



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



In the matter of:

)  
)  
)  
)  
)  
)

ISCR Case No. 23-00462

Applicant for Security Clearance

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: Lea Trojanowski, Esq.

01/18/2024

---

**Decision**

---

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 4, 2022, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On March 17, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; 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.

The SOR detailed reasons why the DCSA 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. (Hearing Exhibit (HE) 2) Applicant provided a response to the SOR, and he requested a decision based on the written record. (HE 3) On June 23, 2023, he requested that his case be converted to a hearing. (HE 4)

On June 28, 2023, Department Counsel was ready to proceed. On July 28, 2023, the case was assigned to me. On August 21, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for October 30, 2023. (HE 1) The hearing was held as scheduled using the Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered four exhibits into evidence; Applicant offered 13 exhibits into evidence; and all proffered exhibits were admitted into evidence without objection. (Tr. 11-14; GE 1-GE 4; Applicant Exhibit (AE) A-AE M) On November 9, 2023, DOHA received a copy of the transcript. Applicant provided eight post hearing exhibits, which were admitted into evidence without objection. (AE N-AE U) The record closed on November 30, 2023. (Tr. 58)

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

### **Findings of Fact**

In Applicant's SOR response, he admitted all-of the SOR allegations. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 38-year-old project manager/associate project manager who has been employed by a major defense contractor since 2012. (Tr. 15, 18) He was married from 2016 to April 2020. (Tr. 15, 41) He has an 11-year-old son, and he pays \$500 monthly child support. (Tr. 41) In 2005, he received an associate degree in business administration, and in 2021, he received a bachelor's degree in business administration. (Tr. 16; AE A) In 2007, he received a security clearance, and it was renewed in 2017. (Tr. 17)

Applicant has been nominated for employee of the month on multiple occasions. (Tr. 19) He has received other performance awards, and he has excellent performance evaluations. (Tr. 19-20; AE B; AE C) Appellant provided one character statement from a friend which indicated he is diligent, polite, responsible, and has good judgment. (AE U)

### **Financial Considerations**

Applicant's current annual pay is \$112,000. (Tr. 19) In 2019, he was getting divorced, and several debts became delinquent because there were disputes about who would be responsible for various debts. (Tr. 21) In 2021, his father needed to be moved into a facility because he was suffering from dementia. (Tr. 51) His father died, and in 2022, he accrued some debt because he was trying to help his mother who was ill. (Tr.

29-301 33) He believed divorce caused most of his financial problems. (Tr. 32) Before 2017, he never had any delinquent debt. The only financial problems he has had occurred in the aftermath of his divorce. (Tr. 33) His overall plan was to resolve his smaller debts first. (Tr. 45)

The SOR alleges six debts totaling \$22,298, and their status is as follows:

SOR ¶ 1.a alleges Applicant has a debt placed for collection for \$10,000. In September 2015, he borrowed funds for his wedding, to purchase a house, and for other expenses. (Tr. 20, 22, 43) From November 2015 to October 2016, Appellant made 12 monthly payments of \$855, which totaled \$10,260. (AE H) Appellant communicated with the creditor and advised the creditor that he would make minimal payments. (AE H) From April 2023 to October 2023, he made five \$25 payments and one \$15 payment. (AE H) He believed some additional payments were made from 2016 to 2019; however, they were not reflected in the documentation he submitted. (Tr. 44) He intends to pay this debt by June 2024. (Tr. 22)

SOR ¶ 1.b alleges Applicant has a charged-off credit-card debt for \$5,923. In 2014, he borrowed funds from the creditor. (Tr. 22, 45-46) In 2019, the debt became delinquent. (Tr. 23, 46) He established small monthly payments to show the creditor he was acting in good faith to repay the debt. (Tr. 23-24) He paid \$10 on the following dates: November 30, 2022; December 28, 2022; January 28, 2023; February 28, 2023; April 26, 2023; May 28, 2023; June 28, 2023; July 28, 2023; August 28, 2023; and September 28, 2023. (AE I) The creditor said when he had sufficient funds, he could make a lump sum to pay the debt. (Tr. 47) He expects to fully resolve this debt by June 2024. (Tr. 24)

SOR ¶ 1.c alleges Applicant has a debt placed for collection for \$3,860. He borrowed the funds in 2020, and the debt became delinquent in 2022. (Tr. 25) The debt became delinquent when he made a mistake scheduling automatic payments. (Tr. 25) On September 29, 2023, the creditor agreed to settle the debt for \$1,500. (AE K) He paid the debt using his debit card. (Tr. 26, 48; AE K)

SOR ¶ 1.d alleges Applicant has a charged-off debt for \$1,065. This debt became delinquent in 2020. (Tr. 26) Applicant mistakenly believed the debt was paid. (Tr. 27) On July 26, 2023, he paid the creditor \$364, and the account was settled. (Tr. 48; AE J)

SOR ¶ 1.e alleges Applicant has a charged-off debt for \$419. He borrowed the funds in 2017, and the debt became delinquent in 2019. (Tr. 28) Applicant mistakenly believed the debt was paid. (Tr. 29) On March 28, 2023, he paid the creditor \$447, and the account was resolved. (Tr. 49; AE L)

SOR ¶ 1.f alleges Applicant has a past-due debt for \$1,013. He made some mistakes in setting up the automatic payments to resolve the debt. (Tr. 30) He did not realize the debt was delinquent. (Tr. 50) From April 2023 to October 2023, he made seven \$126 payments totaling \$882. (AE M) He intends to pay off the debt in 2024. (Tr. 31)

Appellant utilizes a budget. (Tr. 34) Recently he received a house from his mother, and he now has a monthly remainder after his debts are paid of \$2,500. (Tr. 34-35) His SOR does not allege a federal income tax debt. Appellant owes the IRS about \$10,000, and he has been making payments for two or three years under an IRS-approved installment agreement. (Tr. 53, 57) He is making monthly payments of \$219 to the IRS. (Tr. 53; AE S) He provided his bank account statement for July 25, 2023 through August 21, 2023, and it shows a \$219 payment to the IRS on July 28, 2023. (AE T at 5)

The following table summarizes the federal income tax information. Financial amounts are rounded to nearest \$1,000. His filing status for tax year (TY) 2018 was married filing joint, and his filing status for TYs 2019, 2020, and 2021 was head of household. For TY 2020, \$1,780 was transferred from his TY 2020 tax return to partially address his tax debt for TY 2018. (AE N)

Tax Year	Adjusted Gross Income	Taxes Owed (-) or Refund (+)	Exhibit
2018	\$115,000	-\$3,000	AE N
2019	\$69,000	-\$1,000	AE O
2020	\$81,000	+\$3,000	AE P
2021	\$94,000	-\$3,000	AE Q
2022	\$102,000	\$0	AE R

Appellant's May 10, 2023 credit report, the most recent credit report of record, shows the following delinquent SOR debts: ¶ 1.a for \$10,000; ¶ 1.b for \$5,873; and ¶ 1.c for \$3,835. (GE 4 at 3, 11, 13) He has ten federal student loans totaling about \$62,000 in pays as agreed status. (GE 4 at 4-6, 12) He has numerous paid or pays as agreed accounts. (GE 4) He has a paid charged-off debt with a previous high credit of \$5,252. (GE 4 at 9)

### 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 [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**

### **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.

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 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. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 which may be applicable in this case are as follows:

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

Circumstances beyond Applicant's control adversely affected his finances. He had financial problems due to divorce and his parents' illnesses. The SOR alleges six debts totaling \$22,298. He is making minimal payments to address the two SOR debts in ¶ 1.a for \$10,000 and ¶ 1.b for \$5,923. He is making \$126 monthly payments to resolve SOR ¶ 1.f debt for \$1,013. He paid or settled three SOR debts as follows: ¶ 1.c for \$3,860; ¶ 1.d for \$1,065; and ¶ 1,e for \$419.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicants are not required "to be debt-free in order to qualify for a security clearance. 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) (denial of security clearance remanded) (citing ISCR Case No.13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014)). There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has taken meaningful action to address his debts. His credit report indicates he has numerous debts in paid or paid as agreed status. His most recent credit report shows three delinquent debts. Applicant has an established track record of paying his debts as shown by his credit report. His track record of debt payments on his non-SOR debts increases the confidence that he will make the promised payments to resolve his last three unpaid SOR debts and maintain his other debts in current status.

Appellant showed good faith and acted responsibly under the circumstances. All of his financial problems are resolved or are being resolved. His finances are under control, and do not cast doubt on his reliability, trustworthiness, and judgment. 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 common-sense 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 38-year-old project manager/associate project manager who has been employed by a major defense contractor since 2012. He was married from 2016 to April 2020. In 2005, he received an associate degree in business administration, and in 2021, he received a bachelor's degree in business administration. Applicant has been nominated for employee of the month on multiple occasions. He has received other

performance awards, and he has excellent performance evaluations. He provided one character statement from a friend which indicated he is diligent, polite, responsible, and has good judgment.

Applicant acted responsibly under the circumstances. His financial problems resulted from divorce and the illnesses of his parents. He resolved three of the six SOR debts, and he is making payments on the remaining three debts. He realized he made financial mistakes; he took corrective actions; and he assured that he will continue to endeavor to resolve his delinquent debts. He is making payments on his federal income tax debt. He understands that he needs to pay his debts, and the conduct required to retain his security clearance. Applicant was sincere and credible at his hearing. His efforts at keeping debts in current status as shown in his May 10, 2023 credit report have established a "meaningful track record" of debt re-payment. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). I am confident he will maintain his financial responsibility.

Applicant is advised that the grant of a security clearance now does not mean the Government is unable to check his credit and the status of his debts in the future. It is imperative that he continue his efforts to resolve the debts in SOR ¶¶ 1.a for \$10,000, 1.b for \$5,923, and 1.f for \$1,013, and his federal income tax debt. In order to retain a security clearance, he is required to maintain his financial responsibility.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated financial considerations security concerns.

### **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.f:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is granted.

---

Mark Harvey  
Administrative Judge