



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



In the matter of: )  
)  
) ISCR Case No. 19-00818  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

02/07/2020

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient corroborating documentation about his efforts to resolve seven delinquent debts alleged in the statement of reasons (SOR) totaling \$100,242. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 29, 2018, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). (Item 3) On April 2, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Item 1)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). (Item 1)

On May 16, 2019, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 2) On November 12, 2019, Department Counsel completed the File of Relevant Material (FORM). On December 9, 2019, Applicant was served with a copy of the FORM. Applicant's response, if any, was due on January 8, 2020. No response was received. On January 13, 2020, Department Counsel indicated she was ready to proceed. On January 23, 2019, the case was assigned to me.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

### **Findings of Fact**

In Applicant's SOR response, he admitted the SOR allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.f, 1.g, and 1.h. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 39-year-old director of operations. (Item 3) In 1998, he graduated from high school, and in 2003, he graduated from college with a bachelor's degree. (*Id.*) In 2005, he received a master's degree. (*Id.*) He has no military service. (*Id.*) He was married from 1999 to 2004, and he married again in 2010. (*Id.*) His three children were born in 1997, 2004, and 2015. (*Id.*)

### **Financial Considerations**

Applicant's SCA shows no periods of unemployment after August 2011. (Item 3) He also disclosed several financial issues in his SCA. (*Id.*) He said he inherited debt after his father-in-law died, and he fell behind on some of his own debts. (*Id.*) Most of his debts were generated through student loans. He received some financial counseling services from his bank. (*Id.*) For his student loans, he said the financial issue began in May 2014, and he was seeking repayment options. (*Id.*)

The SOR alleges eight delinquent debts totaling \$112,242, as follows: 1.a, 1.b, and 1.c are three student loans placed for collection for \$50,337, \$38,006, and \$5,220; 1.d is a telecommunications debt placed for collection for \$3,431; 1.e is an account placed for collection for \$2,245; 1.f and 1.g are two charged-off debts for \$515 and \$488; and 1.h is a debt relating to a corporate credit card for \$12,000. (Item 1)

In his March 29, 2018 SCA, Applicant said he owed about \$12,000 on a corporate credit card because he failed "to maintain payments within established timeframe for corporate sponsored credit card." (Item 3) During his Office of Personnel Management (OPM) personal subject interview (PSI), he clarified that he went on two business trips that were subsequently not approved, and his employer refused to reimburse his costs. (Item 6) In response to the denial of reimbursement, he authorized a \$1,000 monthly

voluntary garnishment from his paycheck until the debt was paid in full. (Item 3; Item 6) On May 16, 2019, he said the debt in SOR ¶ 1.h was paid in full. (Item 2) He is credited with resolving the debt in SOR ¶ 1.h.

In his May 16, 2019 SOR response, Applicant said he was paying the student loans in SOR ¶¶ 1.a, 1.b, and 1.c through wage garnishment. (Item 2) He said he planned to settle the debts in SOR ¶¶ 1.f and 1.g. (*Id.*)

Applicant said he was contesting the debts in SOR ¶¶ 1.d and 1.e. The debt in SOR ¶ 1.d was invalid because the telecommunications company stopped providing cellular service where Applicant lived, and the telecommunications company said his plan would be cancelled without penalty. (Item 2) Nevertheless, the telecommunications company billed Applicant for \$3,431. (*Id.*) He did not explain why he contested the debt in SOR ¶ 1.e for \$2,245; however, he believed it would be removed from his credit report. (*Id.*)

In the FORM, Department Counsel noted the absence of corroborating or supporting documentation of resolution of the SOR debts. Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the SOR debts. The record lacks corroborating or substantiating documentation and other mitigating information. The FORM informed Applicant that he had 30 days from the receipt of the FORM **"in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.** If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 4 (emphasis in original)) He did not respond to the FORM.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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 adjudicative guidelines. These guidelines 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 overarching 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.

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 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 “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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 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 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

Failure 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two 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." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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, a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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.

The DOHA Appeal Board concisely explained 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. Sept. 24, 2013).

The SOR alleges eight delinquent debts totaling \$112,242. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Applicant said his delinquent debts resulted from the death of his father-in-law because he inherited some of his father-in-law's debts. He did not explain when his father-in-law died or how or why his father-in-law's debts were inherited. Most of Applicant's debts resulted from student loans. His most recent credit report of record indicates his student loans are in collection. He did not explain why they became delinquent or provide details about the ongoing garnishment mentioned in his SOR response.

"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant

has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant does not receive full mitigating credit under AG 20(b) because he did not establish that he maintained contact with his creditors and otherwise acted responsibly under the circumstances.

Applicant paid the debt in SOR ¶ 1.h through a wage garnishment. Payment of a debt “though garnishment rather than a voluntary effort diminishes its mitigating force.” *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns). *See also* ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011) (garnished payments towards delinquent tax debts is not mitigating information in light of other factors); ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) (remanding the case to the administrative judge and stating when addressing an Internal Revenue Service garnishment, “On its face, satisfaction of a debt through the involuntary establishment of a creditor’s garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.”). I have credited Applicant with mitigation of the debt in SOR ¶ 1.h because it is unclear whether this was actually a garnishment as opposed to a voluntary allotment from his salary. Applicant loses some mitigating credit because he did not clearly establish that he voluntarily repaid the debt owed to his employer.

Applicant denied responsibility for the debts in SOR ¶¶ 1.d and 1.e for \$3,431 and \$2,245; however, he did not provide documentation showing his disputes of his responsibility for the two debts, such as letters to the creditors explaining why the accounts were disputed. The debts are not mitigated under AG ¶ 20(e) because he did not provide “documented proof to substantiate the basis of the dispute or . . . evidence of actions to resolve the issue.”

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 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. June 4, 2001)). Applicant did not prove he acted in good faith.

Applicant did not provide documentation relating to his SOR debts such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve this debt; or (5) other evidence of progress or resolution.

Applicant did not provide sufficient documentation about why he was unable to make greater documented progress resolving the seven debts in SOR ¶¶ 1.a through 1.g. There is insufficient assurance that his financial problems are being resolved and will not recur in the future. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 39-year-old director of operations. In 2003, he graduated from college with a bachelor's degree, and in 2005, he received a master's degree. He is well educated and interested in continuing his contributions to national defense. There is no evidence of security violations.



The evidence against granting Applicant's security clearance is substantial. Applicant owes seven delinquent debts alleged in the SOR totaling \$100,242. There is no corroborating documentation of progress after the SOR was issued in the resolution of these seven debts. His actions raise unmitigated questions regarding Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant security clearance eligibility at this time.

### **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 through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

### **Conclusion**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge