



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



In the matter of: )  
 )  
 ) ISCR Case No. 18-00687  
 )  
Applicant for Security Clearance )

**Appearances**

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

11/09/2018  
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**Decision**  
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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

On March 22, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on April 6, 2018. He requested a hearing before an administrative judge. The case was assigned to me on June 15, 2018. On June 21, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing, scheduling the hearing on August 6, 2018. I convened the hearing as scheduled.

Department Counsel offered eight documents into evidence, which I marked as Government Exhibits (GE) 1-8. These exhibits were admitted into evidence without objection. Applicant testified and offered ten documents, which I marked as Applicant Exhibits (AE) A-J and admitted without objection. DOHA received the transcript on August 23, 2018 (Tr.).

At the conclusion of Applicant's case-in-chief, Department Counsel moved to amend the SOR to conform to the evidence so as broaden the allegation in SOR ¶ 1.b to include a state tax debt and to provide specific amounts of Applicant's current indebtedness to the IRS and the state, *i.e.*, \$14,900 and \$3,372, respectively. Applicant did not object to the motion. I granted the Government's motion to amend. (Tr. 76.)

I held the record open after the hearing until September 8, 2018, to allow Applicant the opportunity to submit additional exhibits. On August 28, 2018, he provided Department Counsel with 98 pages of additional documents, which I have marked as AE K-W. These exhibits are admitted without objection.

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

In his answer to the SOR, Applicant denied all nine of the SOR allegations and provided explanations. He also attached six documents to his SOR answer. Based upon the evidence in the record, including Applicant's denials and supporting documentation, I make the following findings of fact.

Applicant is 57 years old and has worked for a defense contractor since at least 2003. He has held a security clearance since about 1996. He is married with five children, ages 10-19. He has earned multiple academic degrees, most recently a doctorate degree in 1993 and a second master's degree in 2005.

Applicant began to experience financial problems in July 2015 when he relocated his family to a different part of the country to escape racial animus directed at his family. He and his wife felt that, it was no longer bearable for their family to continue living where they had lived for a number of years. Applicant stayed behind at his work location hoping for a transfer or a new job so that he would quickly be reunited with his family. As a result of his wife's relocation, she had no income for a period. Also, paying for the move, a second residence for himself, and regular travel to be with his family quickly overwhelmed his financial position, resulting in numerous new debts and the delinquent debts alleged in the SOR. He made withdrawals from his retirement account and under withheld on his taxes in 2016 and 2017 to help pay for his excess expenses and the penalties associated with his withdrawals. (Tr. 43-44.)

It took Applicant longer than expected to find a new job outside of his original location, which exacerbated the length and severity of his financial distress. In August

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application, dated March 8, 2017 (GE 2), unless otherwise indicated by a parenthetical citation to the record.

2016, Applicant was finally transferred by his employer to a location that was not near his family. This required him to move his family a second time in two years. The moving expense was only partially covered by his employer. (Tr. 81-86, 96; AE M-P.)

Applicant and his wife have a substantial combined income at this time and are using their excess income to pay down the debts they incurred in the 2015-2017 period. In October or November 2016, they began working with a credit counseling service to address the debts they accumulated after their first move. That firm was acquired by a debt consolidating company. Applicant continued working with this firm (the Company). Applicant has been paying the Company \$1,200 per month since January 2017, which is then disbursed to a number of Applicant's creditors, including one creditor owed a delinquent debt that is alleged in SOR ¶ 1.c. (Tr. 105; AE L at 1-13.)

The SOR alleges seven delinquent debts totaling about \$10,000. (SOR ¶¶ 1.c-1.i.) The SOR also alleges that Applicant failed to file and pay his federal income taxes in 2015 and 2016, as required, and that he owes federal and state taxes in the total amount of about \$18,000 for 2016. (SOR ¶¶ 1.a and 1.b.)

**SOR ¶ 1.a: late filing and payment of 2015 taxes.** Applicant's response to the Government's interrogatories contains an IRS Account Transcript for tax year 2015. (GE 4 at 122.) The transcript reflects that Applicant's return was filed on June 6, 2016, and that he owed about \$344 with his return. The transcript does not reflect that Applicant sought an extension of time to file after the April 2016 deadline. Applicant submitted his tax information to his accountant prior to the tax filing deadline and was surprised to learn that the returns were not filed on time. (AE U at 2-4; Tr. 34, 98.) He blamed the accountant for any delay in filing and paying the tax due. (Tr. 34.) After the hearing, Applicant provided evidence that supports his position that he contacted his accountant on or before April 3, 2016, and that his federal return was, in fact, submitted on the deadline of April 18, 2016.<sup>2</sup> Applicant's documentation supports his dispute of the information in the IRS account transcript, though there are other inconsistencies. His evidence shows he was due a refund of \$331 and the Account Transcript shows that he underpaid \$344 and was billed for interest and a penalty for a late payment. (GE 4 at 122.) Applicant's 2015 state returns are dated April 19, 2016. (AE U at 8, 13.)

**SOR ¶ 1.b: late filing and payment of 2016 federal income taxes with unpaid taxes remaining.** The record evidence reflects that Applicant filed a timely request for an extension of time to file his 2016 tax returns. (GE 4 at 118; Tr. 38.) The return was due on October 15, 2017. Applicant concedes it was filed late. (Tr. 37.) An IRS Account Transcript for 2016 reflects the return was filed a few months late, specifically on February 26, 2018. (GE 4 at 118.) Applicant again disputes the IRS Account Transcript information by providing a copy of his 2016 federal income tax return, which reflects that his accountant signed the federal return, as well as his state returns, on December 21, 2017.

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<sup>2</sup> I take administrative notice of the 2015 tax filing deadline in 2016, as set forth in the following official U.S. Government publication: <https://www.irs.com/articles/2016-federal-tax-calendar>. The 2015 deadline was April 18, 2016.

(AE V at 3, 5, and 10.) Applicant testified that he became ill in September and October 2017 and was unable to work. Also, he hired a new accountant because he was dissatisfied with his original tax advisor. He also provided documentation to substantiate his disability during the period September 25, 2017, to November 15, 2017. (AE F at 3.) He argues that his illness excuses his late filing and that the return was actually filed in December 2017, not February 2018.

Applicant under withheld on his federal and state taxes in 2016 and again in 2017.<sup>3</sup> (Tr. 43-44.) He owes about \$14,000 in additional taxes for each year. (Tr. 99; AE V at 3; AE W at 3.) He initially arranged an installment agreement for his unpaid 2016 taxes, but when he prepared his 2017 return he realized he owed additional taxes for that year.<sup>4</sup> He modified his installment agreement with the IRS in April 2018 to include both years. (Tr. 45, 121-122.) He now pays \$403 per month. (AE G at 2; Tr. 44.) Applicant provided documentation evidencing his monthly payments to the IRS. (AE Q at 6-10.) With a state tax debt of \$3,260, Applicant also entered into an installment agreement with the state tax authorities in or about May 2018. He pays \$55 per month to the state to pay his back taxes. (AE G at 9-10; Tr. 44.) In August 2018, he made an additional \$200 payment to the state. (AE Q at 2-3.)

**SOR ¶ 1.c: credit-card account charged off for \$4,681.** Applicant defaulted on this credit card at some point during the November 2016 to March 2017 period. (GE 6 at 2; GE 5 at 4.) Starting in or about January 2017, Applicant has been paying this creditor \$105 per month through his debt consolidation plan with the Company. (Tr. 48, 50.) Applicant provided documentation from the Agency reflecting this monthly payment has been made since before the issuance of the SOR. (AE A.)

**SOR ¶ 1.d: unpaid rental charges in collection with a balance of \$1,157.** This debt arose when Applicant and his family moved out of a rental property. He disputed the charges in court, but lost. He paid \$75 on this debt in April 2018, and made four additional payments in May, June, July, and August 2018, totaling \$180. As of the hearing date, the balance due was \$902. (AE K at 1.) Applicant provided documentation evidencing his payments. (AE S at 2-5.) He plans to make additional payments. (SOR Answer at 1 and Attachment 5.)

**SOR ¶ 1.e: delinquent credit union account charged off for \$2,615.** Applicant's bank account was overdrawn and closed. (Tr. 58-59.) He believes the correct amount of this debt is \$1,572. He paid \$393 on March 27, 2018. (AE B.) He has agreed to repay the

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<sup>3</sup> The SOR does not contain an allegation regarding Applicant's 2017 taxes. Applicant provided a copy of his 2017 tax return, which reflects that he owes the IRS about \$15,000 for that tax year. (AE W.) Since this debt is not alleged in the SOR, I do not consider this debt as establishing a disqualifying condition. I can consider this, however, in weighing mitigation and under the whole-person concept, as well as in weighing Applicant's credibility. ISCR Case No. 14-01491 at 3 (App. Bd. Mar. 30, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

<sup>4</sup> Applicant's 2017 federal and state tax returns are dated March 31, 2018, and therefore were timely filed. (AE W at 3, 9.)

credit union \$100 per month. He made these payments starting in April continuing through August 2018. The present balance is \$679. (AE K.) He has repaid about one-half of this debt and intends to continue paying off the remainder of the debt. Applicant had a second debt with this creditor, a delinquent credit-card account that was not alleged in the SOR. Applicant has been paying that debt since 2017 through the Company. (Tr. 61; GE 4; AE B; GE 5 at 3; GE 6 at 2.)

**SOR ¶ 1.f: unpaid cable bill in collection a balance of \$74.** Applicant did not address this small delinquent debt.

**SOR ¶¶ 1.g-1.i: unpaid medical bills in collection with a total balance of \$1,511.** Applicant learned about the largest unpaid medical bill (SOR ¶ 1.g) when he read the SOR. This collection account is for \$1,320. It relates to his child's hospitalization in 2000. He did not pay the uninsured portion of this hospital bill due to confusion with his paperwork. (Tr. 63.) In March 2018, he paid \$400 and is paying \$86 per month on this bill. (AE B at 2; Tr. 68-69.) At the close of the record, the balance was \$606. (AE K at 1; Tr. 69.) Applicant provided documentation evidencing his payments. (AE R at 2-5.) He has paid over one-half of this debt. Applicant did not address the two other small medical debts.

### **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 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, testimony, and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(f) ("failure to file . . . or 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 indication 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 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 established. Applicant's financial problems and the resulting debts occurred under circumstances that are unlikely to recur. Prior to his family's relocation in 2015, Applicant had successfully applied for and held a security clearance since 1996. It is highly unlikely that Applicant would ever repeat the actions that gave rise to the instant financial concerns that put his security clearance at risk. Though not everyone would have made the same decision to relocate his or her family prior to finding employment in a new location, which was the fundamental cause of Applicant's financial problems, it is difficult

to fault his decision as irresponsible. That very personal decision was made under difficult circumstances affecting his family's well-being. The financial problems that followed his decision to relocate his family do not cast doubt on his current reliability, trustworthiness or judgment, with the exception of his under withholding in 2016 and 2017 on his income and distributions from his retirement account. It is unlikely that Applicant will ever make this mistake again.

AG ¶ 20(b) is partially established. Much of Applicant's financial problems resulted from his inability to find appropriate employment in the area to which he initially relocated his family. This resulted in an unexpected and extended period of time when Applicant was living apart from his family, which caused him to incur significant additional expenses he could not afford. This timing problem was beyond his control, even though his voluntary decision to relocate his family in the first place was within his control. As discussed below, Applicant's subsequent actions to address his financial delinquencies establish that he acted responsibly under the circumstances.

AG ¶ 20(c) is established. Shortly after Applicant relocated to his new position with his employer and moved his family a second time to join him, he sought counseling to assist him with the repayment of his debts. In 2017, he and the counseling company, and its successor, set up a monthly payment plan under which Applicant paid \$1,200 per month to the Company, which then disbursed monthly payments to a significant number of creditors. Applicant has been making these payments for almost two years and intends to continue to do so until his debts are paid off. Applicant's successful use for almost two years of this debt consolidation repayment plan evidences that the Company is a legitimate and credible service providing financial counseling.

AG ¶ 20(d) is established. For almost two years, Applicant has been paying most of his creditors through a debt consolidation program established by the Company. The SOR revealed that there were three additional debts that were not covered by his monthly payment to the consolidation company, specifically, the debts alleged in SOR ¶ 1.d for unpaid rental charges, ¶ 1.e for an overdraft in his credit union account, and ¶ 1.g for an unpaid medical bill.<sup>5</sup> Applicant has established a track record of paying these three debts since his receipt of the SOR. The late timing of his initiation of repayment efforts on these debts undercuts the good-faith element of his efforts, but I find that under the circumstances, it is sufficient to conclude that these debts are being resolved. The largest debts alleged in the SOR and not included in all of these payments are Applicant's federal and state income tax debts for tax year 2016. I have addressed these two debts in my conclusions under AG ¶ 20(g), below.

AG ¶ 20(e) is established with respect to the two delinquent tax filing allegations set forth in SOR ¶¶ 1.a and 1.b. Applicant disputes these allegations. His documentation

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<sup>5</sup> The small debts alleged in SOR ¶¶ 1.f, 1.h, and 1.i were not addressed by Applicant or Department Counsel in this proceeding. The total amount of these three debts is \$265. These debts are of no material security significance and are, therefore, not considered in my Decision, though I would believe that Applicant will want to pay them as well.



raises questions about the accuracy of the IRS's Account Transcripts on the actual filing dates of his federal income tax returns in 2015 and 2016. Applicant believes he timely filed his 2015 return and his tax accountant's documentation supports that position. As for 2016, the IRS Account Transcript supports Applicant's position that he timely filed a request for an automatic extension until October 15, 2017. His evidence further establishes that he was ill and unable to work in October 2017 and did not return to work until November 15, 2017. His evidence further shows that the date of his 2016 return was just one month later. Even if Applicant filed his 2016 federal and state tax returns three months later, as the IRS Account Transcript and Applicant's Exhibit V reflect, the delay of a few months, under the circumstances of the entire record in this case, does not evidence a material or significant security concern.

AG ¶ 20(g) is established. Applicant paid any federal taxes, interest and penalty due for 2015. He has entered into payments plans for his unpaid federal and state 2016 and 2017 taxes and is making monthly payments under those plans. He has a sufficient track record of payments to establish his compliance with his payment plans.

### **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>6</sup> After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his past actions.

### **Formal Findings**

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

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<sup>6</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 clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

John Bayard Glendon  
Administrative Judge