



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



In the matter of: )  
)  
) ISCR Case No. 14-05614  
)  
Applicant for Security Clearance )

**Appearances**

For Government Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

09/15/2015

**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 12, 2013, Applicant submitted a security clearance application (SCA). Based on a review of Applicant’s SCA and the ensuing investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on March 9, 2015, pursuant to 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 March 25, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On May 21, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 11. On June 7, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. Applicant timely submitted a response to the FORM. The case was assigned to me on July 31, 2015.

### **Findings of Fact**

The SOR alleged that Applicant filed Chapter 7 bankruptcy in December 2014. In his Answer to the SOR, Applicant admitted that allegation. His admission is incorporated as findings of fact.<sup>1</sup>

Applicant is a 35-year-old employee who has been working for a defense contractor since January 2007. He also worked for that contractor from January 2003 to November 2006 when he was laid off for two months. He completed a technical school in 2007 and an online school in 2008. He has been married since October 2004. He has an eight-year-old child. He has held a security clearance since 2003.<sup>2</sup>

In his SCA, Applicant listed seven delinquent credit card debts totaling \$62,371. He indicated that he had hired a debt consolidation agency (DCA) and established a repayment arrangement to resolve those debts.<sup>3</sup>

In an Office of Personnel Management (OPM) interview dated May 8, 2013, Applicant indicated that his financial problems started in August 2006 when he purchased a house. Due to a downturn in the economy, he was unable to sell his previous house and encountered difficulties renting it. He paid both mortgages (totaling \$3,800 per month) from August 2006 to November 2011. He used credit cards to assist in meeting his financial obligations. He made minimum payments on the credit cards to keep them current. After he started renting his previous home in November 2011, he contacted the DCA to obtain assistance in resolving the credit card debt. The DCA was not a credit counseling service. The DCA advised him to stop making payments on the credit card debts until it finalized the consolidation process. In November 2011, he stopped making the payments. In February 2012, he started making monthly payments of \$646 to the DCA. At the time of the OPM interview, he indicated that he had made all of the DCA payments on time. His last payment was scheduled for November 2016. He provided no proof of the payments toward the debt consolidation program.<sup>4</sup>

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<sup>1</sup> Item 1

<sup>2</sup> Item 11.

<sup>3</sup> Item 5.

<sup>4</sup> Item 11.

In December 2014, Applicant filed Chapter 7 bankruptcy. He received financial counseling to file bankruptcy. His bankruptcy petition reflected that he had \$422,894 in assets and \$474,307 in liabilities. His creditors held secured claims totaling \$442,789 and unsecured, nonpriority claims totaling \$31,518. His current monthly income was listed as \$5,970 and his current expenditures were \$6,637. His debts were discharged in March 2015.<sup>5</sup>

In his Response to the FORM, Applicant stated that, soon after his OPM interview, a creditor obtained a garnishment of \$200 against his wages and put a lien on one of his homes. He indicated that the DCA was of “little to no help” in responding to the garnishment. His tenant fell behind on the rent and he had to evict him. His financial problems caused a strain on his marriage and led to him and his wife separating. He moved into his prior residence. He tried to do a short sale of the property, but received no offers after lowering the price four times. He consulted with an attorney who advised him to stop paying the DCA and recommended that he file bankruptcy. His attorney informed him that the DCA was being investigated for criminal activity. In his Response to the FORM, he indicated that he had an offer on one of the properties and was seeking to dispose of that property through a short sale.<sup>6</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.

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<sup>5</sup> Item 7.

<sup>6</sup> Item 11; Applicant’s Response to the FORM.

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.

Three 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; and
- (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.

In 2006, Applicant purchased a new home. Due to a downturn in the economy, he was unable to sell or rent his previous home. He paid the mortgages on both properties. He struggled financially and used credit cards to cover living expenses. When he was able to rent his prior residence in 2011, he hired a DCA to assist him in resolving his debts. He had been making the minimum payments on the credit cards until the DCA advised him to stop making the payments until the debt consolidation process was finalized. He paid into the debt consolidation program until a creditor garnished his pay. He sought legal advice, learned the DCA he hired was under investigation, and filed Chapter 7 bankruptcy. His debts were discharged in March 2015.

Applicant never ignored his delinquent debts. He consistently took steps to resolve them. His financial situation has stabilized. He has acted in a responsible manner in handling his debts. AG ¶ 20(c) applies. AG ¶¶ 20(a) and 20(b) partially apply.

### **Whole-Person Concept**

Under the whole-person concept, the 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. The 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.

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.

My comments under Guideline F are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant encountered financial difficulties and attempted to resolve them through a debt consolidation program. When his ability to make the debt consolidation payments was negatively impacted through a wage garnishment, he resolved the debts through bankruptcy. He has acted responsibly in handling his debts. Overall, the record evidence leaves me with no questions or doubts as to his eligibility and suitability for a security clearance. Applicant mitigated the security concerns under the financial considerations guideline.

### **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

### **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