



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 15-01571  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2016

---

**Decision**

---

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 on May 5, 2014. On August 23, 2015, 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 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on September 17, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 12, 2015, and the case was assigned to me on November 23, 2015. On November 30, 2015, the Defense Office of Hearings and Appeals (DOHA) notified

Applicant that the hearing was scheduled for December 14, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until January 8, 2016, to enable him to submit additional documentary evidence. DOHA received the transcript (Tr.) on December 22, 2015.

Applicant submitted an e-mail with missing attachments on January 8, 2016. After being contacted about the incomplete e-mail, he submitted AX D through G on February 22, 2016, which were admitted without objection. The record closed on February 23, 2016.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a, 1.c, 1.d, 1.l, and 1.p. He denied SOR ¶ 1.b, 1.e-1.k, 1.m-1.o, 1.q, and 1.r. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 40-year-old service delivery representative employed by a defense contractor. He has worked for defense communications contractors since August 2003. He holds an active security clearance. (Tr. 7.)

Applicant attended a technical college from February 2003 to April 2004 and received an associate's degree in computer science. He served on active duty in the U.S. Navy from June 1993 to June 1997 and received an honorable discharge.

Applicant married in November 2002 and divorced in April 2005. He has a 17-year-old daughter from a previous relationship. He testified that his financial problems began when he divorced and incurred expenses setting up a new household for himself and his daughter, who is a high school student and lives with him. (Tr. 40-41.)

Applicant's credit bureau reports (CBRs) from May 2014 and January 2015 reflect 18 delinquent debts. The evidence concerning the debts is summarized below.

**SOR ¶¶ 1.a and 1.g, penalty for early lease termination (\$8,424 and \$8,217).** Applicant cosigned a lease for a friend and became liable when the friend terminated the lease early. He contacted his friend shortly after being interviewed by a security investigator in June 2014, but she has not responded. The two debts have different account numbers. The debt in SOR ¶ 1.a was referred for collection in February 2012, and the debt in SOR ¶ 1.g was referred in October 2013. (GX 2 at 7.) Applicant admitted that he is liable for one of the debts, but he filed a dispute with the credit bureau because he believed that the two debts were duplicates. (Tr. 29-32.) Both debts were reflected on Applicant's May 2014 CBR, but only the debt in SOR ¶ 1.a was reflected on his June 2015 CBR, indicating that the dispute was resolved in his favor. He paid the remaining debt. (AX G.)

**SOR ¶ 1.b, penalty for early termination of cell phone contract (\$1,364).** Applicant denied this debt in is response to the SOR. At the hearing, he admitted that he owed a penalty, but he disagreed with the amount. As of the date the record closed, he had not disputed or resolved the debt. (Tr. 34.)

**SOR ¶ 1.c, satellite television service (\$730).** Applicant has not contacted the creditor. The debt is not resolved. (Tr. 34.)

**SOR ¶ 1.d, cell phone bill (\$425).** Applicant admitted this debt but has not resolved it. (Tr. 35.)

**SOR ¶ 1.e, telecommunications service (\$56).** Applicant paid this debt in December 2015. (AX F.)

**SOR ¶ 1.f, collection account (\$636).** Applicant denied this debt and testified that he does not know the basis for it. He has not filed a dispute with the credit bureau because he was waiting for the debt to “age off” his credit report in accordance with the Fair Credit Reporting Act.<sup>1</sup> (Tr. 37-38.) The debt is not resolved.

**SOR ¶¶ 1.h, 1.j, and 1.k, student loans for \$1,186; \$964; and \$723.** Applicant paid \$50 per month under a rehabilitation agreement beginning in May 2014. (Tr. 41-43; AX B; AX E.) The loans are not reflected on his January 2015 CBR. They are resolved.

**SOR ¶ 1.i, medical bill (\$1,058).** Applicant has not contacted the creditor or taken any action to dispute or resolve this debt. (Tr. 43-44.)

**SOR ¶ 1.l, collection account for loan (\$307).** Applicant admitted this debt. He made a few occasional payments on this debt before it was referred for collection in April 2014. It is unresolved. (Tr. 44-45.)

**SOR ¶ 1.m, library debt (\$237).** Applicant incurred this debt by failing to return library books on time. He testified that he returned the books by dropping them in the return slot at the library, but the library claimed he had not returned all the books. He has taken no action to resolve this debt. (Tr. 45-46.)

**SOR 1.n, auto insurance (\$102).** Applicant terminated his insurance contract and disagreed with the amount the insurance company claimed that he owed at the time of termination. He claimed he owed \$50. He testified that he intended to pay this debt, but he had not done so by the time the record closed. (Tr. 47-48.)

---

<sup>1</sup> Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, which is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

**SOR ¶¶ 1.o, 1.p and 1.q, medical bill (\$97), auto insurance (\$94), and fire insurance (\$72).** Applicant has taken no action to dispute or resolve these debts. (Tr. 49-52.)

**SOR ¶ 1.r, municipal debt (\$71).** At the hearing, Applicant claimed that he did not know the basis for this debt. After the hearing, he submitted evidence that a tax lien had been released. The debt is resolved. (AX D; Tr. 52.)

At the hearing, Applicant submitted a written plan for resolving his debts. The plan provides for him to (1) contact his creditors, offer settlement, and resolve them starting with the lowest balances and advancing to higher balances; (2) dispute inaccurate and erroneous CBR information; (3) continue to pay credit card accounts; (4) avoid new debts; and (5) obtain credit monitoring service and consider a credit report freeze. (AX C.)

Applicant became aware of the debts alleged in the SOR when he was interviewed about them by an investigator in June 2014. He did not promptly start paying the smaller debts, as provided for in his debt-resolution plan, because he “just didn’t put a high priority on it right then and there.” (Tr. 50.)

Applicant’s take-home pay is about \$2,600 per month. He pays rent of \$1,050. He has no car payment. He usually has a net monthly remainder of about \$600 or \$700. He has three credit cards, on which the payments are current. He has about \$10,000 in his retirement account. (Tr. 56-57.)

## **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

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

The 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 his CBRs establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

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

AG 20(b) is not fully established. Applicant's marital breakup in 2005 and his friend's failure to comply with her lease were circumstances beyond his control. The record contains no evidence indicating that the medical debts were unexpected. Applicant has acted responsibly by rehabilitating his student loans (SOR ¶¶ 1.h, 1.j, and 1.k) and resolving the lease termination penalty (SOR ¶¶ 1.a and 1.g), but he has taken no action to resolve the debts alleged SOR ¶¶ 1.b, 1.c, 1.f, 1.i, and 1.l-1.q.

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

AG 20(d) is established for the delinquent debts alleged in SOR ¶¶ 1.a, 1.e, 1.g, 1.h, 1.j, 1.k. and 1.r. It is not established for the other delinquent debts.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.a and 1.g. It is not established for the other delinquent debts.

### **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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(a). 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. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a: For Applicant

Subparagraphs 1.b-1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant
Subparagraphs 1.l-1.q:	Against Applicant
Subparagraph 1.r:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge