



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



In the matter of: )  
)  
) ISCR Case No. 14-06322  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

11/24/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On March 16, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action 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 by DOD on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On April 8, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 15, 2015. The Defense

Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 7, 2015, and the hearing was convened as scheduled on July 22, 2015.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5. Applicant testified and submitted Applicant Exhibit (AE) A through G. All exhibits were admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on July 28, 2015.

### Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has been working for that contractor since April 2013. He graduated from high school in 1995. He earned a bachelor's degree in 2005 and a master's degree in 2010. He has been married and divorced twice. He has two children, ages 5 and 15. He has held a security clearance for a number of years.<sup>1</sup>

The SOR alleged that Applicant has 34 delinquent debts totaling about \$160,000. In his Answer to the SOR, Applicant neither admitted nor denied the debts in SOR ¶¶ 1.m (\$2,450), 1.s (\$1,565), 1.x (\$182), 1.aa (\$21), and 1.ee (\$748) but indicated that he was researching them. He denied the debts in SOR ¶¶ 1.w (\$379), 1.bb (\$1,142), 1.cc (\$14,244), 1.ff (\$1,176), and 1.hh (\$1,124), and admitted the remaining allegations with comments. His admissions are incorporated as findings of fact. The debts in SOR ¶¶ 1.s, 1.w, and 1.x are not substantiated in the government exhibits. I find in favor of Applicant on SOR ¶¶ 1.s, 1.w, and 1.x. Entries in credit reports (GE 4, 5) substantiate the debts in SOR ¶¶ 1.m, 1.aa, 1.bb, 1.cc, 1.ee, 1.ff, and 1.hh.<sup>2</sup>

In an Office of Personnel Management (OPM) interview in July 2012, Applicant indicated that his financial problems started when he and his first wife separated in December 2007. He was laid off from a job in March 2008 and remained unemployed until June 2008. He and his first wife divorced in June 2008. He was also unemployed from May 2011 to September 2011, when he left a job because he “[d]esired better career growth opportunity.”<sup>3</sup>

Applicant worked as a computer security system analyst for a major defense contractor from September 2011 to April 2013, earning about \$78,000 annually. He left that defense contractor job because his wife lived and worked in a distant city. He thought it would be easy to obtain another job in that distant city, but was unable to obtain full-time employment there. He did not receive unemployment compensation during this period of unemployment. In May 2014, he returned to his former city and obtained a part-time job working for the city. In that part-time job, he works about 20

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<sup>1</sup> Tr. 6-7, 26-35, 39-45; GE 1.

<sup>2</sup> Applicant's Answer to the SOR.

<sup>3</sup> GE 2.

hours per week and earns about \$1,000 per month. At the time of the hearing, he was still working in the part-time job. In October 2014, he obtained a full-time job working for a defense contractor, earning about \$33,000 annually. His current employer is sponsoring him for a security clearance. In March 2015, he received an offer to work for another defense contractor with a starting salary of \$78,000. This job offer is contingent on the prospective employer being awarded a certain contract and Applicant obtaining a Top Secret security clearance. In June 2015, he was granted a divorce from his second wife.<sup>4</sup>

In March 2002, Applicant filed Chapter 7 bankruptcy and received a bankruptcy discharge in July 2002. This bankruptcy was not alleged in the SOR. He indicated that he had a lot of credit card debt at that time. He could not recall the amount of debt discharged in the bankruptcy.<sup>5</sup>

SOR ¶ 1.a – child support arrearages of \$40,942. Applicant testified that he was not aware that he was the father of his five-year child until she was about three years old. When paternity was established, a court assessed him child support arrearages for the first two years of the child's life. Applicant's part-time wages are garnished \$111 every two weeks for the child support payments and arrearages. He provided pay stubs confirming the garnishment. He believed about \$25 of the biweekly garnishment went toward payment of the arrearages. He also testified that he was now residing with the five-year-old and her mother. He was not sure how the current custody situation would impact his child support obligations. Upon questioning, he testified that he had no documentation showing the he was relieved of the child support arrearages.<sup>6</sup>

SOR ¶¶ 1.b through 1.l, 1.p, 1.q, 1.t, and 1.gg – student loans with past-due amounts totaling about \$42,000 and outstanding balances totaling about \$83,000. At the hearing, Applicant estimated that his student loans total about \$98,000. He testified that he was looking into consolidating his student loans and was also trying to participate in a loan forgiveness program. He indicated that he has not made any payments on the student loans since graduating with his master's degree, but had received deferments. No documentation was presented establishing the deferments. He further testified that the loans were not deferred at the time of the hearing, and he did

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<sup>4</sup> Tr. 28, 39-45; GE 1, 2; AE A, E-G.

<sup>5</sup> Tr. at 45-51; GE 3. Conduct not alleged in the SOR will not be considering in applying the disqualifying conditions, but "may be considered (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular adjudicative guideline is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3 . . . ISCR Case No. 00-0633 at 3 (App. Bd. Oct 24, 2003)." ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006).

<sup>6</sup> Tr. 30-35; GE 2; AE C, D; Applicant's Answer to the SOR.

not know when the deferments ended. He also did not know the total amount he owed each month for these loans.<sup>7</sup>

SOR ¶¶ 1.m, 1.aa, and 1.ee – delinquent accounts totaling \$3,219. These debts are two medical bills and a cell phone account. In his Answer to the SOR, Applicant indicated that he was researching these debts. He testified that he did not have any additional information about these debts. They remain unresolved.<sup>8</sup>

SOR ¶¶ 1.n, 1.o, 1.r, 1.u, 1.v, 1.y, 1.z, and 1.dd – delinquent accounts totaling \$13,143. Applicant testified that these accounts remain unresolved.<sup>9</sup>

SOR ¶¶ 1.bb, and 1.hh – delinquent accounts totaling \$2,266. In his Answer to the SOR, Applicant indicated that these accounts were paid in full. He provided no documentation showing the accounts were paid. They remain unresolved.<sup>10</sup>

SOR ¶ 1.cc – collection account totaling \$14,244. In his Answer to the SOR, Applicant denied this debt and indicated that it was over ten years old. He stated he was going to research it and have it removed from his credit report. This was a loan for a truck that Applicant purchased for about \$33,000 in late 2004 or early 2005. The truck was voluntarily repossessed after he was laid off from his job in 2008 and while he was going through a divorce. He provided no documentation showing this debt has been disputed or resolved.<sup>11</sup>

SOR ¶ 1.ff – collection account for \$1,176. Applicant provided documentation showing this account was paid in full in February 2011.<sup>12</sup>

Applicant traveled with his wife to the Bahamas in 2005, Mexico in 2006, and Jamaica in 2010. Each of the first two trips cost about \$1,500. He indicated that he did not pay for the Jamaica trip. At the time of the hearing, he had not yet filed his 2014 federal and state income tax returns and had not requested filing extensions. He was “not really sure” why he had not filed those income tax returns. He further stated, “I just

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<sup>7</sup> Tr. 35-38, 55, 62, 68-70; Applicant’s Answer to the SOR.

<sup>8</sup> Tr. 51, 57-58, 61-62; Applicant’s Answer to the SOR.

<sup>9</sup> Tr. 51-58, 61; Applicant’s Answer to the SOR.

<sup>10</sup> Tr. 56, 58, 62; Applicant’s Answer to the SOR.

<sup>11</sup> Tr. 59-61; Applicant’s Answer to the SOR.

<sup>12</sup> Tr. 62-63; AE B; Applicant’s Answer to the SOR.

hadn't really think (sic) about it. I just wait, you know, wait until they respond to me and then I'll file." He was not sure whether he filed his 2012 and 2013 income tax returns.<sup>13</sup>

## 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

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<sup>13</sup> Tr. 63-69; GE 1. Applicant's failure to file his 2014 income tax returns as required was not alleged in the SOR. See note 4, above, for the limited purposes that conduct not alleged in the SOR may be considered.

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 for this guideline is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

The evidence established that Applicant accumulated delinquent debts that he was unable or unwilling to pay for an extended period. AG ¶¶ 19(a) and 19(c) apply in this case.

Five financial considerations 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.

Insufficient evidence was presented to establish that Applicant's financial problems are under control or will be resolved within a reasonable period. His delinquent debts are recent and ongoing. He has experienced conditions beyond his control – such as being laid off from a job, lack of knowledge of a child's paternity, and divorces – that have contributed to his financial problems; however, he failed to establish that he has acted responsibly under the circumstances. Since obtaining his current job in April 2013, he has shown that he has only resolved one of the alleged debts (SOR ¶ 1.ff). His pay is being garnished for child support payments and arrearages. He failed to present a realistic plan for resolving the remaining debts, including the student loans. His delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment. No documentation was presented to show that he has a legitimate basis for disputing any of the debts. AG ¶¶ 20(a), 20(c), and 20(e) are not applicable. AG ¶¶ 20(b) and 20(d) partially apply. Financial security concerns remain despite the presence of some mitigation.

### **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>14</sup> In this case, I gave due consideration to the information about

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<sup>14</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

Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion to mitigate the security concerns. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant a security clearance must be resolved in favor of national security.

### **Formal Findings**

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	For Applicant
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t-1.v:	Against Applicant
Subparagraphs 1.w-1.x:	For Applicant
Subparagraphs 1.y-1.ee:	Against Applicant
Subparagraph 1.ff:	For Applicant
Subparagraphs 1.gg-1.hh:	Against Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant’s eligibility for a security clearance. Clearance is denied.

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James F. Duffy  
Administrative Judge

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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.