



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



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 15-02812  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

06/29/2016

**Decision**

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances beyond his control, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on August 1, 2014. On October 5, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD 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 DOD on September 1, 2006.

Applicant answered the SOR on November 13, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 15, 2015, and the case was assigned to me on March 14, 2016. On March 23, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that

the hearing was scheduled for April 13, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A through P, which were admitted without objection. I kept the record open until April 27, 2016, to enable him to submit additional documentary evidence. He timely submitted AX Q<sup>1</sup> through T, which I have admitted without objection. DOHA received the transcript (Tr.) on April 22, 2016.

### **Findings of Fact**

The SOR alleges 23 delinquent debts, 22 of which total approximately \$27,049. These delinquent debts include two student-loan accounts, eight medical bills, a cellular telephone bill, a cable service bill, and numerous credit-card accounts. The other alleged debt is for an unspecified amount due for the deficiency balance for a mortgage account that went into foreclosure. In his Answer, Applicant admitted SOR ¶¶ 1.a – the mortgage account, 1.b. – a student loan account, and 1.k – an insurance account, and denied the remaining allegations. He also gave a brief description of the status of each alleged debt. His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) dated August 2014, February 2015, and November 2015. (GX 2; GX 3; AX H.)

Applicant is a 38-year-old instructor employed by a defense contractor since 2006. He has held a clearance since August 2004. He served honorably in the U.S. Army from August 1995 until December 1998, and in the Army National Guard from January 1999 until March 2001. He attended college between August 2003 and June 2005, and between August 2007 and June 2009. He and his first wife married in 2002 and divorced in 2005. He and his current wife married in January 2013, and she has two sons, nine and eight years old, who reside with them. (Tr. 46-49.) He is considered to be trustworthy, reliable, and loyal by his supervisor, his former supervisor and current coworker, and other coworkers, most of whom have worked with Applicant for about 10 or more years. (AX T.) His April 2015 - March 2016 employment performance appraisal rated him as "Outstanding" in all applicable categories. (AX D.) His landlord states that he is trustworthy, reliable, and helpful, and that he pays his rent on time, if not early. (AX P.)

Following Applicant's divorce in 2005, he remained responsible for the marital debt. After several years, he was able to resolve the debts, and in 2008, he qualified for a Department of Veteran Affairs (VA) guaranteed loan, and secured a mortgage loan for the purchase of a house. In 2009, he met his current wife, and in 2010, she and her two sons moved in with Applicant, who became financially responsible for them as the sole income earner. The greater financial obligations placed a strain on Applicant's financial resources, yet he was able to maintain his mortgage payments. Later in 2010, his future mother-in-law was diagnosed with cancer, and required financial and emotional support. (Answer.) As a result of the additional expenses, Applicant began falling behind on his financial obligations, including his student loans. (GX 1.) In 2011, he missed two or

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<sup>1</sup> AX Q is an electronic mail exchange between Applicant and Department Counsel that includes an explanation of each of the additional exhibits submitted by Applicant.

three mortgage payments, and owed approximately \$3,600 in arrears. (Tr. 35-36.) He contacted the lender, and attempted to negotiate an agreement whereby he would make additional monthly payments of approximately \$500, until the arrearage was paid off. The lender demanded a full, lump-sum payment of the arrearage. He was unable to make this payment, and the lender initiated foreclosure. Upon learning of the foreclosure, he and his family vacated the house due to their concern of arriving home and finding themselves locked out. (Tr. 35-39.) He attempted to rent the house, but was unsuccessful. (Tr. 39.) Applicant's wife also suffered from cancer, and the expense of her copays and other treatment-related costs not covered by insurance added to the family's financial strain. (Tr. 79-81.)

Applicant incurred additional expenses when he moved his family into a rental house. His relationship with the owner started out well, however, the owner's personal life was troubled, and after about 10 months, Applicant decided not to renew his lease. This decision resulted in discord with the owner, who filed for eviction, with damages. In June 2012, the owner was awarded a \$5,000 judgment against Applicant, who states that the owner and her boyfriend perjured their testimony to secure the judgment. Applicant paid the unanticipated expense of the judgment, and has had no further contact with the owner.

Applicant and his family have lived in their current residence since 2012, with a rent-to-own contract that will be exercised once their credit issues are resolved. (Answer.) Applicant has not incurred any delinquent debt since 2012, and the majority of his past-due debts, including the mortgage debt, were incurred between 2009 and 2011. (GX 3.) He and his family live within their means, and are current on their regular living expenses. Applicant's wife is in charge of their finances, and testified that they usually have a surplus of \$400 to \$500 after their monthly bills are paid. (Tr. 73.) The monthly net remainder is used for unexpected expenses, such as recent car repairs or items for the children, and for medical costs. (Tr. 76.)

From January 2015 through July 2015, and from November 2015 until the present time, Applicant has been enrolled in a program with a credit-repair company. He pays a monthly fee to the company, and the company contacts Applicant's creditors and disputes, pays, or otherwise negotiates the resolution of his debts. (Answer; AX A.) He provided documentary evidence that shows that the following 18 SOR debts have been removed from his credit report: SOR ¶¶ 1.d, 1.e, and 1.i through 1.w. (AX K; AX L; AX N.) The following debts were identified as duplicates: SOR ¶¶ 1.k and 1.m, 1.l and 1.r, 1.o and 1.q, and, 1.s and 1.v. (AX M; AX C; AX D; AX F; AX G.) The status of the unresolved debts is discussed below.

SOR ¶ 1.a – Mortgage loan. The November 2015 CBR shows a \$0 balance. Applicant testified that the result of the foreclosure was that the lender sold the property to the VA, and any deficiency balance was absorbed by the VA, thereby resolving this debt. (Tr. 30.) AX R indicates that the loan was foreclosed in October 2011, and the house was sold at auction to the lender purchased for \$125,382. The lender then sold the house to the VA, under the terms of the original loan for \$165,140. In the event that Applicant seeks another VA-backed mortgage loan, he either has to pay the deficiency balance from the foreclosure to the VA, or his entitlement will be offset by the amount of

the deficiency balance. The VA will not actively attempt to collect the deficiency balance from Applicant. (AX Q.) Applicant received notification of a class-action lawsuit against the lender due to its foreclosure practices, which he joined, but has not received any information about the status of the lawsuit. (Tr. 40-41)

SOR ¶¶ 1.b and 1.d – Student loans - \$8,299 and \$5,313. The balances on the November 2015 CBR were \$6,215 and \$3,979. Applicant’s annual tax refunds were captured to pay these debts. (Tr. 46-48.) In April 2016, Applicant entered a student loan rehabilitation program with the current loan holder under which the two consolidated loans totaled \$10,521.26, which includes interest and collection fees. He agreed to make 10 consecutive monthly payments to the current loan holder, after which the loan holder will sell the loan to a participating lender. He will then be required to make monthly payments in an amount set by the new loan holder. (AX S.) SOR ¶ 1.d was deleted from Applicant’s CBR when the two loans were purchased by the current loan holder and consolidated. (AX K; AX S.)

SOR ¶ 1.c – Personal loan - \$6,740. The November 2015 CBR shows this account as having been charged off 2011, and that Applicant has disputed the account.

SOR ¶ 1.f – credit-card account - \$852. The November 2015 CBR shows a \$0 balance and that this account has been charged off, purchased by another lender, and that Applicant has disputed the account. The debt does not appear elsewhere on the CBR as owed to another lender. (AX H.)

SOR ¶¶ 1.g and 1.h – credit-card accounts to the same lender - \$509 and \$502. The November 2015 CBR shows these accounts as having been charged off in 2010, and that Applicant has disputed these accounts.

### **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’s 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 testimony, corroborated by the record evidence, establishes 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").

However, a person can mitigate concerns about his ability to handle and safeguard classified information raised by his financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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.

Before his mother-in-law's illness, Applicant was overall able to meet his financial obligations. However, the additional expenses caused by providing for his mother-in-law, combined with increased living expenses, resulted in several missed mortgage payments. Thus began the downward spiral of Applicant's finances. The circumstances contributing to his financial woes were largely beyond his control, including medical

expenses for his mother-in-law and his wife, and the judgment in favor of his former landlord. He acted responsibly under the circumstances by attempting to resolve his mortgage issues with the lender, and by contracting with the credit-repair company about 10 months before he received the SOR. Through the actions of the credit-repair company, all but seven of the SOR debts have been removed from Applicant's CBR. While he only recently entered the student loan rehabilitation program, which addresses two of the unresolved SOR debts, he knew that his loans were being paid, in part, through his annual tax refunds. The deficiency balance stemming from the VA loan is not being actively collected, and it does not appear on his most recent CBR. Applicant has disputed each of the remaining SOR debts, and the debt alleged in SOR ¶ 1.f is not on the most recent CBR.

Applicant acted in good faith by entering the student-loan rehabilitation program, and by contracting with the credit-repair company to dispute, pay, or otherwise resolve his debts. "Good faith" 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). A security clearance adjudication is an evaluation of a person'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. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has not incurred any delinquent debt since 2012, and the circumstances which led to his indebtedness are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. He is addressing his outstanding debts, and currently lives within his means. AG ¶¶ 20(a) through 20(e) apply.

### **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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the military. Despite a series of financial hardships, he lives within his means, and provides for his family. I am confident that Applicant will continue his good-faith efforts to resolve his remaining delinquent debts.

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 mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.w:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge