



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 15-00630  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

06/20/2016

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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 granted.

**Statement of the Case**

Applicant submitted a security clearance application on April 16, 2014. On August 27, 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 September 15, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 2, 2015, and the case was assigned to me on February 22, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 29, 2016, scheduling the hearing for March 24, 2016. I convened the hearing

as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A through H, which were admitted without objection. I kept the record open until April 8, 2016, to enable Applicant to submit additional evidence. He timely submitted AX I through P, which were received without objection. DOHA received the transcript (Tr.) on April 4, 2016.

### **Amendment of SOR**

Department Counsel moved to amend the SOR to add an allegation that Applicant filed a petition for Chapter 13 bankruptcy. Applicant did not object, and I amended the SOR by adding SOR ¶ 1.f, alleging that Applicant filed a petition for Chapter 13 bankruptcy in about May 2015. (Tr. 18-19.)

### **Withdrawal of SOR ¶ 1.d**

During the hearing, Department Counsel moved to withdraw SOR ¶ 1.d on the ground that it alleged the same debt as SOR ¶ 1.c. Applicant did not object, and I granted the motion. (Tr. 78-79.)

### **Findings of Fact<sup>1</sup>**

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 64-year-old employee of a defense contractor, working as an operations analyst since 2006. He has been employed by defense contractors since September 2002. He has held a security clearance since December 2003.

Applicant served on active duty in the U.S. Navy from August 1979 to November 1995, when he retired as a lieutenant commander. He retired before completing 20 years of active duty under a program in effect at the time that authorized early retirement. (Tr. 88.)

Applicant has a bachelor's degree, master's degree, and professional certifications from the Joint and Combined Staff Officer School and the Navy Postgraduate School. He had a distinguished military career, serving in four operational flying tours and completing 2,800 flight hours and 660 arrested carrier landings. He flew 35 combat missions during Operation Desert Storm. He also served as a staff officer in numerous key positions, including service as a senior member of the staff of the Chief of Naval Operations. He has received two awards of the Air Medal for Valor, the Meritorious Service Medal, six awards of the Navy-Marine Corps Commendation Medal (including one award for valor), and the Navy Achievement Medal. (Enclosure 12 to Answer; AX G.)

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to other documents in the record.

Applicant married in June 1988 and divorced in May 2013. He and his ex-wife have two adult sons, ages 26 and 22. When they divorced, the court declined to allocate the property interests in the marital home or allocate the debt associated with the property.<sup>2</sup> The divorce decree recites that the parties will continue to hold title to the marital home as tenants in common. Applicant was ordered to pay his ex-wife spousal support of \$2,250 per month for 12 months and \$2,000 per month thereafter. He also was required to pay \$17,500 for her attorney's fees. (Enclosure 1 to Answer at 4-5; Tr. 43.) Applicant's ex-wife lived in the marital home, and Applicant was required to obtain her permission to visit it. (Tr. 43.)

Applicant erroneously believed that his ex-wife's status as a tenant in common and a joint borrower imposed a legal obligation on her to pay one-half of the mortgage payments. (Tr. 44.) She made no payments. He was financially unable to make the full payments, and he allowed the house to go into foreclosure. (Tr. 43-45.) Applicant testified that the property was foreclosed in February 2016, but it had not been sold as of the date of the hearing. (AX L; Tr. 72-76, 86.) In his post-hearing submission, he stated that there were no buyers at the auction and the property likely reverted to the Federal National Mortgage Association (Fannie Mae). His Equifax credit report of March 25, 2016, reflects that the property was transferred and sold and that the past-due debt payments are included in the bankruptcy. (AX O at 4.)

In April 2015, Applicant retained a law firm to represent him in a Chapter 13 bankruptcy proceeding. He completed the required financial counseling in April and July 2015. The bankruptcy petition was filed in May 2015. The bankruptcy file lists the creditors (or their successors) alleged in the SOR and Fannie Mae. However, the documents indicate that neither the mortgage lender nor Fannie Mae had made a claim as of March 2016. (AX C.) Applicant made an initial payment of \$1,064 to the bankruptcy trustee in May 2015 and began making monthly \$1,086 payments in June 2015 by payroll deduction. His payments were current as of the date of the hearing. (Enclosures 2-6 to Answer; AX A through D.)

In June 2015, an independent monitor overseeing a settlement agreement between the mortgage lender and the U.S. Department of Justice notified Applicant that his obligations under a second mortgage on the marital home were forgiven and any liens on the property were extinguished. (Enclosures 9-10 to Answer.) This debt was alleged in SOR ¶ 1.b and is resolved.

Applicant's current salary is about \$109,000 per year, and he receives about \$20,000 in military retired pay. He contributes about \$6,000 per year to his 401(k) retirement account, which has a current balance of about \$75,000. (Tr. 63.) He testified that his take-home pay, including his military retirement, is about \$5,000 per month,

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<sup>2</sup> There is a handwritten notation on the divorce decree that is barely legible but appears to say, "Pursuant to the court's oral ruling on 4-5-13, Respondent is no longer required to make any mortgage payments due after April 5, 2013." It is not clear who made the notation, when it was made, or whether the judge approved it. Other notations on the decree by both attorneys reflect disagreements with portions of the decree, including the ex-wife's attorney's objection to the judge's failure to allocate the property or debt associated with the marital home.

after deductions including the \$2,000 in alimony and \$1,084 payments to the bankruptcy trustee. His payments on his truck, rent, utilities, and his son's student loan are current. (Tr. 47.) His net monthly remainder is about \$3,000. He has an average balance in his checking account of about \$3,000. (Tr. 84-85.)

## **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 SOR alleges a mortgage loan that is past due for about \$33,056 (SOR ¶ 1.a); a home-equity line of credit that was charged off for \$115,313 (SOR ¶ 1.b); a delinquent credit-card account that was charged off for about \$11,213 (SOR ¶ 1.c); and an installment account for furniture that was charged off for about \$1,266 (SOR ¶ 1.e). SOR ¶ 1.d was withdrawn because it duplicated SOR ¶ 1.c. The SOR was amended at the hearing to allege that Applicant filed a Chapter 13 bankruptcy petition in May 2015 (SOR ¶ 1.f).<sup>3</sup>

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

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<sup>3</sup> In his answer to the SOR and his post-hearing submission (AX I), Applicant argued that 11 U.S.C. § 515 prohibits the U.S. Government from considering his Chapter 13 bankruptcy in determining his eligibility for a security clearance. Applicant has a legal right to file a bankruptcy petition, but the Government is not precluded from considering the negative security implications of the financial difficulties underlying his bankruptcy petition. ISCR Case No. 08-00435 (App. Bd. Jan. 22, 2009), *citing* ISCR Case No. 01-27082 (App. Bd. Aug. 5, 2003)

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 admissions and the documentary evidence submitted in his answer to the SOR and at the hearing 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 numerous, not yet resolved, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's debts were the result of his divorce and his ex-wife's refusal to share in payment of debts incurred during the marriage. Applicant acted responsibly by attempting to pay the debts by himself, resorting to a Chapter 13 bankruptcy when he was unable to pay the debts, and complying with his Chapter 13 payment plan for more than a year.

AG ¶ 20(c) is established. Applicant completed the financial counseling required by the bankruptcy court, and his Chapter 13 payment record provides "clear evidence" that his financial problems are under control.

AG ¶ 20(d) is established. Applicant made a good-faith effort to pay the marital debts by himself. When he was unable to carry the financial load of his failed marriage

alone, he resorted to a Chapter 13 bankruptcy and has made the required payments for more than a year. Based on his reputation for reliability and devotion to duty, along with his track record in resolving the marital debts, I am confident that he will resolve any deficiency after the foreclosure and sale of the marital home, either through the bankruptcy process or by a separate transaction.

AG ¶ 20(e) is not fully established. Although Applicant disputed his legal obligation to pay the joint marital debts, he has not disputed the validity of the debts.

### **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.

At the hearing, Applicant was indignant about what he perceived as an attack on his loyalty, reliability, trustworthiness, and good judgment; however, he was candid, sincere, and credible. He had a long and distinguished military career, followed by impressive service as an employee of a defense contractor. He is meeting his obligations under the Chapter 13 payment plan as well as his current living expenses.

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 financial problems. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his 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 Consideration): FOR APPLICANT

Subparagraph 1.a-1.c: For Applicant

Subparagraph 1.d: Withdrawn

Subparagraph 1.e-1.f: For Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge