



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



In the matter of: )  
)  
) ISCR Case No. 14-04444  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On March 27, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Based on a review of Applicant's e-QIP and the ensuing background investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on February 10, 2015, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006. The SOR alleged security concerns under the financial considerations guideline.

On April 14, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On September 29, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 6. On October 12, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. On December 9, 2015, Applicant submitted a Response to the FORM that has been marked as Item 7. Department Counsel had no objection to Applicant's submission. The case was assigned to me on January 5, 2016.

### **Findings of Fact**

The SOR alleged that Applicant had 15 delinquent debts totaling \$45,480 (SOR ¶¶ 1.a-1.o). In his Answer to the SOR, Applicant denied the two largest debts – a charged-off mortgage loan for \$42,510 (SOR ¶ 1.a) and a charged-off credit card account for \$1,592 (SOR ¶ 1.b). The two denied debts account for 96% of the alleged indebtedness. He admitted the remaining SOR debts. His admissions are incorporated as findings of fact. Credit reports in the FORM contain substantial evidence of the denied debts.<sup>1</sup>

Applicant is a 54-year-old business manager who has been working for a defense contractor since January 1984. He graduated from high school in 1979 and earned a bachelor's degree in 1983 and a master's degree in 1987. He has not served in the military. He has been married for the past 23 years. His e-QIP listed four children, ages 17, 19, 21, and 23, and three stepchildren, ages 26, 27, and 35. He was granted a security clearance in 2003.<sup>2</sup>

In an Office of Personnel Management (OPM) interview in May 2013, Applicant attributed his delinquent debts to medical expenses incurred by him and his son and to his wife's irresponsible spending habits. During the interview, Applicant indicated that he was unaware of most of the medical bills reflected on his credit report.<sup>3</sup>

SOR ¶ 1.a – charged-off account for \$42,510. This was a second mortgage on Applicant's former residence. In his Answer to the SOR, he indicated this mortgage loan was canceled as a result of a legal action that alleged the lender used unfair lending practices for securing nonprime, high-interest-rate loans for debt consolidation. His Answer contained no documentation confirming his claim. In his Response to the FORM, he provided an IRS Form 1099-C (Cancellation of Debt) and two Settlement Statement (HUD-1) forms. These documents established that the second mortgage was cancelled in February 2013. The home was sold in June 2015 when Applicant moved to another city for a new job assignment. The HUD-1 form for the sale of his former

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<sup>1</sup> Items 1, 3, 5, and 6.

<sup>2</sup> Items 1 and 2. In his Answer to the SOR, Applicant indicated that he has raised eight children, but his e-QIP only lists four children and three stepchildren. In his e-QIP, he indicated that he had no former spouses, but he disclosed that he had a former spouse in his OPM interview.

<sup>3</sup> Item 4.

residence reflected that the sales price was \$340,000. The lender of the first mortgage (who was also the lender of the canceled secondary mortgage) received \$178,136 for the payoff of the first mortgage, and no money went toward the payment of a second mortgage during that transaction. Applicant received \$129,434 in that sale. In July 2015, he purchased a home in another city for \$270,000. The debt in SOR ¶ 1.a has been resolved.<sup>4</sup>

SOR ¶ 1.b – charged-off account for \$1,592. This was a credit card account that had a date of last activity of January 2013. In his Answer to the SOR, Applicant stated that he was diagnosed with cancer and lost track of this debt. He also indicated the debt was paid as of July 2014. In his Response to the FORM, he presented a document from a law firm confirming the payment of this debt.<sup>5</sup>

SOR ¶¶ 1.c, 1.e, 1.f, 1.j, and 1.k – medical debts past due for \$222, \$97, \$67, \$45, and \$32. In his Answer to the SOR, Applicant stated that his son was diagnosed with a spinal condition that required surgery and his daughter was diagnosed with Lupus. His medical insurance only paid a portion of the bills. He stated that he was unaware his medical insurance did not pay the full bills, but also indicated that he was remiss in not paying closer attention to the charges and was surprised and embarrassed these debts have negatively impacted his credit report. In his Response to the FORM, he provided documentation establishing the above medical debts have been paid.<sup>6</sup>

SOR ¶¶ 1.d, 1.g, 1.h, 1.i, 1.l, 1.m, 1.n, and 1.o – medical debts past due for \$143, \$64, \$62, \$60, \$374, \$92, \$60, and \$60. These eight medical debts total \$915. In his Response to the FORM, Applicant indicated that he did not have specific information about these accounts and was attempting to identify the creditors. He stated that, once the creditors were identified, he would pay the balance owed.<sup>7</sup>

In his Answer to the SOR and Response to the FORM, Applicant highlighted recent events that have improved his financial situation. First, he noted that only one of his children still resides in his home and that child has no medical problems. Second, he received a promotion, which was the reason for his move to another city. Third, he indicated that his current mortgage payments, utility bills, and property taxes were lower than those at his previous residence. Fourth, he paid off his car loan. Finally, he mentioned he regularly maintained a zero balance on all of his credit cards.<sup>8</sup>

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<sup>4</sup> Items 1 and 7.

<sup>5</sup> Items 1 and 7.

<sup>6</sup> Items 1 and 7.

<sup>7</sup> Items 1 and 7.

<sup>8</sup> Items 1 and 7.

Applicant provided no evidence that he received financial counseling. He did not provide a monthly budget. The amount of his discretionary income each month is unknown.

## Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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, *Safeguarding Classified Information Within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in reaching a decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's admissions and the record evidence established two disqualifying conditions in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant has been diagnosed with cancer. His son had a spinal condition that required surgery and his daughter was diagnosed with Lupus. These medical problems were conditions beyond his control that contributed to his financial problems. However, he also attributed his financial problems to his wife's irresponsible spending and his failure to track properly his medical bills. Based on these circumstances, he receives only partial credit under AG ¶ 20(b).

Applicant resolved the two largest debts (SOR ¶¶ 1.a and 1.b) that account for 96% of the alleged indebtedness. He has also paid five medical debts. He is in the process of tracking down the creditors of the eight remaining medical debts totaling \$915. He provided sufficient evidence to show that his financial problems are under control and are being resolved. His delinquent debts do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) partially apply. AG ¶ 20(c) applies. AG ¶ 20(e) applies to SOR ¶ 1.a.

### **Whole-Person Concept**

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>9</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating

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<sup>9</sup> The adjudicative process factors listed at AG ¶ 2(a) are as follows:

- (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.

evidence, outweighs the security concerns at issue. Applicant met his burden of persuasion. His financial problems leave me with no questions or doubts as to his current eligibility to access classified information.

### **Formal Findings**

As required under the Directive, the formal findings are:

Paragraph 1, Guideline F:           For Applicant

Subparagraphs 1.a – 1.o:           For Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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James F. Duffy  
Administrative Judge