



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



In the matter of: )  
)  
) ISCR Case No. 19-03055  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*  
06/30/2021

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate financial considerations concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On March 3, 2020, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); 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.

Applicant responded to the SOR on December 10, 2020, and elected to have his case decided on the basis of the written record, in lieu of a hearing. Applicant received

the File of Relevant Material (FORM) on March 22, 2021, and interposed no objections to the materials in the FORM. Within the time permitted, Applicant supplemented the record with updated information about his accounts. Applicant's post-FORM submissions are admitted as Items 6-10 without objection.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 35 delinquent debts exceeding \$26,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In his response to the SOR, Applicant admitted each of the allegations. He added no explanations or clarifications to his answers.

### **Findings of Fact**

Applicant is a 41-year-old ship fitter for a defense contractor who seeks continuation of his security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married in July 1994 and divorced in April 1997. (Item 3) He has no children from this marriage. He remarried in August 1998 and divorced in January 2014. (Items 2-3) He has two children (ages 22 and 20) from this marriage. (Items 2-3 and 7) He remarried again in August 2018 and has three stepchildren from his most recent marriage. (Items 2-3) Applicant earned an associate's degree in December 2006. He attended vocational classes between May 2005 and December 2005, but did not obtain a degree or diploma. (Items 2-3) Applicant enlisted in the U.S. Army in April 1994 and served five years of active duty. (Items 2-3) He received an honorable discharge in April 1999.

Since January 2015, Applicant has been employed by his current employer. (Items 2-3) Between September 2011 and January 2015, he worked for other non-defense employers in various types of jobs and disciplines. Between December 2005 and September 2011, he was a self-employed handyman. (Items 2-3)

#### **Applicant's finances**

Between December 2010 and October 2016, Applicant accumulated 35 delinquent debts exceeding \$26,000. (Items 3-5) Several of the debts represent delinquent student loans. (SORs ¶¶ 1.a-1.b) Others represent delinquent medical debts (SOR ¶¶ 1.f-1.h and 1.j-1.ii) The remaining three listed debts represent delinquent consumer debts. (SORs ¶¶ 1.c-1.e,1.i), and 1.ii)

Applicant's documented efforts to address the debts covered by the SOR are limited to two small payments of \$75 and \$176, respectively, to the medical creditor

covered by SOR ¶¶1f-1.h and 1.j-1.gg). (Item 10) Applicant's claims of making efforts to address his other delinquent accounts are not supported by any corroborating documentation. The only other cited debt that he is addressing is a non-SOR car loan for \$9,681, which currently carries a reported reduced balance of \$3,867. (Item 9)

Applicant attributed his debt delinquencies in part to the burdens associated with fulfilling his child support obligations to his second wife and their two children imposed by the terms of his divorce decree. (Items 6-7) Under the terms of his divorce decree, Applicant became responsible for child support obligations in the monthly amount of \$668 for the support of his two minor children (one of whom is now an adult), beginning January 2014. (Items 6-7)

By all reported accounts, Applicant has been compliant with his child support terms. (Items 6-7). Applicant's divorce decree also obligated him to make monthly spousal support payments of \$1,000, beginning in January 2014. (Items 6-7) Applicant's credit reports do not reveal any delinquencies in his child and spousal support obligations.

Absent documentation from Applicant's committing more of his resources to addressing his delinquent accounts covered by SOR ¶¶ 1.a-1.ii with pay-offs and payment plans, resolution of Applicant's SOR-listed accounts cannot be favorably established.

Applicant is highly regarded by his former military instructor, friends, and coworkers who have worked with him and know him to be dedicated, accountable, reliable, and trustworthy. (Item 11) Whether any of his character references are aware of his past financial difficulties is unclear.

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. Eligibility for access to classified information may only be granted "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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. The AG guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* 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 personal 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. AG ¶ 18.

### **Burdens of Proof**

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. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 (4<sup>th</sup> 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 [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**

Security concerns are raised over Applicant’s accumulation of delinquent debts between 2010 and 2020. On the strength of the evidence presented, two disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations apply to Applicant’s situation: DC ¶¶ 19(a), “inability satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s admitted delinquent debts require no independent proof to substantiate them. See Directive 5220.6 at E3. 1.1.14; *McCormick on Evidence* § 262 (6<sup>th</sup> ed. 2006). His admitted debt delinquencies are fully documented and create

judgment issues as well over the management of his finances. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004)

Financial stability in a person cleared to protect classified and sensitive information is required to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified and sensitive information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion to classified information or to holding sensitive position, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing and resolving of debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability and good judgment in following rules, regulations, and guidelines necessary for those seeking access to classified and sensitive information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016; ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's history of financial difficulties associated with his accumulated debts (*viz.*, student loans, medical, and consumer debts) raise considerable concerns over his ability to manage his finances in a responsible and reliable way.

Extenuating circumstances played some contributing role in Applicant's accumulation of his delinquent accounts. Faced with increased financial outlays associated with his imposed child and spousal support obligations, Applicant fell behind with his other accounts. Based on these contributing factors, he is entitled to some extenuating credit. Mitigating Condition (MC ¶ 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances," partially applies to Applicant's situation.

Because Applicant has failed to address any of his accumulated delinquent accounts with the income resources available to him, the second prong of MC 20(b)), "and the individual acted responsibly," is not available to him. With so little financial information to work with relative to the circumstances prompting him to fall behind with his child support, student loan, and medical accounts with the income resources available to him from his full-time employment, no meaningful extenuation credit can be assigned to him at this time.

Afforded opportunities to provide clarification of his current financial condition and explanations of his lack of payment progress on his delinquent debts, Applicant provided no persuasive clarifications or explanations for (a) how he allowed his debts to become delinquent with his past and current income available to him and (b) why he has failed to take any documented steps to address his listed delinquent accounts to date. Account histories of Applicant's listed SOR debts are not sufficiently developed in this administrative record to permit more detailed assessments of his managing of his finances during the critical years in issue.

For lack of any documented repayment or financial counseling initiatives by Applicant, other potentially available mitigating conditions cannot be applied to Applicant's situation. Based on his failure to date to establish a meaningful track record of addressing his delinquent accounts, it is too soon to make safe predictive assessments as to whether Applicant can restore his finances to stable levels consistent with minimum requirements for holding a security clearance.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether Applicant's failure to adequately address his delinquent debts are otherwise compatible with DoD requirements for holding a security clearance. To be sure, Applicant is highly regarded by his former military instructor, friends, and coworkers who have worked with him and know him to be dedicated, accountable, reliable, and trustworthy.

Neither Applicant's favorable endorsements nor his credited military service and contributions to the defense industry are enough at this time to overcome his accumulated delinquent debts and his lack of a meaningful track record for dealing with them and maintaining responsible control of his finances. More time is needed for Applicant to regain established control of his finances, consistent with the minimum requirements for holding a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

### **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:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraphs 1.a-1-ii:

Against Applicant

### **Conclusion**

In light of all of 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. Eligibility for access to classified information is denied.

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Roger C. Wesley

## Administrative Judge