



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



In the matter of: )  
)  
) ISCR Case No. 14-06746  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016  
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**Decision**  
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DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On April 25, 2013, Applicant submitted a security clearance application (SCA). Based on a review of Applicant’s SCA and the ensuing background investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on June 20, 2015, under 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 in September 1, 2006. The SOR alleged security concerns under the financial considerations guideline.

On August 17, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On September 28, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 6. On October 14, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. Applicant did not submit a response to the FORM. The case was assigned to me on December 28, 2015.

### Findings of Fact

The SOR alleged that Applicant had ten delinquent debts totaling \$40,864. The largest delinquent debt (SOR ¶ 1.a) was a mortgage loan that was 120 days or more past due for \$19,494. In his Answer to the SOR, Applicant denied the debt in SOR ¶ 1.a claiming it was current, denied the debts in SOR ¶¶ 1.b and 1.h claiming they were paid, and admitted the remaining debts. His admissions are incorporated as findings of fact.<sup>1</sup>

A credit report dated August 29, 2014, contains substantial evidence of the debts in SOR ¶¶ 1.a and 1.b. The credit report also reflected that the debt in SOR ¶ 1.h was charged off, had a zero balance, and did not reflect a past-due amount. In the absence of admissible information establishing the amount of the debt in SOR ¶ 1.h, I find in favor of Applicant on that debt.<sup>2</sup>

Applicant is a 37-year-old security guard who has been working for a defense contractor since May 2012. He graduated from high school in 1996 and earned an associate's degree in 2001. He has not served in the military. He married in 2007 and has three children, ages 3, 6, and 14. He has been granted a security clearance in the past.<sup>3</sup>

In his 2013 SCA, Appellant responded "no" to all financial record questions. In his Office of Personnel Management (OPM) interview, he attributed his financial problems to the premature birth of his son in 2012. His son received medical care at a facility that was not located near Applicant's residence. Applicant and his wife had to take flights to visit their son in the hospital. Additionally, Applicant's wife changed jobs in 2011 that resulted in a reduction of her income.<sup>4</sup>

Applicant provided no proof that the debt in SOR ¶ 1.a was current or the debt in SOR ¶ 1.b was paid. Furthermore, he provided no proof of any actions taken to resolve

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<sup>1</sup> Items 1 and 2.

<sup>2</sup> Items 4 and 5. The SOR alleged the debt in SOR ¶ 1.b was charged off for \$1,099. However, the credit report dated August 29, 2014, reflected the debt in SOR ¶ 1.b was charged off for \$10,099. Applicant's OPM interview indicated the debt in SOR ¶ 1.h was charged off for \$8,777. Since Applicant's OPM interview has not been authenticated, I did not consider information in the OPM interview that is negative towards Applicant. See Item 6 and ¶ E3.1.20 of the Directive.

<sup>3</sup> Item 3.

<sup>4</sup> Items 3 and 6.

the alleged debts. No proof was provided that he received financial counseling. He did not provide a budget. His discretionary income each month is unknown.<sup>5</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 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.*

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<sup>5</sup> Items 1 through 6.

*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.

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.

None of the mitigating conditions are fully established. Applicant's delinquent debts are significant, not infrequent, and ongoing. His son was born prematurely and his wife changed jobs. Both of those conditions contributed to his financial problems. However, he failed to show that he has since acted responsibly in addressing his delinquent debts. Insufficient evidence was presented to conclude his financial problems are being resolved, are under control, and are unlikely to recur. Based on the evidence presented, his financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment.

### **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>6</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion and the security concerns remain. Following the *Egan* decision and the "clearly consistent with the national interest" standard, doubts about granting Applicant's eligibility for a security clearance must be resolved in favor of national security.

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<sup>6</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 pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

## **Formal Findings**

Formal findings as required under the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.j:	Against Applicant

## **Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Clearance is denied.

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James F. Duffy  
Administrative Judge