



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [Redacted]                       | ) | ISCR Case No. 14-06359 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

08/21/2015

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**Decision**

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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 7, 2014. On February 3, 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 the DOD on September 1, 2006.

Applicant answered the SOR on February 25, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 6, 2015, and the case was assigned to me on May 8, 2015. On the same day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 4, 2015. I convened the hearing as scheduled. Government Exhibits

(GX) 1 through 5 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 June 19, 2015, to enable him to submit additional evidence. He timely submitted AX D and E, which were admitted without objection. DOHA received the transcript (Tr.) on June 15, 2015.

### **Findings of Fact**

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

Applicant is a 36-year-old security guard employed by a defense contractor since April 2014. He previously worked as a corrections officer for a state government. He has never held a security clearance.

Applicant was unemployed for about four months before beginning his current job. His job with the state government was about 70 miles from his residence. His normal shift was 12 hours, and sometimes he was required to work 16 hours. The combination of a long commute, long hours, and the pressure of working around dangerous prisoners was difficult and exhausting. (Tr. 36-37.) He applied for his current job while he was still employed by the state, but it took about four months to process his job application and hire him. He withdrew money from his state retirement fund to pay living expenses while he was unemployed. (Tr. 36-38.)

One of Applicant's fellow corrections officers submitted a letter on his behalf. He described Applicant as devoted to his job, placing his family and his job first, and willing to work extra shifts to pay for family expenses. He states that Applicant worked with death-row inmates and demonstrated that he could be trusted with sensitive information. (AX A.)

Applicant has never married, but he has cohabited since April 2008 with his fiancée. They have a four-year-old daughter and a four-month-old son, and his fiancée has two children from a previous relationship. (Tr. 15.)

The SOR alleges 21 delinquent debts totaling about \$15,500. Applicant admitted ten debts totaling about \$8,900. He denied the remaining debts. All the debts alleged in the SOR are reflected on Applicant's credit bureau reports (CBRs) dated May 16, 2014 and November 13, 2014. (GX 3; GX 4.)

Applicant denied the telecommunications debts alleged in SOR ¶¶ 1.b and 1.p, claiming he never had an account with that service provider. (Answer to SOR; GX 2 at 7.) He later learned that his mother had opened the accounts, using his name and social security number. (Tr. 64.) He received offers to settle the two accounts for 50% of the amount due, but he was financially unable to accept the offers. (AX B; AX C.) Both accounts were with the same service provider and referred to the same collection

agency. He later made one \$71 payment to the collection agency. (AX D.) He testified that he contacted the original creditor, who told him that he needed a police report to dispute the debts. (Tr. 65-66.) He has not filed disputes with the creditor, the collection agency, or the credit reporting agencies. The debts are unresolved.

The past-due debt in SOR ¶ 1.e and the judgment in SOR ¶ 1.m are based on the same car loan. Applicant encountered expensive repairs on the car, could not afford to pay for repairs and make his loan payments, and surrendered the car to the dealer. His employer, the state department of corrections, began garnishing his pay in December 2011 to satisfy the judgment, at the rate of \$230 twice a month for three months and then \$230 per month. The garnishment stopped when Applicant began his current job with a defense contractor. The debt is unresolved. (GX 2 at 4.)

The collection account in SOR ¶ 1.q and the judgments alleged in SOR ¶¶ 1.k, 1.l, and 1.n arose from the same rental contract. Applicant rented an apartment, where he lived with his mother and grandmother. The contract was solely in his name. He moved out of the apartment, but his mother and grandmother remained there. His mother promised to pay the rent, but did not. The judgments are unsatisfied, and the collection accounts opened after the judgments were filed are unpaid. (GX 2 at 4.)

On a date not reflected in the record, Applicant made one payment of \$40 on the credit card account alleged in SOR ¶ 1.c. (AX D.) The debt is unresolved.

Applicant testified that he contacted the creditors in SOR ¶¶ 1.a and 1.c about a month before the hearing, but they had not responded. (Tr. 27, 46, 47.) He contacted the creditor in SOR ¶ 1.d, who refused to accept a payment plan. (Tr. 48). He testified that he contacted the creditor in SOR 1.h and arranged to pay the debt on the day following the hearing. (Tr. 51.) However, he did not include any documentation of payment in his post-hearing submission. He has not contacted the creditors in SOR ¶¶ 1.e, 1.f, 1.g, 1.i, and 1.t. (Tr. 48-52, 62.) At the hearing, he testified that he had paid the debt in SOR ¶ 1.o and was making payments on the debt in SOR ¶ 1.r, but he submitted no documentation of payments. (Tr. 59-61.) As of the date the record closed, Applicant had not resolved any of the debts alleged in the SOR. Some of the debts are duplicates.

Applicant submitted a personal financial statement (PFS) reflecting that he earns \$16.19 per hour. His income for a 40-hour week is \$647.60, or about \$2,590 per month. His monthly expenses are about \$2,456, leaving him a net remainder of about \$134. (AX E.) He has depleted his retirement funds, has about \$30 in the bank, and has no funds set aside for emergencies. (Tr. 72.) Applicant's fiancée works full time as a security officer at a hospital. Her take-home pay is about \$1,300 per month. (Tr. 43-44.) His PFS does not accurately reflect his family's monthly net remainder, because it does not reflect his fiancée's income.

## 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).

The evidence reflects that the delinquent car payment alleged in SOR ¶ 1.e is included in the unsatisfied judgment in SOR ¶ 1.m. The medical debts in SOR ¶¶ 1.g and 1.t have the same account numbers and are for the same amount. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.e and 1.g in Applicant's favor.

Applicant's admissions, corroborated by 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 debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant incurred some debts through circumstances beyond his control: his mother's fraudulent opening of a telecommunications account in his name, his mother's failure to keep her agreement to pay the rent for an apartment rented by Applicant, and unexpected medical expenses for himself and his children. However, he has not acted responsibly. Although he contacted the creditors alleged in SOR ¶¶ 1.a, 1.c, and 1.d, he has not contracted the creditors in SOR ¶¶ 1.e-1.g, 1.i, and 1.t. He did not follow through on his promise to pay the medical debt in SOR ¶ 1.h. He has not resolved any of the smaller medical debts, such as SOR ¶¶ 1.i (\$40) and 1.t (\$85)

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

AG ¶ 20(d) is not established. 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). Applicant's pay was garnished to satisfy the judgments against him while he was a state employee. However, payment by involuntary garnishment, "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009). Applicant claimed that he had paid the medical debts in SOR ¶¶ 1.o and 1.f, but he submitted no documentation to support his claim. None of the debts are resolved; nor have any debts been significantly reduced by partial payments. Applicant has promised to pay his debts, but a promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

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. 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 an individual 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 no plan and has not taken any significant actions to resolve his debts.

AG ¶ 20(e) is not established. Although Applicant believes that the telecommunication debts in SOR ¶¶ 1.b and 1.p were fraudulently incurred by his mother, he has not filed disputes with the original creditor, the collection agency, or the credit reporting bureaus.

### **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 some warrant additional comment.

Applicant has a reputation for hard work and dedication to his family. He was candid and sincere at the hearing. However, he is overwhelmed by his debts and appears to lack the financial and organizational skills required to gain financial stability. 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 financial problems. Accordingly, I conclude he has not 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**

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

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

|                        |                   |
|------------------------|-------------------|
| Subparagraphs 1.a-1.d: | Against Applicant |
| Subparagraph 1.e:      | For Applicant     |
| Subparagraph 1.f:      | Against Applicant |
| Subparagraph 1.g:      | For Applicant     |
| Subparagraphs 1.h-1.u: | Against Applicant |

## **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge