



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



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 12-10377  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

08/11/2015

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On February 14, 2012, Applicant submitted a Questionnaire for National Security Positions (SF 86). On January 21, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant 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 granted.

On February 20, 2015, Applicant responded to the SOR. On April 2, 2015, Department Counsel was ready to proceed. On April 8, 2015, DOHA assigned Applicant's case to me. On April 21, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for May 26, 2015. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, which were received into evidence without objection.

Applicant did not call any witnesses, testified, and offered Applicant Exhibits (AE) A through H-2, which were received into evidence without objection. I held the record open until June 5, 2015, to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE I through AE L, which were received into evidence without objection. On June 2, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In his SOR answer, Applicant constructively admitted all of the SOR allegations with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 52-year-old sheet metal mechanic employed by a defense contractor since April 2011. He seeks a secret security clearance as a condition of continued employment. (GE 1; Tr. 15-17)

Applicant graduated from high school in June 1981. He did not pursue higher education and learned his job skills from on-the-job training. (GE 1; Tr. 17-18) Applicant married in March 1999. His wife is employed full-time as a receptionist at a law firm. Applicant has three adult children, one son and two daughters. Applicant did not serve in the armed forces. (GE 1; Tr. 18-21)

### **Financial Considerations**

Applicant's SOR lists eight allegations under this concern – four collection accounts, two charged-off accounts, one state tax lien, and failure to file federal and state tax returns in 2008. (SOR ¶¶ 1.a – 1.h)

Applicant's financial problems began when he was laid off and unemployed from August 2009 to April 2011. His income dropped from \$2,400 a month to approximately \$972 a month, which he received in unemployment compensation.

Applicant also was required to pay a car loan he co-signed for one of his daughters when she defaulted. (GE 2; Tr. 21-25)

The following summarizes the status of each SOR debt:

SOR ¶ 1.a – Collection account for utility company in the amount of \$595. Paid in full. **DEBT RESOLVED.** (Tr. 25-26; AE A-1, A-2)

SOR ¶1.b – Collection account for cable service in the amount of \$327. Paid in full. **DEBT RESOLVED.** (Tr. 27; AE B)

SOR ¶ 1.c – Charged-off account for car repossession in the amount of \$15,319. Applicant co-signed for his daughter's car loan and she defaulted. He has a pending written offer with the creditor to settle this account. **DEBT BEING RESOLVED.** (Tr. 27-29, 42; AE C-1, C-2, C-3)

SOR ¶ 1.d – State tax lien in the amount of \$516. Paid in full. **(DEBT RESOLVED.** (Tr. 29-32; AE D)

SOR ¶ 1.e – Charged-off credit card account for \$453. Paid in full. **(DEBT RESOLVED.** (Tr. 32; AE E)

SOR ¶ 1.f – Charged-off credit card account for \$706. Paid in full. **(DEBT RESOLVED.** (Tr. 32; AE F)

SOR ¶ 1.g – Collection account for a furniture company in the amount of \$1,663. Applicant is making \$150 monthly payments until account is paid off. **(DEBT BEING RESOLVED.** (Tr. 32, 42-43; AE G-1, G-2)

SOR ¶ 1.h – Applicant failed to file his state and federal income returns for 2008. After Applicant was laid off, he did not have the money to pay his taxes. Applicant has since filed both his state and federal returns and is current on all of his state and federal income taxes. (Tr. 32-36, 43; AE H-1, H-2)

Post-hearing, Applicant submitted a budget that reflects he is living a modest lifestyle and within his means. He testified that his net monthly remainder is approximately \$1,800. (Tr. 38-42; AE I)

### **Character Evidence**

Applicant submitted three work-related reference letters from two supervisors and one co-worker. Applicant is a dependable and trusted employee. He has an excellent work ethic and is a definite asset to his company's mission. (AE J – AE L)

## 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

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 three financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts”; “(c) a history of not meeting financial obligations”; and “(g) failure to file annual Federal, state, or local income tax returns as required ....” Applicant’s history of delinquent debt and failure to file his tax returns is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a), 19(c), and (g).

Five financial considerations 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 judgment.

Full application of AG ¶ 20(b) is warranted. After Applicant was laid off for approximately 20 months, his income significantly decreased. His daughter also defaulted on a car loan for which he co-signed. These events could not have been anticipated. Applicant remained in contact with his creditors<sup>1</sup>; however, he was unable to remain current on his accounts because he simply did not have the money to pay them.

AG ¶¶ 20(c) is partially applicable and 20(d) is fully applicable. Although he did not receive financial counseling, his debts are being resolved and there are clear indications that his financial problems are under control. Applicant has made a concerted effort to repay his creditors. He has paid six of his debts in full, is making monthly payments on one debt, and has a pending written offer to settle one of his debts. Additionally, Applicant has filed his 2008 state and federal state income tax returns and is current on all of his taxes. AG ¶ 20(e) is not relevant.

### **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):

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<sup>1</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 [his or her] creditors and attempted to negotiate partial payments to keep [his or her] debts current.

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

Applicant 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 have been 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).

Applicant's debts have been explained, paid or are being resolved. Due to circumstances beyond his control, his debts became delinquent. Despite his financial setback, it is clear from Applicant's actions that he is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's years of financial responsibility before falling into debt, the circumstances that led to his financial difficulties, his financial recovery, the steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his situation, his reference letters, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

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**

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.h:               For Applicant

### **Conclusion**

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

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Robert J. Tuidor  
Administrative Judge