



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-03948
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany Muetzel, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2018

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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 30, 2016. On January 12, 2018, 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 February 14, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 9, 2018, and 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. The FORM was comprised of Items 1 through 6. He responded to the FORM and submitted Applicant's Exhibits A through F, which were admitted without objection. The case was assigned to me on July 26, 2018.

FORM Item 6 consisted of summaries of five personal subject interviews conducted on April 13, April 24, May 12, July 31, and October 6, 2017. The summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summaries; make any corrections, additions, deletions or updates; or object to consideration of them on the ground that they were not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the summaries, nor did he object to them. 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). I conclude that he waived any objections to the FORM Item 6. See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (upholding application of waiver when an applicant did not object after notification of the right to object).

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

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 59-year-old system administrator employed by a federal contractor since November 2015. He was previously employed by federal contractors from September 2010 to February 2014, and he was employed in the private sector from February 2014 until he was fired for being rude to a customer. He did not disclose the termination in his SCA. When asked by a security investigator why he did disclose being fired, he responded that he did not know.<sup>2</sup> (FORM Item 6 at 6.)

Applicant has never married and has no children. He has lived with a cohabitant since February 2005. He has never held a security clearance.

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (GX 3) unless otherwise indicated by a parenthetical citation to the record.

<sup>2</sup> Applicant's failure to disclose in his SCA that he was fired from a job was not alleged in the SOR. Conduct not alleged in the SOR 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). I have considered Applicant's failure to disclose that he was fired for these limited purposes.

The SOR alleges four delinquent debts that are reflected in credit reports from June 2016 and October 2017 (FORM Items 4 and 5). The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: credit-card account charged off for \$682.** This debt was charged off in April 2016. (FORM Item 5 at 1.) Applicant made a payment agreement in February 2018 providing for monthly payments of \$35.26. (Answer to SOR.) He referred to the payment agreement in his response to the FORM, but he provided no evidence that he actually made payments in compliance with the payment agreement.

**SOR ¶ 1.b: delinquent debt for overpayment of unemployment benefits, placed for collection of \$16,255.** The collection account for this debt was opened in September 2010. (FORM Item 4 at 5.) In April 2017, Applicant told an investigator that he was unaware of this debt and had never been contacted about it. (FORM Item 6 at 9.) In May 2017, he told an investigator that he was unaware that he had been overpaid, and that the amount of the overpayment was \$600 for two months in 2005, but that the debt had grown to its present amount due to penalties and interest. He told the investigator that he was setting up an agreement providing for monthly payments of \$100. (FORM Item 6 at 12.) A tax refund of \$4,162 was applied to this debt in July 2017. In his answer to the SOR, Applicant stated that he had arranged to make online monthly payments of \$25-\$50. In his response to the FORM, he submitted documentation of two automated \$20 payments on this debt in March and May 2018. There is no evidence that he made the April 2018 payment. (AX D at 2; AX F.)

**SOR ¶ 1.c: medical bill placed for collection of \$182.** This debt was referred for collection in January 2011. (FORM Item 4 at 7.) Applicant paid \$100 on this debt in April 2011. (AX B.) In his response to the FORM, he stated that the collection agency informed him that the balance on his account is zero, and he has asked the collection agency to remove the collection account from his credit report. (AX A.) The debt is not reflected in the October 2017 credit report, indicating that it was resolved.<sup>3</sup> (FORM Item 5.)

**SOR ¶ 1.d: medical bill placed for collection of \$50.** This debt was placed for collection in May 2015. In April 2017, Applicant told an investigator that he was unaware of the debt and did not recognize it, but that he would pay it because the amount was so small. He paid it on May 30, 2018. (AX C.)

### **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

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<sup>3</sup> Under the Fair Credit Reporting Act (FCRA), 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. Under the FCRA, this debt would not have “aged off” the credit report until January 2018.

“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 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's admissions and the documentary evidence in the FORM establish the following potentially disqualifying conditions under this guideline:

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 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; 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), 20(b), 20(c), and 20(e) are not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. He submitted no evidence of conditions largely beyond his control. He presented no evidence of financial counseling and no evidence of his overall financial situation. He has not disputed any of the debts alleged in the SOR.

AG ¶ 20(d) requires a showing of good faith, which means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Furthermore, applicants who wait until their clearances are in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

Although Applicant submitted documentary evidence of a payment agreement for the credit-card debt alleged in SOR ¶ 1.a, he submitted no evidence of payments. AG ¶ 20(d) is not established for this debt.

The overpayment of unemployment benefits, which was the basis for the debt alleged in SOR ¶ 1.b, arose in 2005. It is hard to believe that Applicant would not have noticed an unexpected increase of \$600 in his monthly income. He took no action to resolve this debt until a tax refund of \$4,162 was diverted to satisfy it. In May 2017, he told a security investigator that he intended to begin making monthly payments of \$100. In his answer to the SOR, he stated that he had arranged to make online payments of \$25-\$50. He submitted documentation that he made \$20 payments in March and May 2018, but no evidence of an April payment. Even after his long-overdue promise May 2017 to begin resolving this debt, he has been inconsistent in the amounts he has promised to pay, and he has not established a consistent track record of payments. I conclude that AG ¶ 20(d) is not established for the debt alleged in SOR ¶ 1.b.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.c and 1.d. The debt alleged in SOR ¶ 1.c was resolved in April 2011. The debt alleged in SOR ¶ 1.d is for an amount of minimum security significance, and it was paid in May 2018.

### **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 and applied the adjudicative factors in AG ¶ 2(d). 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:

Guideline F, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant

### **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

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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.