



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-01157
	)	
Applicant for Security Clearance	)	

**Appearances**

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

03/28/2016

**Decision**

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 29, 2014. On August 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF 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 September 23, 2015, and requested a hearing before an administrative judge. The SOR was amended on November 18, 2015, to add three allegations. Department Counsel was ready to proceed on December 2, 2015, and the case was assigned to me on January 6, 2016. On January 11, 2016, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 1, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. DOHA received the transcript (Tr.) on February 8, 2016.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶ 1.e. He denied SOR ¶¶ 1.a-1.d, 1.f, and 1.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 42-year-old logistics specialist employed by a defense contractor since May 2014. He has never held a security clearance.

Applicant graduated from high school in June 1991, earned a bachelor's degree in history in May 1996, and worked in various private-sector marketing and sales jobs until he began his current job. He had two periods of unemployment, from February to September 2011 and from August 2013 to March 2014. He worked briefly as an account executive for a landscaping company from March to May 2014.

Applicant married in February 2003 and divorced in December 2009. He and his wife separated around 2006, reconciled and lived together for about a year, and then divorced. (Tr. 39-40.) He has a 12-year-old daughter born during the marriage. He has joint custody of his daughter, but she lives primarily with her mother. He pays child support of \$600 per month, and his payments are current. (AX G; Tr. 40.)

When Applicant submitted his SCA, he disclosed several delinquent debts, including those alleged in the SOR. He attributed his debts to his unemployment. (GX 1 at 34-41.) In his SCA and during a follow-up security interview in July 2014, he indicated that he was receiving financial counseling but had not yet taken any action to resolve his delinquent debts. (GX 1 at 34; GX 2 at 4.) He testified that he paid some small credit-card debts, but that he was "drowning" in debt and decided that bankruptcy was the only feasible option. He testified that he did not make any payments on the larger debts, but he contacted the creditor alleged in SOR ¶ 1.d, made a payment agreement, and made several payments before resorting to Chapter 7 bankruptcy. (Tr. 58.) He did not provide any documentary evidence of payments or a payment agreement. He chose to not file a Chapter 13 bankruptcy petition because he did not believe his income would enable him to make the required payments. (Tr. 49-50, 63.)

Applicant testified that he incurred the expenses of setting up a separate household when he and his wife first separated, while continuing to pay the mortgage on the marital home. When they reconciled and he moved back into the marital home, they spent large sums of money on the house, including renovation of a bathroom, repairing the floor under the bathroom, and replacing the roof. (Tr. 45-46.)

The SOR, as amended, alleges a judgment for \$21,071, filed in September 2012 for a credit-card debt (SOR ¶ 1.a); a credit-card debt charged off in April 2011 for \$20,001 (SOR ¶ 1.b); a credit-card debt charged off in July 2011 for \$5,452 (SOR ¶ 1.c); a credit-card account charged referred for collection in July 2013 for \$6,372 (SOR ¶ 1.d); a Chapter 7 bankruptcy discharge in October 2015 (SOR ¶ 1.e); and a delinquent state tax debt for \$150 for tax year 2014 (SOR ¶¶ 1.f and 1.g). The debts alleged in SOR ¶¶ 1.a-1.d were reflected in Applicant's June 2014 credit bureau report (CBR). (GX 3.)

On July 6, 2015, Applicant filed a Chapter 7 bankruptcy petition, claiming assets of \$13,525 and liabilities of \$51,959. His petition included all the debts alleged in the SOR. (GX 6 at 7-8.) On July 21, 2015, he paid the state tax debt alleged in SOR ¶¶ 1.f and 1.g. (AX H.) The remaining debts were discharged on October 15, 2015. (GX 6 at 25.)

Applicant testified that the state tax debt occurred because a friend prepared his tax return for him, and he erroneously assumed that his friend had filed the state tax return electronically. When Applicant found out the return had not been filed, he contacted the state tax authorities, determined the penalty for late filing, filed the return, and paid the taxes due. (Tr. 52.)

Applicant testified that during his periods of unemployment he concentrated on paying his rent, making his car payment, keeping current on his child support. While he was living on unemployment benefits, he fell behind on his credit-card payments. When he was interviewed by the security investigator in July 2014, he told the investigator that he intended to consolidate his debts and pay down the balances. He later decided that the best option for removing the debt burden and making himself less of a security risk was to file a Chapter 7 bankruptcy petition. (Tr. 33-36.)

Applicant currently earns about \$50,000 per year. His net pay per month, after taxes, is about \$2,600. (Tr. 42-44.) His loan on an 11-year-old car is now paid, and he has a net monthly remainder of about \$500 or \$600. (Tr. 51, 54-55.)

A retired Navy captain, retired Marine Corps major, a Navy paralegal, and two civilian friends submitted letters supporting Applicant. The Navy captain has known Applicant for more than 30 years, and the Marine major has known him for more than 20 years. The others have known him for 13-16 years. They uniformly admire him for his extensive and selfless involvement in the community, his devotion to his daughter, and his personal qualities. They regard him as honest, trustworthy, responsible, dependable, and patriotic. (AX A through E.)

Applicant's facility security officer (FSO), who has known him for about two years, also supports his application for a clearance. He states that Applicant takes on all assignments with enthusiasm and dedication, and he treats everyone with respect. He trusts Applicant to the extent that he would leave him alone with his teenage daughter. (AX F.)

## 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 an unsatisfied judgment for about \$21,071 (SOR ¶ 1.a), three delinquent credit-card accounts totaling about \$31,825 (SOR ¶¶ 1.b-1.d); a Chapter 7 bankruptcy in which liabilities of \$51,959 were discharged (SOR ¶ 1.e); and an unpaid state tax debt of \$150 (SOR ¶¶ 1.f-1.g). 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).

Applicant’s failure to pay state taxes as required is alleged twice in SOR ¶¶ 1.f and 1.g. When the same conduct is alleged twice in the SOR under the same guideline, one of 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). I will resolve SOR ¶ 1.g in Applicant’s favor.

Applicant’s admissions, his testimony, and the documentary evidence 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”). Applicant’s admission at the hearing that he failed to timely file his state tax return would be sufficient to establish AG ¶ 19(g) (“failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same”). However, the SOR alleges only his failure to pay his taxes, and not a failure to file his return. I will consider

his failure to timely file his return for the limited purpose of assessing his credibility; to evaluating evidence of extenuation, mitigation, or changed circumstances; considering whether he has demonstrated successful rehabilitation; and as part of a whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

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 delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established for Applicant's failure to timely pay his state income taxes. The failure of his tax preparer to file his state return for 2014 was a condition beyond his control, and he acted responsibly by resolving the debt as soon as he discovered it.

AG ¶ 20(b) is not fully established for the debts alleged in SOR ¶¶ 1.a-1.d. Applicant's marital breakup and his two periods of unemployment were conditions largely beyond his control, but he has not acted responsibly. He had almost two years of gainful employment after he returned to the workforce in September 2011, but he presented no evidence of any meaningful actions to resolve the debts in SOR ¶¶ 1.a-1.d, which became delinquent while he was unemployed. He testified that he made an effort resolve the debt in SOR ¶ 1.d after his second period of unemployment ended, but he provided no documentary evidence of payments or a payment agreement. After he returned to the workforce in March 2014, he made no meaningful effort to resolve his

delinquent debts until he realized that he needed a security clearance and that his debts were an impediment to obtaining it.

AG ¶ 20(c) is established. As a result of the Chapter 7 bankruptcy discharge, Applicant's debts are resolved.

AG ¶ 20(d) requires a showing of good faith. "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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. This mitigating condition is established for the state tax debt, but it is not established for the debts alleged in SOR ¶¶ 1.a-1.d. The resolution of the debts by bankruptcy does not end the inquiry, because 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.) Reliance on the fact that a debt is uncollectible does not constitute a good-faith effort to resolve that debt within the meaning of this mitigating condition. ISCR Case No. 07-06841 at 4. Bd. Dec. 19, 2008). Even though the debts are uncollectible, the facts and circumstances facts and circumstances under which they were incurred but not timely resolved are relevant. See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

AG ¶ 20(e) is not applicable. Applicant has not disputed any of the debts alleged in the SOR.

### **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 was candid and sincere at the hearing. He enjoys a reputation for being a devoted father and a selfless contributor to his community. Experienced military officers and life-long friends regard him as honest, dependable, reliable, and trustworthy. His FSO trusts him and supports his application for a clearance. On the other hand, his complacency about his debts during his periods of employment from September 2011 to August 2013 and from March 2014 to the present raises doubts about his trustworthiness and reliability. His recent actions to resolve his debts through bankruptcy appear to have been motivated by his need for a clearance rather than a sense of obligation to his creditors. He voluntarily accepted substantial financial obligations and then disregarded them when they appeared to interfere with his professional goals.

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 delinquent debts. 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.e: **Against Applicant**

Subparagraphs 1.f-1.g: **For 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