



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



In the matter of: )  
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----- ) ISCR Case No. 14-02851  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

09/11/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges two delinquent collection accounts totaling \$28,194. His \$27,016 SOR debt was the result of underemployment and loss of income. He settled the \$27,016 debt. He disputed his responsibility for the \$1,178 SOR debt. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 30, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Item 3) On September 5, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 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 4, 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). (Item 1) The SOR detailed reasons why the DOD CAF could not make the finding under the Directive that it is clearly consistent with the national interest to grant or continue a

security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

Applicant provided an undated response to the SOR allegations and did not request a hearing. (Item 2) A complete copy of the file of relevant material (FORM), dated June 15, 2015, was provided to him on June 22, 2015.<sup>1</sup> Applicant did not respond to the FORM. The case was assigned to me on September 1, 2015.

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

In Applicant's SOR response, he admitted SOR debts ¶¶ 1.a and 1.b.<sup>3</sup> He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 38-year-old associate engineer, who has worked for a defense contractor since March 2011.<sup>4</sup> Applicant did not disclose any unemployment in the last 15 years. He honorably served on active duty in the Army from 2000 to 2006, and he left active duty service as a sergeant. He served in Afghanistan as a government contractor from October 2006 to February 2008. (Item 6)

Applicant has never been married, and he does not have any children. He is a high school graduate. He attended college; however, he did not receive a degree. He disclosed the two SOR debts on his SF 86. (Items 1 and 3) Applicant had a security clearance with access to sensitive compartmented information (SCI) when he was on active duty. There is no evidence of criminal conduct, abuse of alcohol, use of illegal drugs, or security violations.

### **Financial Considerations**

Applicant's SOR alleges two delinquent collection accounts totaling \$28,194. He owed his \$27,016 SOR debt as a result of a resort-timeshare contract, which he purchased in November 2008. (Item 2) In 2011, his annual income decreased from about \$80,000 to about \$50,000, and he could not afford payments to the resort-timeshare creditor. (Items 1 and 2) He entered negotiations with the creditor, in

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<sup>1</sup>The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated June 16, 2015, and Applicant's receipt is dated June 22, 2015. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup>The source for the information in this paragraph is Applicant's SOR response. (Item 2)

<sup>4</sup>Unless stated otherwise, Applicant's January 30, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) is the source for the facts in this paragraph and the next paragraph. (Item 3)

November 2012, the creditor offered to settle the balance by “accept[ing] back” Applicant’s membership. (Item 2) Applicant accepted the offer, and the creditor provided a 2012 Internal Revenue Service (IRS) form 1099-A, stating the “Balance of Principal outstanding” was \$27,016 and the “Fair market value of property” was \$37,098. (Item 2) This debt is resolved.

Applicant attended a technical university under the post-911 GI Bill, and the Department of Veteran’s Affairs (VA) funded his education. (Item 2) The technical university, the VA, and Applicant disputed responsibility for \$1,178. (Item 2) Applicant said the school advised him that if the VA did not pay the debt, the school would forgive it. (Item 2) Applicant promised to pay the debt if the school continues to seek payment, explaining that the school is withholding his diploma until the bill is paid. (Item 2)

Applicant’s February 1, 2014 credit report shows 17 accounts with a designation of “pays as agreed,” and the only two negative entries were the two SOR debts. (Item 4) His May 5, 2015 credit report shows 18 accounts, and one derogatory entry, the past-due debt alleged in SOR ¶ 1.a. (Item 5)

### **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.

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 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 [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 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 history of delinquent debt is documented in his credit reports, SF 86, and SOR response. His SOR alleges two delinquent collection accounts totaling \$28,194. 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>5</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.

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) through 20(d). Applicant's underemployment and reduction in income are circumstances largely beyond his control that caused his financial problems. He acted responsibly by negotiating and settling his \$27,016 SOR debt.

AG ¶ 20(e) applies to Applicant's \$1,178 SOR debt. Applicant was entitled to VA education benefits, and he was attending a technical university. The VA funded his tuition. A dispute arose between the VA and the technical university. It was reasonable for Applicant to exhaust resolution between the VA and the technical university before paying the debt. If the VA does not pay the debt, and the technical university fails to

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<sup>5</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)).

forgive it, Applicant will have to either pay the debt or sue the technical university to obtain his diploma. Applicant has promised to successfully dispute or pay this debt.

Applicant's delinquent debts "occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on [his] current reliability, trustworthiness, or good judgment." Applicant has learned from his experiences; there are clear indications that the problem is resolved; his finances are under control; and he showed good faith in the resolution of his financial problems. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts. His efforts are sufficient to 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.

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 Guideline F, but some warrant additional comment.

Applicant is a 38-year-old associate engineer, who has worked for a defense contractor since March 2011. He honorably served on active duty in the Army from 2000 to 2006, and he left active service as a sergeant. He served in Afghanistan as a government contractor from October 2006 to February 2008. He attended college; however, he did not receive a degree. He disclosed his two SOR debts on his SF 86. He is sufficiently mature to understand and comply with his security responsibilities. Underemployment and reduction in income caused his financial woes. I give Applicant substantial credit for maintaining contact with his creditors and either paying, settling, or disputing, all of his debts. Applicant had a security clearance with access to SCI when he was on active duty. There is no evidence of criminal conduct, abuse of alcohol, use of illegal drugs, or security violations.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 understands what he needs to do to maintain his financial responsibility. He has resolved or maintained all debts in current status except for one \$1,178 SOR debt owed to a technical university. His efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident he will maintain his financial responsibility and resolve his debt owed to the technical university.

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, and 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 and 1.b: For Applicant

## **Conclusion**

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

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Mark Harvey  
Administrative Judge