



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



In the matter of: )  
)  
) ISCR Case No. 14-06601  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

09/29/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Clearance is granted.

**Statement of the Case**

On January 4, 2011, 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 January 16, 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 by DOD on September 1, 2006. The SOR alleged security concerns under the financial considerations guideline.

On April 2, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On June 6, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 5. On July 22, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. He did not submit a response to the FORM. The case was assigned to me on September 18, 2015.

### **Findings of Fact**

The SOR alleged that Applicant had three delinquent debts totaling \$29,367 (SOR ¶¶ 1.a-1.c). In his Answer to the SOR, Applicant denied each alleged debt.<sup>1</sup>

Applicant is 40 years old. He received an offer of employment from a defense contractor in December 2010. From the record, it is unknown whether he is now working for that contractor. In the past, he worked overseas for defense contractors for a number of years. He graduated from high school in 1994. He served on active duty in the U.S. Navy from 1996 to 2004 and in the Navy Reserve from 2004 to 2006. He received honorable discharges for his military service. He is divorced and has three children, ages 12, 15, and 17. He has held a security clearance in the past.<sup>2</sup>

SOR ¶ 1.a – delinquent account for \$526. This was a credit card debt that was late over 120 days. Applicant's credit report dated May 11, 2011, reflected that the date of last activity on the debt was December 2007. In his Answer to the SOR, Applicant stated that he contacted the creditor about this debt and was told he had no account with that creditor. He believes this was his ex-wife's account. The creditor would not disclose information to him about his ex-wife's accounts. Applicant's credit report dated September 19, 2014, no longer reflects this debt.<sup>3</sup>

SOR ¶ 1.b – collection account for \$13,015. This was a charged-off loan from a credit union that had a date of last activity of July 2004. While deployed on a ship, Applicant's wife stopped making payments on this loan. He reported this debt on his security clearance application and indicated he was making monthly payments to resolve it. In his Answer to the SOR, Applicant stated the debt was satisfied in November 2012. He also provided a letter from the creditor reflecting this debt has been resolved.<sup>4</sup>

SOR ¶ 1.c – collection account for \$15,826. This was a student loan that was past due \$5,643 and had a date of last activity of January 2007. In his Answer to the SOR, Applicant indicated that he contacted the creditor about this debt and was told he

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<sup>1</sup> Item 1.

<sup>2</sup> Items 2, 3.

<sup>3</sup> Items 1, 3, 4, 5.

<sup>4</sup> Items 1, 3, 4.

had no account with them. He contacted another company that handles student loans and was told this account belonged to his ex-wife, that Applicant co-signed the loan with her, and that it had been satisfied. Applicant's credit report dated September 19, 2014, no longer reflects this debt.<sup>5</sup>

Applicant attributed his debts to his ex-wife's financial mismanagement, although he acknowledged that he should have monitored the accounts better. His credit report dated September 19, 2014, reflected that he has no delinquent debts. He also stated that none of the alleged debts were reflected on his credit report when he purchased a home in April 2014.<sup>6</sup>

Applicant provided no evidence that he received financial counseling. He did not provide a monthly budget. It is unknown whether he has any discretionary income remaining each month after payment of his expenses.<sup>7</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.

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

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<sup>5</sup> Items 1, 3, 4, 5.

<sup>6</sup> Items 3, 5.

<sup>7</sup> Items 1-5.

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.” See 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.

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.

Five 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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant provided proof that he resolved the debt in SOR ¶ 1.b. His most recent credit report reflects that he has no delinquent debts and supports his contention that the remaining alleged debts are resolved. He recently purchased a home. He appears to be financially stable. AG ¶¶ 20(a) and 20(c) apply. AG ¶¶ 20(d) and 20 partially apply. Insufficient evidence was presented to establish AG ¶ 20(b).

### **Whole-Person Concept**

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>8</sup> After giving due consideration to the information about Applicant in the

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<sup>8</sup> The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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

record, I conclude that Applicant has met his burden of persuasion and mitigated the Guideline F security concerns.

### **Formal Findings**

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a – 1.c: 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

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pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.