



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-03771
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

09/19/2018

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**Decision**

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FOREMAN, LeRoy F., 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 March 29, 2016. On November 14, 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 December 13, 2017, and requested a decision on the written record without a hearing. He denied all the allegations in the SOR. Department Counsel submitted the Government's written case on May 21, 2018. On the same day, 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 June 13, 2018, and submitted Applicant's Exhibit A.<sup>1</sup> The case was assigned to me on September 6, 2018.

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

Applicant is a 39-year-old senior program manager employed by a defense contractor since November 2016. He served honorably on active duty in the U.S. Air Force from June 1997 to May 2007. He has served in the U.S. Air Force Reserve from September 2013 to the present. He was self-employed from May 2007 to April 2011. He has been employed by defense contractors since April 2011, except for a five-month period from June to November 2012, when he worked in the private sector. He has held a security clearance while on active duty and as an employee of defense contractors. He married in January 2001. He and his wife have two children, ages 16 and 15.

The SOR alleges 12 delinquent debts that are reflected in credit reports from May 2018 (FORM Item 4), October 2017 (FORM Item 5), and June 2016 (FORM Item 6). The evidence concerning these debts is summarized below.

**SOR ¶¶ 1.a-1.c, 1.e-1.g: delinquent student loans placed for collection of \$6,235; \$4,166; \$4,080; \$2,504 (two loans for same amount); and \$2,360.** Applicant attended college courses from June 2012 to July 2015. In March 2017, he told a security investigator that these loans should be in a deferred status because he is still a student, even though he has not attended any classes since July 2015 due to his busy schedule. (FORM Item 7 at 6, 10.) The credit reports from October 2017 and May 2018 reflect that these loans are delinquent and referred for collection. (FORM Item 4 at 2-4; FORM Item 5 at 1-2.) In Applicant's response to the FORM, he stated that he was "currently in negotiation" for a payment plan. (AX A.) He submitted no documentary evidence of negotiations, payments, or a payment plan.

**SOR ¶ 1.d: delinquent car loan charged off for \$3,868.** Applicant was unable to provide any information about this debt when he was interviewed by a security

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<sup>1</sup> The FORM included a summary of a personal subject interview (PSI) conducted on March 20, 2017. The PSI summary 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 PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he waived any objections to the PSI 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). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

<sup>2</sup> Applicant's personal information is extracted from his security clearance application (FORM Item 3) unless otherwise indicated by a parenthetical citation to the record.

investigator. (FORM Item 4 at 13.) The credit report from October 2017 reflects that this debt was charged off in December 2010. (FORM Item 5 at 2.) It is not reflected in the May 2018 credit report. (FORM Item 4.) Based on the date when the debt was charged off, it would have “aged off” any credit reports after December 2017.<sup>3</sup> There is no evidence that the debt was paid or otherwise resolved.

**SOR ¶ 1.h: delinquent medical bill for \$208.** In his SCA, Applicant stated that he was in the process of disputing several medical bills, and that if the disputes were not resolved within 30 days, he would pay them so that they would be removed from his credit record. (FORM Item 3 at 35.) The credit report from May 2018 reflected that this debt was paid in August 2017. (FORM Item 4 at 2.)

**SOR ¶¶ 1.i-1.l: state tax liens for \$7,309; \$536; \$3,258; and \$4,621.** In his SCA, Applicant stated that these liens were for payroll taxes incurred while he was self-employed, and that the taxes were being paid under a payment plan that would be completed in March 2017. (FORM Item 3 at 33-34.) When he was interviewed by a security investigator in March 2017, he told the investigator that he did not pay the taxes for tax year 2010 because he could not afford them at the time, that he was making monthly \$200 payments, and that he anticipated paying this debt in full by September 2017. (FORM Item 7 at 9.) The security investigator who conducted the interview specifically commented, “Subject was given the opportunity to provide additional documentation regarding financial delinquencies. Subject failed to provide documentation during the interview, or subsequent to the interview to corroborate his disagreement with accounts on the credit bureau report.” (FORM Item 7 at 17.) In Applicant’s response to the FORM, he stated that he was still in a payment plan for the delinquent taxes, indicating that he had not completed the payment plan in March 2017, as he promised in his SCA, or in September 2017, as he promised during his security interview. (AX A.) He submitted no documentary evidence of efforts to resolve the tax debt. The liens are not reflected in the May 2018 and October 2017 credit reports. (FORM Items 4 and 5.)

## 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.

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<sup>3</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 this debt. 15 U.S.C. § 1681c.

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).

Applicant denied all the allegations in his answer to the SOR. However, the documentary evidence in the FORM establishes the following potentially disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to . . . pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

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;

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. The apparent failure of Applicant's attempt at self-employment was a condition beyond his control. Although the taxes were due for tax year 2010, the record does not reflect when he first contacted the tax authorities about resolving the debt or took any other responsible measures to resolve it. He has not attributed any of the other debts alleged in the SOR to conditions beyond his control.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and his financial situation is not yet under control.

AG ¶ 20(d) is established for the medical debt alleged in SOR ¶ 1.h. Applicant has submitted no evidence of payments or a payment plan for the student loans or the charged-off auto loan. The fact that the auto loan has dropped of his credit reports "is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. Jul. 7, 2016).

AG ¶ 20(e) is not established. Although Applicant expressed doubts about the validity of the medical debts reflected in his credit reports when he submitted his SCA, he has not disputed any of the debts alleged in the SOR.

AG ¶ 20(g) is not established. Applicant has submitted no documentary evidence of payments or a payment plan for his state taxes. When applicants claim to have resolved a delinquent debt, they are expected to submit documentary evidence to support the claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). The absence of the tax liens on recent credit reports does not necessarily reflect that the taxes have been paid. To the contrary, Applicant stated in his response to the FORM that he is still making payments on the tax debt. Furthermore, payment of delinquent taxes does not end the

inquiry. A security clearance adjudication is not aimed at insuring an applicant's compliance with the tax laws. Even if Applicant is on his way to resolving his tax problem, his efforts do not preclude careful consideration of his security worthiness based on his prior behavior evidencing irresponsibility. ISCR Case No. 12-05053 (App. Bd. Oct.30, 2014).

### **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>4</sup>

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant has a long record of military and civilian service in responsible and sensitive positions. However, his response to security concerns raised by his delinquent debts has been long on promises and short on documentary evidence. The security investigator commented on Applicant's failure to provide documentary evidence in the interview summary. Department Counsel specifically commented on the lack of documentary evidence in her submission of the case, but Applicant did not avail himself of the opportunity to provide such evidence when he responded to the FORM.

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 and failure to pay taxes.

### **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.g:

**Against Applicant**

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<sup>4</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.

Subparagraph 1.h:

For Applicant

Subparagraphs 1.i-1.l:

Against 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