



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 15-02538  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2016

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 16, 2014. On October 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 October 30, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 17, 2016, and the case was assigned to me on February 22, 2016. On February 26,

2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 22, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 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 April 6, 2016, to enable him to submit additional documentary evidence. He timely submitted AX D through G, which were admitted without objection. Department Counsel's comments regarding AX D through G are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on March 30, 2016.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations in SOR ¶¶ 1.a-1.n, but commented that some of the delinquent debts alleged in the SOR had been paid. He attached documentation showing payment of two debts. He did not admit or deny SOR ¶ 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 61-year-old inspection supervisor employed by a defense contractor since September 1980. He also holds three part-time jobs as a limousine driver, football official, and event staff supervisor for a local university. Applicant married in September 1986, and he and his wife have four adult children. He has held a security clearance since about 1984. (Tr. 34.)

The SOR alleges 14 delinquent debts, which are reflected in his June 2014 and February 2015 credit bureau reports. (GX 3; GX 4.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: home mortgage loan (past due payments of \$244,967; balance on loan of \$453,641).** Applicant's financial problems began when he and his wife decided to refinance their home mortgage loan to reduce their monthly payments, and they obtained an adjustable-rate loan. Applicant's wife was handling the family finances at the time, and she suggested the refinancing. When the rate adjusted and the payments increased, and they could no longer afford them. They offered to make partial payments and tried to renegotiate the loan, without success. They stopped making payments about four years ago. In a personal subject interview in August 2014, Applicant told the investigator that his wife was taking most of the family income and donating it to their church. They were notified in February 2011 that the lender was foreclosing on the property. They moved out of the house and expected it to be sold. In November 2011, they discovered that the property had not been sold, when the homeowners' association notified them that the association dues had not been paid. As of the date of the hearing, they had paid the past-due association dues, which are not alleged in the SOR. (GX 2 at 2; Tr. 38-43.)

**SOR ¶ 1.b: credit-card account placed for collection for \$1,135.** Applicant testified that he thought this account was paid off because he never received any bills.

He contacted the creditor after receiving the SOR and was informed that the account had been sold. (Tr. 44-45.) The debt is unresolved.

**SOR ¶ 1.c: credit-card account placed for collection for \$538.** After the hearing, Applicant settled this debt for \$349.70. (AX F.)

**SOR ¶ 1.d: credit-card account charged off for \$511.** Applicant provided no information about this account. (Tr. 46.) It is unresolved.

**SOR ¶ 1.e: satellite television service referred for collection for \$164.** Applicant speculated that the debt might be for equipment. He had satellite service about five or six years ago. (Tr. 46-47.) The debt is unresolved.

**SOR ¶ 1.f: telecommunications bill referred for collection for \$78.** The account is current. (AX E.)

**SOR ¶ 1.g: credit-card account referred for collection for \$68.** Applicant provided no information about this account. It is unresolved.

**SOR ¶¶ 1.h-1.k: four judgments obtained by a property management company for late rent payments (\$1,630; \$1,140; \$1,151; and \$245).** Applicant testified that each judgment was filed within a few days after the rent was past due. (Tr. 48-50.) All four judgments were satisfied in 2011 and 2012. (Attachments to SOR answer.)

**SOR ¶¶ 1.l and 1.m, electronics company debt referred for collection for \$452; credit card account referred for collection for \$452.** Applicant settled a \$662 bill from a collection company, to whom both debts had been referred, for \$66. (AX A.) He settled it shortly before the hearing, and he was not sure that his payment settled both debts. (Tr. 51-52.)

**SOR ¶ 1.n, insurance bill referred for collection for \$52.** This debt was paid before Applicant received the SOR. (AX G; SOR Answer.)

Shortly before the hearing, Applicant made the final payment of \$353 on a \$1,155 debt to a furniture store. (AX B.) He recently received an offer for a pre-approved credit card from the creditor alleged in SOR ¶ 1.b, with a \$1,500 credit limit. (AX C.) He thought it was ironic for the holder of a delinquent debt referred for collection to offer him additional credit. (Tr. 54.)

When Applicant submitted his SCA in June 2014, he did not disclose any delinquent debts. He testified that he thought the home would be sold, although they still owned it when he submitted his SCA. He testified that "it didn't cross [his] mind" to disclose the delinquent mortgage-loan payments. He also testified that he had not checked his credit report, had not received bills from any of the creditors alleged in the

SOR, and was unaware that he had other delinquent debts in addition to the mortgage loan. (Tr. 55-56.)

Applicant's annual salary is about \$82,000. With overtime, he usually earns about \$95,000 per year. (Tr. 36.) He and his wife now have a joint bank account, which is used for household expenses, and each has a separate account. Applicant has about \$1,000 in his personal account. He pays the rent, car payments, and insurance. His wife pays the utilities, cable, and personal expenses. At the hearing, he was unfamiliar with the amounts and status of the recurring debts handled by his wife. His wife recently retired and receives a pension, but Applicant does not know how much she receives. (Tr. 61-64.)

Applicant has not received financial counseling. He considers his current financial situation as "good." (GX 2 at 4.)

### **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, corroborated by his credit bureau reports, 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(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. The increase in the interest rate on Applicant's home loan was a circumstance beyond his control, but it was not unforeseeable. He gambled on the interest rate going down and lost. The financial mismanagement by his wife was a not condition completely beyond his control. He chose to let her handle all the family finances and remained uninvolved until they fell behind on their mortgage loan. When he discovered her mismanagement, he did not act responsibly. He took no significant action to assess their financial situation. As of the date of the hearing, he was still uncertain about the status of the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.g. Even after taking control of the rent payments, car payments, and insurance payments, he trusts his wife to pay the utilities, cable service, and personal expenses, with no oversight or participation on his part. He knows she receives a retirement pension, but has not bothered to find out how much income she contributes to the family finances.

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. This mitigating condition is established for the debt alleged in SOR

¶ 1.a, on which Applicant made reasonable efforts to resolve the delinquent mortgage-loan. The resolution of this debt has been pending since February 2011, through no fault of Applicant. AG 20(d) is established for the debts alleged in SOR ¶¶ 1.f, 1.h-1.k, and 1.n, which were resolved before Applicant received the SOR. It is not established for the debts alleged in SOR ¶¶ 1.l and 1.m, which were resolved after Applicant received the SOR and less than a month before the hearing. It is not established for the debt in SOR ¶ 1.c, which was resolved after the hearing. It is not established for the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.g, on which no significant action has been taken.

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR, make payments on all delinquent debts simultaneously, or pay the debts alleged in the SOR first. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's response to his delinquent debts has been haphazard and not part of a credible, reasonable plan.

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . ." When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant has held a security clearance for many years and has been required to revalidate his clearance several times. The evidence reflects that Applicant has been

uninvolved in the family finances for many years. After being notified that his clearance is in jeopardy, he took control of some of the family financial obligations, but is still uninterested in the family obligations administered by his wife. Under these circumstances, his claim that he was unaware of the debts alleged in SOR ¶¶ 1.b-1.n is plausible and credible. He admitted that he knew the home mortgage-loan was in trouble, but it “slipped [his] mind,” which is consistent with his history of disinterest in financial matters. Applicant’s omissions from his SCA were the product of culpable ignorance. Culpable ignorance does not equate to intentional falsification. Accordingly, I conclude that AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are applicable.

**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 and E in my whole-person analysis and I have considered the factors in AG ¶ 2(a). Applicant is a mature adult with many years of service as a defense contractor with a security clearance. However, he is financially naïve and, until recently, disinterested in his family’s financial health. Even after receiving the SOR, he has not demonstrated the sense of urgency expected of one entrusted with classified information.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies. 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.k:	For Applicant
Subparagraphs 1.l and 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a:	For Applicant
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## 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