



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 12-09598  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2016

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On April 25, 2012, Applicant submitted a Questionnaire for National Security Positions (SF-86). On May 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under 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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and referred his case to

an administrative judge for a determination whether his clearance should be granted or denied.

On June 2, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated September 22, 2015, was provided to him by letter dated September 24, 2015. Applicant received the FORM on October 5, 2015. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information within the 30-day period, which was received without objection.<sup>1</sup> On February 17, 2016, the case was assigned to me.

### **Findings of Fact**

Applicant denied all of the SOR allegations except SOR ¶¶ 1.i, 1.j, and 1.o, to which he admitted.

### **Background Information<sup>2</sup>**

Applicant is a 37-year-old employee of a defense contractor since May 2008. He seeks a security clearance in conjunction with his current employment. Applicant was initially granted a security clearance when he was on active duty in the U.S. Army, discussed below. (Items 2, 4)

Applicant graduated from high school in June 1997. During his June 15, 2012 Office of Personnel Management Personal Subject Interview (OPM PSI), he stated that he had been attending college on-line and in person from September 2010 to present. (Item 4) Applicant served on active duty in the Army from February 2002 to February 2006, and served in the Army National Guard from February 2006 to November 2010. (Item 2)

Applicant married in May 2008, and is currently separated, date unknown. (Item 2; FORM response) He has two stepchildren, a 16-year-old stepson and a 12-year-old stepdaughter. (Item 2)

### **Financial Considerations**

Applicant's SOR lists 15 delinquent debts that are essentially broken down into two categories – 7 medical debts and 8 non-medical debts. The medical debts were incurred by his estranged wife and the non-medical debts consist primarily of household-related debts. (SOR ¶¶ 1.a – 1.o; Item 4) Department Counsel noted in his FORM that Applicant had failed to provide documentation to support claims made in his

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<sup>1</sup> Applicant's additional information will be referred to as FORM response.

<sup>2</sup> The limited background information regarding Applicant was derived from the FORM and was the most current information available.

SOR answer that his debts were not valid, were being paid by health care insurance, were paid, or that payment arrangements had been made. Applicant, in large part, corrected those shortcomings in his FORM response.

Applicant's financial problems began in approximately 2008 when his job as a Government contractor required him to deploy to Iraq. While deployed, Applicant's wife assumed responsibility for managing the household finances. However, shortly after assuming this responsibility, she went into a deep and debilitating depression. She continued to incur debt and not pay bills. Applicant attempted to manage the family finances while he was in Iraq to the best of his ability. (Item 4)

Applicant's wife continues to struggle with depression. Applicant reports that her "medical procedures were due to numerous attempted suicides and [his wife's] refusal to seek help." Applicant has health care insurance to cover his wife's medical bills; however, he claims that the insurance company requires her medical records to process payment and his wife refuses to release her medical records. Applicant and his wife are no longer on speaking terms. As of the date of his FORM response, Applicant's wife was in the intensive care unit following a suicide attempt. Applicant's mother-in-law was in the process of having his wife committed to a long-term mental health care facility, as well as, assuming custody of her minor grandson. Applicant recognizes the adverse impact unpaid bills have on his credit and security clearance process and is committed to resolve these medical bills in a timely manner. (Item 4; FORM response)

The first seven SOR debts are for medical bills related to his wife. Two of those debts have been resolved and have been removed from Applicant's credit report. The remaining five debts remain unpaid; however, Applicant is working with his health care insurance company to resolve these debts. (SOR ¶¶ 1.a – 1.g; Items 1, 4; FORM response)

The remaining eight SOR debts have been resolved or are being resolved. The following summarizes their status: SOR ¶ 1.h – \$3,418 collection account for property management company. Creditor has no record of debt and Applicant is in the process of having account removed from his credit reports. SOR ¶ 1.i - \$1,468 collection account for cable television. Applicant is making \$50 monthly payments by direct debit. SOR ¶ 1.j - \$1,458 collection account for cable television. Applicant is making \$50 monthly payments by direct debit. SOR ¶ 1.k - \$244 collection account for cell phone. Account is paid in full. SOR ¶ 1.l - \$121 collection account for local municipality. Account is paid in full. SOR ¶ 1.m - \$272 collection account for utility bill. Account is paid in full. SOR ¶ 1.n - \$830 charged-off credit card bill. Account is paid in full. SOR ¶ 1.o – \$2,990 charged-off credit card bill. Applicant is making \$308 monthly payments by direct debit. (Item 1; FORM response)

Applicant has paid, is paying, or is attempting to resolve all of his SOR debts. As noted, he has addressed the debts within his control and those debts outside of his control, which would be medical bills related to his wife, remain a work in progress. There is no record evidence that Applicant sought financial counseling nor does the record contain any character evidence.

## 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 for 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.”

The evidence establishes the validity of the allegations and 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 does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgement.

Full application of AG ¶ 20(b) is warranted. His wife's medical problem could not have been foreseen, and there does not appear to be any short-term resolution for Applicant as it pertains to his wife's condition. His wife's depression began in 2008 when he was deployed to Iraq. Her condition deteriorated to the point where she was committed to a mental health facility following her latest suicide attempt.

AG ¶¶ 20(c) is partially applicable and 20(d) is fully applicable. Although Applicant did not receive formal financial counseling, his debts are being resolved and there are clear indications that his financial problems are resolved or under control. As noted above, Applicant has made a concerted effort to repay his creditors through a series of actions to include contacting his health care insurance and taking responsibility for the debts within his control. Given Applicant's resources, he is approaching his debts in a responsible and measured way.<sup>3</sup> Applicant disputes the validity of the debt in SOR ¶ 1.h triggering application of AG ¶ 20(e); however, further action is required by Applicant to challenge this debt so it does not appear on his credit report.

### **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

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<sup>3</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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

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). The discussion in the Analysis section under Guidelines F and E is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's employment with a defense contractor weighs heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts are resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating 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 omitted).

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

Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a "meaningful

track record” of debt re-payment. I am confident he will resolve the remaining debts on his SOR and maintain his financial responsibility.<sup>4</sup>

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **Formal Findings**

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.o:	For Applicant

### **Conclusion**

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge

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<sup>4</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 security clearance is conditional.