



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



In the matter of: )  
)  
) ISCR Case No. 22-02223  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: Robert G. Hanseman, Esq.

06/06/2023

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant’s financial issues developed due to circumstances beyond his control. He has acted responsibly to address and resolve his financial delinquencies. His efforts reflect good judgment and reliability, and he has greatly reduced his overall indebtedness. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 27, 2021, Applicant submitted a security clearance application (SCA). On December 12, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

On January 16, 2023, Applicant responded to the SOR, and he requested a hearing. On February 17, 2023, the case was assigned to me. On March 17, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 18, 2023. Applicant’s hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits, Government Exhibits (GE) 1-5, and Applicant offered 11 exhibits, Applicant Exhibits (AE) A-K. There were no objections, and all proffered exhibits were admitted into evidence. On April 25, 2023, DOHA received the hearing transcript. On April 28, 2023, Applicant submitted four documents, AE L-O, without objection, which I admitted into evidence. The record closed on May 2, 2023.

### **Findings of Fact**

In Applicant's SOR response, he admitted all five of the debts alleged in SOR ¶¶ 1.a - 1.e. Applicant's admissions are accepted as findings of fact.

Applicant is a 37-year-old financial manager employed by a government contractor since January 2019. His current annual salary is \$114,800. He previously worked with other government contractors since 2016. In September 2004, he enlisted in the U.S. Air Force, and he remained on active duty until his honorable discharge in July 2014. He had one deployment to Southwest Asia and Kuwait. He married in 2013, separated in 2019, and divorced in August 2021. He has two young sons. He requires a DOD security clearance to perform his employment duties. (Tr. 27-31, 40; GE 1)

### **Financial Considerations**

Applicant started to experience financial difficulties after getting married in 2013. His ex-spouse's parents agreed to pay for the wedding, but they changed their minds and provided financial assistance to another family member instead. Applicant had to pay for the unanticipated wedding expenses, which caused him to experience financial problems. In addition, shortly after they were married, they had a child and his wife stopped working outside their home. She decided to start a business from home selling Mary Kay cosmetics. In order for his ex-wife to start her new business venture, he was required to purchase inventory supplies and pay for her travel and business retreats. Her business was unsuccessful, and she was unable to earn any income. By the time they separated in 2019, Applicant found about \$2,000 of unopened Mary Kay inventory in their home. In their divorce, and he became responsible for all of the outstanding joint accounts. He is current on his monthly child support payments of approximately \$1,200. (Tr. 30-33, 59-60)

The SOR alleges five delinquent debts totaling \$42,737, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges Applicant is indebted to a bank creditor on a charged-off account for \$19,123. This debt resulted in a judgment being entered against Applicant in October 2022, and he immediately notified his facility security officer of this legal action. A Satisfaction of Judgment was issued in February 2023. This debt has been resolved. (Tr. 33-36, 49-53; AE B)

SOR ¶ 1.b alleges a collection account owed for a consumer credit card in the amount of \$13,868. In January 2023, Applicant entered into a repayment plan with the creditor. Since March 2023 he has paid \$2,340 on this account and the remaining balance is \$11,528. He is currently resolving this account. (Tr. 36, 54-55; AE C, AE L)

SOR ¶ 1.c alleges a collection account owed for a consumer credit card in the amount of \$6,332. In January 2023, Applicant entered into a repayment plan with the creditor to settle the account in the amount of \$4,500. Post-hearing documentation showed that he has made four monthly payments per the terms of the repayment plan. Applicant is currently resolving this account. (Tr. 36-37, 55-56; AE D, AE M)

SOR ¶ 1.d alleges Applicant is indebted to a bank creditor for a charged-off credit card account in the amount of \$2,502. Documentation showed that Applicant made his final payment in February 2023 per the terms of the repayment agreement. This account has been resolved. (Tr. 37, 55-57; AE E)

SOR ¶ 1.e alleges Applicant is indebted to a bank creditor for a charged-off credit card account in the amount of \$909. Documentation showed that Applicant made his final payment in February 2023 per the terms of the repayment agreement. This account has been resolved. (Tr. 37-38, 55-57; AE F)

Applicant said that he re-established contact with the SOR creditors after he received the SOR in December 2022. He had a savings account with over \$10,000. He saved this money to finance a move to another state so he could be closer to his sons. After he received the SOR, he hired counsel to help him negotiate with his creditors and to represent him during his security clearance hearing. Based on his counsel's advice, he used the money in his savings account to resolve several or of the SOR debts. Applicant's finances are now stable. He still maintains a savings account, and he is current on filing all of his income tax returns. (Tr. 51-57, 61-62)

## **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 DNI 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. Sept. 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. . . . An individual who is financially

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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." The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) and requires additional inquiry about the possible applicability of mitigating conditions.

Four 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly

given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017): See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

The SOR alleges five delinquent debts totaling \$42,737. Applicant's debts resulted from unexpected wedding expenses, his ex-spouse's failed business and lack of income, and from the financial effects of his divorce. These are circumstances largely beyond his control. Notwithstanding these unforeseen events that impacted his finances, Applicant must demonstrate that he acted responsibly in dealing with his financial issues under the circumstances.

Applicant paid, settled, or is currently repaying all of the SOR debts. It is well-established that the timing of debt payments is a relevant consideration in evaluating whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). The Appeal Board has consistently held that a "good-faith effort" generally requires that an applicant has established a meaningful financial track record of payments, to include evidence of actual debt reduction. See, e.g., ISCR Case 05-01920 at 5 (App. Bd. Mar. 1, 2007).

Applicant used the money he held in his savings account to pay off his debts. He was saving that money to move to the state where his children are located. Instead, he hired counsel who helped him negotiate with his creditors and he followed his legal advice to get his finances in order. Applicant's finances are currently stable, and he has resumed depositing money into his savings account. He is committed to repaying his last two delinquent SOR debts in accordance with the established payment plans.

Applicant made significant progress resolving his delinquent debts. He has demonstrated good faith in resolving his delinquent debts. There are clear indications that his financial problem is being resolved, and his finances are under control. Future financial problems are unlikely to occur. AG ¶¶ 20(b) and 20(d) are established, and financial considerations security concerns are mitigated.

### **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 has resolved three of the alleged debts and is currently repaying the other two debts per the terms of his repayment agreements. Applicant’s actions show financial responsibility and good judgment, and he has established his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. 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. I conclude that financial considerations security concerns are mitigated.

### **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:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	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 or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson  
Administrative Judge