



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 12-11009  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

01/27/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 26 delinquent, charged-off, or collection debts totaling \$16,350. He paid one debt for \$832. He did not make sufficient progress resolving his other SOR debts. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 20, 2012, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On July 23, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to him, alleging security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) as revised by the Under Secretary of Defense for Intelligence on August 30, 2006, which became effective on September 1, 2006.

Based on information available to the Government, DOD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that his

case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

Applicant provided an undated response to the SOR. (HE 3) On December 15, 2014, Department Counsel was prepared to proceed. On December 18, 2014, DOHA assigned the case to me. On January 9, 2015, DOHA issued a hearing notice, setting the hearing for January 13, 2015. (HE 1) The hearing was held as scheduled. Applicant waived his right to 15 days of notice of the date, time, and place of the hearing. (Tr. 15-17) Department Counsel provided five exhibits, which were admitted without objection. (Tr. 20-21; GE 1-5) Applicant did not offer any documents into evidence at his hearing (Tr. 21). I received the transcript of the hearing on January 21, 2015. On January 22, 2015, I received an email from Applicant, which was admitted without objection. (AE A)

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.y. (HE 3) He denied the allegation in SOR ¶ 1.z, and he did not address his bankruptcy in SOR ¶ 1.aa. (HE 3) At his hearing, he admitted SOR ¶ 1.aa. (Tr. 18) Applicant's SOR response also provided mitigating information. (HE 3) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 44-year-old helicopter electrical engineer, who seeks to retain his security clearance to continue his work with a DOD contractor. (Tr. 6, 27) He has worked for a defense contractor for 14 years. (Tr. 7, 23) In 1987, he graduated from high school. (Tr. 6) He has not attended college. (Tr. 6) He has not had any periods of unemployment in the last five years. (Tr. 8) He has held a security clearance since 2002 and previously held a security clearance when he was on active duty in the Air Force. (Tr. 23)

Applicant served in the Air Force from 1987 to 1997 as an aircraft electrician. (Tr. 6-7) He was an E-4 when he left the Air Force, and he received an honorable discharge. (Tr. 7) In 1991, he married, and in 1994, he was divorced. (Tr. 9, 31-32) In 1998, he married the second time, and in 1999, he was divorced. (Tr. 9, 31-32) He has custody of his 16-year-old daughter. (Tr. 9)

### **Financial Considerations**

Around 2000, Applicant was unemployed for about three months, and he had debts from his divorce. (Tr. 29) In August 2004, his nonpriority, unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. (Tr. 39-41; SOR ¶ 1.aa)

Applicant had two surgeries in 2010 or 2011, and he was on disability for three months. (Tr. 8, 36-37; SOR response) He lost one month of pay, and he was only paid

---

<sup>1</sup>To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

65% of his pay while on disability. (Tr. 8, 36; SOR response) Applicant is a single parent and his daughter is an important financial priority. (SOR response) He paid some medical debts and a personal loan received from his father. (Tr. 49; SOR response) He is paying \$156 monthly on a \$1,000 non-SOR loan and \$212 monthly on a \$2,000 non-SOR loan. (Tr. 45, 50)

Applicant's 16-year-old daughter has a non-SOR debt to Social Security for about \$1,600. (Tr. 32-35; AE A) The mother of Applicant's daughter was receiving Social Security disability, and Social Security was paying Applicant's daughter about \$30 monthly based on her mother's disability. (Tr. 32-33) The mother of Applicant's daughter became employed, but did not inform Social Security about the change in her employment status. (Tr. 32) Social Security sought repayment of \$1,800 from Applicant's daughter. (Tr. 32-34) About four years ago, Applicant made one \$200 payment to address this debt. (Tr. 32-35) He did not make any more payments because he believed his former spouse was responsible for this debt and should pay it. (AE A) Applicant plans to pay this debt for his daughter. (Tr. 48) I draw no adverse inferences about Applicant whatsoever concerning this non-SOR debt.

Applicant's SOR alleges 26 delinquent, charged off, or collection debts totaling \$16,350. A discussion of each SOR debt follows: (1) debt for a vehicle repossession in 2011 for \$10,456 (Tr. 58; SOR ¶ 1.a); (2) telecommunications debt for \$876 (1.b); (3)-(18) medical collection debts for \$64 (1.c), \$117 (1.d), \$154 (1.e), \$86 (1.f), \$58 (1.g), \$234 (1.h), \$269 (1.i), \$65 (1.j), \$58 (1.n), \$30 (1.o), \$36 (1.p), \$97 (1.s), \$448 (1.t), \$89 (1.v), \$164 (1.w), and \$75 (1.y); (19) utilities debt for \$219 (1.k); (20) telecommunications debt for \$165 (1.l); (21) bank debt for \$792 (1.m); (22) collection debt for \$196 (1.q); (23) collection debt for \$19 (1.r); (24) collection debt for \$700 (1.u); (25) collection debt for \$48 (1.x); and debt for unpaid federal taxes for \$832 (1.z).

Applicant indicated he contacted the creditor in SOR ¶ 1.l for \$165. (Tr. 53) The creditor was unable to locate the debt; however, a December 10, 2014 credit report shows the debt is still listed as delinquent. (Tr. 53; GE 5) Applicant said he paid the debt for federal taxes in SOR ¶ 1.z for \$832 in January 2014. (SOR response) Applicant believed it was paid using his tax refund. (Tr. 46-47) Aside from paying the debt in SOR ¶ 1.z, no other payments were made to any SOR creditors. (Tr. 52-54)

On August 15, 2012, an Office of Personnel Management (OPM) investigator interviewed Applicant about his finances. (Tr. 65; GE 2) Many of the SOR debts were delinquent at that time, and Applicant told the investigator that he would obtain a copy of his credit report and make arrangements to start paying his delinquent debts. (Tr. 55) In December 2013, Applicant said in response to DOHA interrogatories that he had not yet obtained his credit report and started working on resolving his delinquent debts. (Tr. 55-56) Applicant said that he "lost track of getting [his debts] paid." (Tr. 57-58)

Applicant's annual salary is \$62,500. (Tr. 25) Applicant described his income and expenses, and he estimated he had a net monthly remainder of \$570. (Tr. 51-51) See *also* Applicant's personal financial statement (showing net monthly remainder of \$737)

(GE 2) Applicant's medical insurance pays 80% of his medical bills, and his annual deductible is \$2,500. (Tr. 38) He has not received financial counseling. (Tr. 51)

## 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 his 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.” Applicant’s SOR alleges 26 delinquent, charged-off, or collection debts totaling \$16,350. Applicant admitted his responsibility for all of the SOR debts, except he said he paid the debt for federal taxes in SOR ¶ 1.z for \$832 in January 2014, and he said the creditor could not find the debt in SOR ¶ 1.i for \$165. His admissions are corroborated by his credit reports. 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;<sup>2</sup> 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.

The Appeal Board concisely 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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the mitigating conditions apply to all of Applicant's SOR debts. Nevertheless, there is some mitigating financial information. Applicant's delinquent debt initially resulted from two surgeries in 2010 and 2011. His pay was reduced by one third for two months, and he was not paid for one month. These are circumstances beyond his control under AG ¶ 20(b). Other than the SOR debts, he maintained most of his other debts in current status.

The federal tax debt in SOR ¶ 1.z for \$832 is mitigated because Applicant said he paid it. I am also crediting Applicant with mitigating SOR ¶¶ 1.aa, his 2004 bankruptcy. This bankruptcy is not recent and his debts resolved in that bankruptcy were beyond his control. AG ¶ 20(e) does not apply to any of his debts because he did

---

<sup>2</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)).

not provide “documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” He called the creditor about the debt in SOR ¶ 1.I, and he said the creditor could not find the debt. However, the debt was in his December 2014 credit report, and it remains unresolved.

Applicant admitted responsibility for 24 delinquent, charged-off, or collection debts totaling more than \$15,000. He did not make any payments to address any of these 24 debts; even though 12 of them are less than \$100 each, and four of them are under \$50 each. He did not take reasonable and responsible actions to resolve his SOR debts. There are not clear indications the problem is being resolved and is under control. Applicant did not receive financial counseling or establish that he was unable to make more payments to his SOR creditors. His efforts are insufficient to fully mitigate financial considerations security concerns.

### **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.

Under AG ¶ 2(c), 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

There is some evidence supporting Applicant’s continued access to classified information; however, this evidence is not sufficient to mitigate security concerns. Applicant is a 44-year-old helicopter electrical engineer. He has worked for a defense contractor for 14 years. He has held a security clearance since 2002 and previously when he was on active duty in the Air Force. There is no evidence that Applicant has committed any security violations. He served in the Air Force from 1987 to 1997 as an aircraft electrician. He was an E-4 when he left the Air Force, and he received an honorable discharge. He is divorced, and he has custody of his 16-year-old daughter. His debts initially resulted from loss of pay due to surgeries in 2010 and 2011. Many of his debts originate from medical treatment. These are circumstances beyond his control that contributed to his financial problems.

The factors weighing towards reinstatement of Applicant's security clearance are less substantial than the factors weighing against its reinstatement. On August 15, 2012, an OPM investigator interviewed Applicant about his finances, and Applicant promised to address his delinquent debts. Applicant's SOR alleges 26 delinquent, charged-off, or collection debts totaling \$16,350. He paid one SOR federal tax debt for \$832. This is insufficient progress since 2012 to establish there are clear indications the problem is being resolved and his finances are under control. He did not receive financial counseling or establish that he was unable to make some payments to more of his SOR creditors. He did not act responsibly under the circumstances, and his financial problems are likely to continue. He did not provide documentation showing he disputed any of his SOR debts. The record does not show enough evidence of inability to pay debts, documented financial progress, financial effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations security concerns.

It is well settled that once a concern arises regarding an applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that reinstatement of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his worthiness for 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 Applicant has not carried his burden and financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

### **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:   | AGAINST APPLICANT |
| Subparagraphs 1.a to 1.y:   | Against Applicant |
| Subparagraphs 1.z and 1.aa: | For Applicant     |



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Mark Harvey  
Administrative Judge