumstances.

I considered the progress that Applicant has made in tackling his delinquent debts, and the fact that he is not required to be debt-free in order to qualify for a security clearance.<sup>22</sup> However, in light of the record before me, I cannot conclude that Applicant has mitigated 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 following 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

---

<sup>22</sup> 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).

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 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 that Applicant has not mitigated the security concerns raised by his failure to pay substantial delinquent debts. 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.

### **Formal Findings**

I make the following formal findings on the allegations in the amended SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

Subparagraphs 1.c – 1.x: Against Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge