



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



In the matter of: )  
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----- ) ISCR Case No. 12-06822  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: John S. Berry, Esquire and Justin Kalemkiarian, Esquire

07/08/2014

**Decision**

Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 16 delinquent debts, totaling \$72,174. He settled, paid, or resolved 13 SOR debts. Two debts totaling \$17,729 are in the process of resolution through payment plans. One debt for \$12,000 is in settlement negotiations. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 22, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On February 25, 2014, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for

Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked. (HE 2)

On March 20, 2014, Applicant responded to the SOR and indicated he wanted a hearing. (HE 3) On April 8, 2014, Department Counsel indicated he was ready to proceed on Applicant's case. On April 10, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On May 12, 2014, DOHA issued a hearing notice, setting the hearing for June 26, 2014.<sup>1</sup> (HE 1) Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered six exhibits, and Applicant offered 15 exhibits. (Tr. 18-20, 33-35; GE 1-6; AE A-O) There were no objections, and I admitted GE 1-6 and AE A-O. (Tr. 18-20, 33-35) On July 7, 2014, DOHA received the transcript of the hearing.

### **Findings of Fact<sup>2</sup>**

In his Answer to the SOR, Applicant admitted SOR allegations 1.d-1.i, 1.k, 1.l, and 1.n. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 38-year-old electronics technician, who has worked continuously for a defense contractor for six years. (Tr. 21; GE 1) He graduated from high school and has attended some college. (GE 1) He served in the Air Force from January 1998 to July 2007, and he received an honorable discharge. (GE 2) When he left active duty, he was a staff sergeant (E-5). (GE 2) He served in the Air National Guard from January 2008 to July 2009. (Tr. 13) In 2002, he married, and he has an eight-year-old son. (Tr. 21, 42; GE 1)

### **Financial Considerations**

From July 2007 to April 2008, Applicant was unemployed or underemployed, and his family fell behind on their debts. (Tr. 23) Applicant's debts became delinquent while he was deployed overseas and his spouse failed to ensure their creditors were paid. (Tr. 49-50; SOR response)

Applicant's SOR alleges 16 delinquent debts, totaling \$72,174 as follows: (1) ¶ 1.a (\$10,627) is a judgment relating to a bank debt; (2)-(4) ¶¶ 1.b (\$4,801), 1.l (\$5,002), and 1.m (\$4,801) pertain to a debt to a store and its related collection actions; (5) ¶ 1.c (\$8,069) alleges a telecommunications judgment; (6)-(10) ¶¶ 1.d (\$265), 1.e (\$108), 1.f

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<sup>1</sup> A brief hearing was held on May 19, 2014; however, Applicant was not present. Later, it was determined that Applicant did not receive actual notice of the date, time, and place of his hearing.

<sup>2</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

(\$349), 1.h (\$353), and 1.n (\$91) allege five medical debts totaling \$1,166; (11) ¶ 1.g (\$549) alleges a debt to a store; (12) ¶ 1.i (\$7,400) alleges a bank debt; (13) ¶ 1.j (\$6,411) alleges a bank debt; (14) ¶ 1.k (\$11,900) alleges a bank debt; (15) ¶ 1.o (\$2,878) alleges a garnishment for a vehicle debt; and (16) ¶ 1.p (\$8,570) alleges a garnishment for a student loan.

In 2014, Applicant received some financial counseling and \$12,000 from his father-in-law, a retired Air Force chief master sergeant, which he used to resolve some SOR debts. (Tr. 28, 55-56) He generated a budget. (Tr. 29-30, 44) Applicant currently earns \$3,500 a month, and his spouse earns \$1,800 monthly. (Tr. 28-29) They have a monthly remainder after making debt payments and paying expenses. Applicant understands what he must do to establish and maintain his financial responsibility.

On May 29, 2013, Applicant received notice that his pay was being garnished to address the debt in SOR ¶¶ 1.a (\$10,627) and 1.k (\$11,900). (Tr. 31-33; AE A) The two SOR allegations relate to one debt. (Tr. 31-33; AE A) On June 26, 2014, the law firm collecting this debt wrote that \$300 monthly payments, beginning on July 15, 2014, were satisfactory to address a debt with a current balance of \$12,741. (Tr. 33; AE O at 61)

The debts in SOR ¶¶ 1.b (\$4,801), 1.l (\$5,002), and 1.m (\$4,801) are duplications of a store debt. (AE B) In 2014, Applicant made an initial payment of \$1,000 to the creditor. (Tr. 36-37) On June 25, 2014, Applicant and the collecting law firm agreed that Applicant will pay \$300 monthly starting on July 15, 2014, to address a debt with a current balance of \$4,988. (Tr. 35-AE B at 20; AE N at 60) On December 4, 2013, he was “released and discharged as a garnishee” for the telecommunications-related judgment in SOR ¶ 1.c (\$8,069). (Tr. 37; AE A at 5; AE C at 21)

On March 17, 2014, Applicant paid the four medical debts totaling \$1,075 in SOR ¶¶ 1.d (\$265), 1.e (\$108), 1.f (\$349), and 1.h (\$353). (Tr. 38, 45; AE D at 33-34) On June 12, 2014, he paid the medical debt in SOR ¶ 1.n (\$91). (Tr. 38; AE D at 33)

On June 4, 2014, Applicant paid the jewelry debt in SOR ¶ 1.g (\$549). (Tr. 38; AE D at 35) On June 20, 2014, Applicant paid \$3,000 to resolve the bank debt in SOR ¶ 1.i (7,400). (Tr. 38; AE E at 38)

On December 31, 2012, the bank creditor in SOR ¶ 1.j (\$6,411) provided Applicant an Internal Revenue Service (IRS) 1099-C, showing cancellation of \$5,843 of debt. (Tr. 39, 52; AE F at 38) On June 15, 2012, the creditor acknowledged “full and complete settlement” of the garnishment for a vehicle debt alleged in SOR ¶ 1.o (\$2,878). (Tr. 39, 52; AE G at 39-40)

In 2010, the student-loan collection agent garnished Applicant’s pay, but did not garnish sufficient funds to fully resolve the debt in SOR ¶ 1.p (\$8,570). (Tr. 40; GE 4; AE H at 49-50) This student loan debt now totals \$12,000. (Tr. 31) Applicant recently made an offer to settle this debt for \$9,000. (Tr. 17) If the debt is not settled, Applicant promised to make payments to resolve this debt. (Tr. 31)

While he was on active duty, Applicant served three years and four months in Southwest Asia. (Tr. 52; GE 2) He earned the following Air Force awards: Air Force Achievement Medal; Air Force Training Ribbon; Air Force Longevity Service Award with one device; National Defense Service Medal; NCO Professional Military Education Ribbon; Armed Forces Expeditionary Medal; Air Force Outstanding Unit Award with Valor with three devices; Air Force Good Conduct Medal with one device; and several other awards and ribbons. (GE 2, DD Form 214)

After leaving active service, Applicant served as an aeronautical field engineer for a government contractor in Iraq from July 2007 to April 2008 and in Afghanistan from 2008 to February 2009. (Tr. 24-26) As a contractor, he was exposed to enemy indirect fire because he was serving at several forward operating bases in Iraq. (Tr. 54) He was also exposed to the risk of improvised explosive devices when traveling in convoys.

### **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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, 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 and the Secretary of Defense 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 (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 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 relating to financial problems:

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 and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness 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). Applicant's history of delinquent debt is documented in his credit reports, SOR response, and statement at his hearing.

Several of Applicant's debts became delinquent more than five years ago. Applicant's SOR alleges 16 delinquent debts, totaling \$72,174. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) to 20(d). AG ¶ 20(e) is not applicable. Applicant did not dispute any of his delinquent SOR debts. Unemployment, underemployment, and his spouse's failure to pay the family debts while he was deployed overseas contributed to his financial problems, which are circumstances largely beyond his control. He settled, paid, or resolved 13 SOR debts. Two debts totaling \$17,729 are in the process of resolution through payment plans. Applicant offered to settle one \$12,000 student loan debt for \$9,000. If the \$9,000 settlement offer is rejected, he promised to make payments and resolve this debt. In 2014, Applicant received some financial counseling and \$12,000 from his father-in-law, a retired Air Force chief master sergeant, which he used to pay his creditors. He generated a budget. He understands what he must do to establish and

maintain his financial responsibility. Applicant promised to continue making payments and to resolve all three of his remaining SOR debts.<sup>3</sup>

The Appeal Board explained that circumstances beyond one's control can cause unresolved debt, and are not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing some good faith.<sup>4</sup> He established and maintained contact with his creditors.<sup>5</sup> His financial problem is being resolved or is under control. Applicant's financial problems are unlikely to recur; and they do not cast doubt on his current reliability, trustworthiness, or good judgment. His efforts are sufficient to fully mitigate financial considerations security concerns.

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<sup>3</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

<sup>4</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>5</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

## 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(a):

(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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 38-year-old electronics technician, who has worked continuously for a defense contractor for six years. He deserves substantial credit for supporting the U.S. Government during his Air Force active-duty service for more than three years in Southwest Asia, and as a contractor in Iraq and Afghanistan. He is sufficiently mature to understand and comply with his security responsibilities. There is every indication that he is loyal to the United States and his employer. There is no evidence that he abuses alcohol or uses illegal drugs.

Applicant is credited for admitting responsibility for his delinquent debts. Unemployment, underemployment, and his spouse's failure to pay the family debts, while he was deployed overseas, contributed to his financial woes. Applicant's SOR alleged 16 delinquent debts, totaling \$72,174. He settled, paid, or resolved 13 debts. Two debts totaling \$29,729 are in the process of resolution through payment plans or settlement negotiations. He has sufficient financial resources to resolve his remaining delinquent SOR debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation



and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination). There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant is an intelligent person, and he understands what he needs to do to establish and maintain his financial responsibility. There is simply no reason not to trust him. Moreover, he established a "meaningful track record" of debt repayment. I am confident he will maintain his financial responsibility.<sup>6</sup>

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 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:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.p: For Applicant

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<sup>6</sup>Of course, the Government can re-validate Applicant's financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this Applicant's clearance is conditional.

## **Conclusion**

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

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Mark Harvey  
Administrative Judge