



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 22-01560
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Kent, Esq. Department Counsel  
For Applicant: *Pro se*

10/20/2023

**Decision**

WESLEY, ROGER C. Administrative Judge

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

**Statement of Case**

On September 12, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAS 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); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (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 September 21, 2022, and requested a hearing. This case was assigned to me on May 3, 2023. A hearing was scheduled for July 14, 2023, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on one witness (himself) and 14 exhibits (AEs A-N). The transcript (Tr.) was received on July 25, 2023.

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant allegedly accumulated four delinquent debts exceeding \$23,000. Allegedly, his delinquent debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted all of the allegations with explanations and clarifications. He claimed his second spouse ran off with the vehicle covered by SOR ¶ 1.in 2015 and refused to return it, resulting in the vehicle's being later recovered by the seller and sold at auction for less than the amount owed. He further claimed that the car lender did not initially pursue a deficiency against him. He also claimed that his most recent wife was responsible for the SOR ¶ 1.b debt, which he is paying through a payoff agreement. He claimed, too, to have made \$200 monthly payments to SOR creditor 1.c through March 2020 before defaulting for lack of funding. Addressing SOR creditor 1.d, He claimed that the vehicle pay loss covered by the car loan from the creditor was destroyed by fire in December 2020 and should have been reimbursed by gap insurance in early 2021. And, Applicant expressed remorse over his allowing his soon-to-be ex-spouse (i.e., his third wife) to handle their finances during their relationship.

### **Findings of Fact**

Applicant is a 47-year-old employee of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

### **Background**

Applicant married in November 2002 and divorced in February 2012. (GE 1; Tr. 31, 33) He has three children from this marriage (ages 20, 18, and 10). (GE 1; Tr. 75) He remarried in August 2014 and divorced in July 2016. (GE 1; Tr. 32) He has no children from this marriage. (GE 1; Tr. 32, 76) He remarried for the third time in February 2017 and divorced in April 2023. (GE 1 and AE M; Tr. 32, 34, 50, and 76) He has one child and one adopted child from this marriage. (GE 2 and AE L; Tr. 76) He is not currently married. (Tr. 32) Applicant earned a high school diploma in May 1994. (GE 1; Tr. 30) He attended classes at a technical college in 2005 but did not earn a degree or diploma. (GE 1; Tr. 31) He enlisted in Navy in August 1994 and served eight years of active duty before receiving an honorable discharge in April 2002. (GE 1; Tr.

31-32) Between October 2002 and December 2014, he served in the Navy Inactive Reserve and received an honorable discharge in December 2014. (GE 1; Tr. 31-32) Since October April 2014, Applicant has worked for his current employer as an inspector. (GE 1) He reported brief periods of unemployment in 2013. (GE 1; Tr. 37, 46) He has held a full security clearance since July 2007. (GE 1; Tr. 74)

### **Applicant's finances**

Between 2010 and 2019, Applicant accumulated four delinquent accounts exceeding \$23,000. (GEs 2-4) The SOR-listed debts are listed as follows: SOR ¶¶ 1.a (an individual account opened in 2013 with a \$12,969 balance); 1.b (an individual account opened in 2010 with a \$5,224 balance); 1.c (an individual account opened in 2012 with a \$5,194 balance); and 1.d (a joint account opened in 2019 with a \$979 balance). (GEs 2-3; Tr. 35-39)

Applicant attributed his debt delinquencies to a number of sources. He cited his second wife's becoming addicted to drugs and alcohol, running off with his car in April 2015 and refusing to return it. (GE 2; Tr. 36) Unable to recover the car on his own, he contacted local police, who recovered the vehicle in May 2015. With no assistance forthcoming from either the police or his lender, he settled on letting his lender repossess the vehicle with the help of a towing company. (Applicant's response)) According to Applicant, the car was sold at auction for less than the amount owed on the vehicle, leaving a deficiency balance covered by SOR ¶ 1.a. After being informed by the car lender of its decision not to pursue collection of a deficiency balance, he received a deficiency letter from a collection agent several months later, demanding payment of the deficiency balance owing after the auction sale. He ignored the latter from the collection agent and has since lost all of the documentation pertaining to collection during his numerous moves. (Tr. 36)

Addressing the alleged \$979 balance owing the creditor covered by SOR ¶¶ 1.d, Applicant continues to dispute any balance owing the creditor on his third wife's car loan. (Applicant's response and AEs F and K; Tr. .54, 57) The dispute can be traced to Applicant's financing of a purchase of a new vehicle in April 2019 for \$48,102. (GE 2) In December 2020, the car, along with his tools, were destroyed in a shop fire. (GE 4 and AEs B, F and K) With his gap insurance, he secured a measure of financial relief. His gap insurance carrier, in turn, covered its assessed value of the vehicle with a final payment of \$31,213 in January 2021. (AEs B and F) However, his car lender disputed the gap insurer's total loss payment, claiming the payment was not enough to pay off the car loan. (AE K) Whether the additional approved \$7,111 insurance payment earmarked for his car lender payee was enough to cover any shortfall from the loss of the vehicle is unclear. (AEs B and K)

According to Applicant's account, his dispute with his SOR ¶ 1.d creditor has never been resolved, and the lender has continued to hold him responsible for the \$979 shortfall. (Applicant's response and AE K) Still believing the gap insurance loss payoff should have relieved him of any further loan responsibilities, he has never paid the

lender its claimed \$979 loan balance. (AE K) Subsequent efforts by him to enlist the divorce court's assistance in revising the parties' settlement agreement to direct his ex-spouse to pay off any remaining balance on the SOR ¶ 1.d debt were unsuccessful. (AEs H-I)

Applicant cited additional burdens placed on his finances by the 2023 child support and alimony order imposed on him based on the claims of his third wife, and his own failures to make more concerted follow-up checks on the status of the delinquent accounts in issue. (AEs L and O-Q; Tr. 38-56, 78) His furnished documentation does validate his efforts to refinance his home in 2022 to increase his available cash to better address his remaining debts. (AE N) While his efforts to refinance his home were unsuccessful, they reflect good-faith attempts on his part to resolve his debts.

To Applicant's credit, he has since resolved two of his debt delinquencies with either payoffs or payment agreements. He documented his resolution of his SOR ¶ 1.b and 1.c accounts with payment agreements and a lump sum payoff of his SOR ¶ 1.b account. (AEs E and R; Tr. 41-44, 46-49) At the time of his settlement agreements, the SOR 1.b debt was in collection status; while the SOR 1.c debt was charged off. (GEs 2-4) He had fallen behind with these debts during a period of unemployment in 2013. (Applicant's response and AE J) By the time he learned that his second spouse had not taken care of the account, the account had become delinquent.

Similar circumstances prevented Applicant from timely addressing his SOR ¶ 1.c debt payments. As a divorcee, Naval reservist, and single and custodial parent, responsible for his two sons, he encountered tough sledding in keeping up with all of his debts and let his SOR ¶ 1.c account slip into delinquent status. (AE J) Complicating his ability to address this account were the child support orders obtained by his first wife who had regained custody of Applicant's sons. (AE J) Meeting his monthly child support obligations compounded his already strained finances.

Applicant currently earns \$130,000 a year in base salary and another \$5,000 a year in earned overtime with his latest promotion. (Tr. 34) Preceding his promotion, he earned \$110,000 annually after starting with an entrance salary of \$100,000. (Tr. 34-35). Before his divorce, his third wife contributed financially to his family with part-time work. (Tr. 35) Applicant's monthly expenses consist of mortgage payments (\$2,000), car payments (\$2,000), food (\$1,000); car insurance (\$250); utilities (\$100-\$300); and child support and alimony payments (\$1,700). (GE 4; Tr. 47-48, 51-53) He estimated a monthly remainder of \$1,200 to \$1,500, which he has used in the past to cover medical and plumbing issues. (Tr. 47)

### **Endorsements and awards**

Applicant is well-regarded by his supervisors and colleagues. (AE D) Between 2018 and 2023, he received letters of recognition recognizing his contributions to his team's operations. His military awards include the Navy and Marine Corps. Achievement Medals awarded for his recognized contributions. (AE C)

## 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 reported accumulation of four delinquent debts exceeding \$23,000. These debt delinquencies 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.”

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 delinquent debts.

Historically, the timing of addressing and resolving 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). In Applicant’s case, his debt delinquencies are attributable to several contributing factors: spousal lapses in addressing their respective joint creditor responsibilities, unexpected child and alimony payments associated with his recent 2023 divorce, and his own lapses in failing to follow up on the status of his debts in issue.

Applicable mitigating conditions (MC) include 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 circumstance”; 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts”; and 20(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.” While Applicant has been dilatory about monitoring and addressing his debts, extenuating circumstances and mitigating conditions have been major factors. Overall, his debt management initiatives have been encouraging and helped him to meet his

evidentiary burdens of demonstrating the responsible requirements for managing his finances.

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 voluntary payment of accrued debts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). Based on the evidence presented, Applicant is able to demonstrate a sufficient tangible track record of actual debt reduction to satisfy Appeal Board guidance associated with the responsible and good-faith payment requirements of MCs ¶¶ 20(b) and 20(d).

### **Whole-person assessment**

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether her finances are fully compatible with minimum standards for holding a clearance. Taking into account Applicant’s credited defense contributions, his extenuating circumstances associated with his spousal contributory actions, his brief periods of unemployment, his unexpected accruals of child support and alimony payment obligations, and his own partial payment lapses, he has shown sufficient responsibility in managing his finances to date to enable him to maintain sufficient control of his finances to meet minimum standards 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 Against 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