



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



In the matter of: )  
)  
) ISCR Case No. 18-01662  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: *Pro se*

03/08/2019

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to demonstrate financial responsibility, or that his financial problems are being resolved. The financial considerations security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 24, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 3, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on July 19, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on November 1, 2018. The notice of hearing was issued on November 13, 2018, setting the hearing for December 18, 2018. At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified and submitted one exhibit post-hearing (AE 1). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 2, 2018.

## Findings of Fact

In his SOR answer, Applicant admitted the seven SOR financial allegations (¶¶ 1.a through 1.g). His SOR admissions and those at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 57 years old. He graduated from high school in 1979, and attended a community college for a short period, but has completed no additional formal education. He married in 1991 and divorced in 2000. He has two children of this marriage, ages 25 and 21. He married his second wife in 2003 and divorced in 2013. He has two children of this marriage, ages 12 and 9. Applicant enlisted in the U.S. Coast Guard (Reserve) in 1983 and was discharged in 1990. He received a general discharge because of drug-related misconduct. While serving in the Coast Guard, he was granted a secret clearance in 1986.

In response to Section 26 (Financial Record) of his 2017 SCA, Applicant disclosed he had financial problems that included being delinquent in his child support obligations and six delinquent credit cards that were in collection or charged off, all debts totaling about \$90,000. He noted that his financial problems resulted from extensive periods of unemployment.

Applicant's work history shows that he worked for a large company between 2000 and 2014. The company was relocating to another state, and Applicant elected to take a six-month severance payment instead of relocating. He was unemployed between April and September 2014. After taking his severance pay, Applicant resided with his then girlfriend at different locations. It is not clear from his testimony the value of his severance pay, and to what extent, if any, he used it to pay his delinquent child support.

Applicant was employed during September and October 2014, and unemployed between October 2014 and April 2015. He was employed between April and August 2015, and unemployed between August 2015 and May 2016. He was employed with a federal contractor between May and August 2016, and unemployed between September 2016 and May 2017. Applicant was hired by his current employer and clearance sponsor as a network support engineer in June 2017. He seeks the continuation of his clearance, which is required for his work with his current employer.

Applicant attributed his financial problems to his periods of unemployment, his 2013 divorce, and him having to pay half of his monthly income in child support. His child support obligation equates to about 33 percent of whatever his gross income is, plus an additional amount to pay arrearages. Applicant's gross 15-day pay is \$3,250. The state garnishes \$1,124 in child support. After paying federal and state taxes, social security tax, Medicare tax, and health and vision insurance, his net pay is \$1,006 every 15 days – a little over \$2,000 a month. His current employer's earning statement from July 2017, shows a \$1,124 deduction for child support every pay period.

The state started garnishing Applicant's pay to satisfy his child support obligation in April 2013. He noted that his child support obligation was determined based on his 2014 earnings, which were \$94,000 a year. He has been to the family court at least three times to adjust his child support obligation to his current earning with limited success. Applicant's documentary evidence shows that his pay was consecutively garnished between April 2013 and February 2017, except during some periods of unemployment. During that period, he paid over \$59,000 in support.

Applicant used his credit cards to supplement his income and to pay for his living expenses during his unemployment periods. Additionally, he occasionally sought financial assistance from his elderly parents to pay his bills or the rent. Because he had periods with little or no income, he was unable to pay his credit cards and they became delinquent. His current credit card debt totals about \$64,500. Applicant presented no documentary evidence of any efforts to pay, settle, or resolve any of the SOR debts.

Concerning his two older children, Applicant testified that he never had a court-ordered support obligation. He paid his ex-wife and children whatever he could afford every month, but his support was inconsistent. He acknowledged that he was in arrears in his child support payments for his older children, but noted that his ex-wife was understanding and she did not need support because her family had money. Concerning his current financial situation, Applicant testified he is making \$78,000 yearly. He explained that after paying his child support obligation, the little money he has left over is used to pay his living expenses. He has not participated in any financial counseling, and he presented no evidence to show that he is following a working budget.

Applicant expressed remorse for his financial problems. He claimed that if he could, he would pay his delinquent accounts, but claimed he cannot pay them because of his child support obligation. He likes his current job and would like to continue working with his current employer. He believes this is the best job he has had in a long time. He promised to pay his delinquent accounts if he is granted a clearance to continue in his position.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "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).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

Applicant's financial problems are documented in the record. He took six months of severance pay from his 14-year job and has had difficulty finding a full-time position. Since 2014, he has had numerous periods of unemployment.

Applicant's income was insufficient to pay for his court-ordered child support obligations, living expenses, and accumulated debts. He maxed out his credit cards paying for his living expenses and other discretionary expenses. He was unable to pay his debts and they became delinquent. He presented no evidence of efforts to pay, settle, or otherwise resolve his delinquent accounts.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>1</sup>

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<sup>1</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must

The Appeal Board concisely explained an applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

None of the financial considerations mitigating conditions are fully raised by the facts in this case and they do not mitigate the security concerns. Applicant's financial problems are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) partially applies because of his periods of unemployment and underemployment and the resulting reduced earnings may be considered circumstances beyond his control. Notwithstanding, his evidence is insufficient to show that he was financially responsible under the circumstances, and it is not clear what Applicant did with the six-month severance pay he received in 2014.

Applicant's evidence is insufficient to show clear indications that his financial problems are resolved or under control. He presented no evidence of contacts with creditors, payments made, or of good-faith efforts to repay his creditors. AG ¶¶ 20(c) and (d) are not applicable. Considering the evidence as a whole, Applicant's evidence is insufficient to demonstrate financial responsibility, or that his financial problems are being resolved. The financial considerations security concerns are not mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of

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do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 57, has been employed with federal contractors intermittently and has held a clearance during some periods of time. His evidence is insufficient to establish a track record of financial responsibility. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. Unmitigated financial considerations security concerns lead me to conclude that granting a security clearance to Applicant is not warranted at this time.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his delinquent debts, a healthy financial picture, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge