



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-02761  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

**05/17/2021**

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial concerns. Eligibility for access to classified information or to hold a sensitive position is granted

**Statement of the Case**

On November 20, 2020, the Department of Defense (DoD) Consolidated Central 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 (undated) and requested a hearing. The case was assigned to me on February 25, 2021. A hearing was scheduled for March 30, 2021, and heard on the scheduled date. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on no exhibits and one witness (himself). The transcript (Tr.) was received on April 16, 2021.

### **Procedural Issues**

Before the close of the hearing, Applicant asked to leave the record open to afford him the opportunity to address the allegations covered by SOR ¶¶ 1.a-1.d with documentation of disputes and payment plans with the listed creditors. For good cause shown, Applicant was granted 30 days to supplement the record. The Government was afforded three days to respond. Within the time permitted, Applicant documented his payoffs of SOR creditors ¶¶ 1.a-1.d. and a monthly budget for April 2021. Applicant's post-hearing submissions were admitted without objection as AEs A-D for consideration.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) filed for Chapter 7 bankruptcy in December 2015 and received a discharge in April 2016 and (b) accumulated four delinquent post-bankruptcy debts exceeding \$4,500. Allegedly, Applicant's post-bankruptcy debts remain unresolved.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed he petitioned for Chapter 7 bankruptcy after his divorce due to problems he encountered in trying to pay remaining marital debts assigned to him for payment responsibility. He further claimed that he is disputing the SOR 1.b debt and is setting up payment plans to resolve the debts covered by SOR debts 1.c and 1.d.

### **Findings of Fact**

Applicant is a 35-year-old data center technician for a defense contractor who seeks a security clearance. Applicant admitted each of the allegations in the SOR with explanations, and findings of fact follow.

### **Background**

Applicant married in March 2010 and divorced in October 2015. (GE 1; Tr. 30-31) He has no children from this marriage. He currently resides with his girlfriend, with whom he has a co-habitation relationship. (Tr. 42-43) Applicant earned a high school diploma in May 2003 and attended college classes between August 2003 and May 2005 at a respected university. (GE 1; Tr. 27) He did not earn a degree or diploma. Between December 2011 and May 2013, he accrued college credits at another college but did not earn a degree or diploma. (GE 1; Tr. 27) Applicant enlisted in his state's Army National Guard Reserve in January 2009 and served seven years of inactive military reserve-duty before receiving an honorable discharge in January 2016. (GE 1) He

reenlisted in his state's Army National Guard in 2009, and continued his military service in his state's Army National Guard until January 2021. (GEs 1-2; Tr. 26)

Since March 2018, Applicant has worked for his current contractor employer as a service desk representative. (GE 1) Previously, he worked for other non-military contractor employers in various types of technical jobs. (GE 1; Tr. 29-37)

### **Applicant's finances**

Following his divorce in October 2015, Applicant encountered difficulties keeping up with the debts assigned to him for payment responsibility as a part of his divorce decree, and petitioned for Chapter 7 bankruptcy protection. (GEs 2-4; Tr. 31-33) He attributed his bankruptcy petition to his divorce that left him without enough income and assets to meet his financial obligations imposed on him in his final divorce decree. (GE 2; Tr. 22-23)

In his Chapter 7 bankruptcy petition, Applicant listed assets of \$11,346 and total liabilities of \$101,304. (GE 3) He scheduled non-priority unsecured debts of \$86,075. (GE 3) Of the listed non-priority debts, all but \$5,808 represented student loan debts. He reported monthly income of \$2,320 and monthly expenses of \$2,110. (GE 3) He received his bankruptcy discharge in April 2016. (GE 3)

Between 2016 and 2019, Applicant accumulated three additional delinquent debts exceeding \$4,500. (GEs 2, 4-5) He has since documented his resolving each of these debts with payoffs and payment plans. (AEs A-D) Specifically, he provided probative documentation of his payment in full of the \$1,908 SOR ¶ 1.b debt in March 2021. (AE A) He provided documentary proof as well of his paying off the \$526 SOR ¶ 1.c debt and \$2,167 SOR ¶ 1.d debt. (AEs C-D)

Applicant provided a monthly budget for April 2021. (AE B) In his budget, he reported monthly income of \$3,357, monthly expenses of \$2,949, and a net monthly remainder of \$131. (AE B; Tr. 58) Applicant characterized his budget as generally typical of his monthly income and expense breakdown. (AE B) He is current with his tax filings and payments (both federal and local), and his accrued student loans are currently in deferment status. (GEs 3-5; Tr. 57-58)

### **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.

These 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 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 or 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 acts or otherwise questionable acts to generate funds. . . . 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 incurred since his 2016 bankruptcy discharge. Applicant's history of financial difficulties warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations." Each of these DCs apply to Applicant's situation.

Applicant's admitted debt delinquencies negate the need for any independent proof. See Directive 5220.6 at E3. 1.1.14; McCormick on Evidence, § 262 (6<sup>th</sup> ed. 2006) His admitted delinquent debts are fully documented and create some judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment, and trust concerns are implicit in cases involving debt delinquencies and tax return filing lapses.

Historically, the timing of addressing debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified 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 2016 bankruptcy discharge and ensuing delinquent debt accruals create security concerns requiring considerable repayment initiatives on Applicant's part failed to resolve preclude his taking advantage of any of the potentially available extenuating and mitigating benefits.

Extenuating benefits are available to Applicant due to the cited circumstances that prompted his filing for Chapter 7 bankruptcy protection in December 2015. 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," is applicable to Applicant's situation. And, because Applicant has since paid off all of his listed delinquent debts that arose since his bankruptcy discharge, he may take advantage of the benefits afforded by MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the timely resolution of listed delinquent debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, the Chapter 7 bankruptcy petition he filed in December 2015 was prompted in major part by his concluded divorce (finalized in October 2015). While he accumulated several new delinquent debts following his 2016 bankruptcy discharge, he has since paid off these debts in full.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a clearance. Applicant is entitled to credit not only for his civilian and military contributions to the defense industry, but also to his successful initiatives in resolving

his post-bankruptcy debt delinquencies covered in the SOR. His combined debt resolution efforts and strengthened financial circumstances reflect positively on his ability to maintain his finances in a sufficiently stable manner to meet 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 financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

### **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): FOR APPLICANT

Subparagraphs 1.a-1.d:

For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Roger C. Wesley  
Administrative Judge