



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



In the matter of: )  
)  
) ISCR Case No. 14-01193  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Christopher Morin, Esq., Department Counsel  
For Applicant: *Pro se*

10/16/2014

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 1, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On May 24, 2014, Applicant answered

the SOR and requested a hearing. This case was assigned to me on July 18, 2014. On July 22, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for August 14, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, while Applicant testified and offered Applicant Exhibits (AE) A through F. The record of the proceeding was left open until August 28, 2014, to provide Applicant an opportunity to present additional matters. He submitted additional documents that were marked as AE G through I. All proffered exhibits were admitted into evidence without objection. The prehearing guidance sent to Applicant was entered into the record as Hearing Exhibit (HE) 1, Department Counsel's list of exhibits was entered as HE 2, and a post-hearing email sent to Applicant as HE 3. The transcript (Tr.) of the hearing was received on August 25, 2014.

### **Procedural Matter**

Department Counsel made a motion to amend the allegation in SOR ¶ 1.d by changing the amount of the past-due debt from \$511 to \$20,140 to conform to the evidence. Applicant objected to the amendment. His objection was overruled, and the motion to amend the SOR was granted. The record of the proceeding was left open as noted above for Applicant to submit additional matters concerning the amendment.<sup>1</sup>

### **Findings of Fact**

Applicant is a 37-year-old computer network engineer who works for a defense contractor. He has been working for his current employer since January 2013. He graduated from high school in 1994 and has accumulated enough college credits to be considered a senior. He married in June 1999 and divorced in April 2013. He continues to live with his ex-wife. They have reconciled and plan to remarry. He has three children, ages 11, 14, and 16. This is the first time that Applicant has sought to obtain a security clearance.<sup>2</sup>

The SOR alleged that Applicant had seven delinquent debts totaling \$22,410 (SOR ¶¶ 1.a – 1.g). In the Answer to the SOR, he admitted each of the alleged debts.<sup>3</sup>

Applicant attributed his delinquent debts to a variety of problems, including a downturn in the economy, periods of unemployment, divorce, health issues, and contractor fraud. From 2000 to 2009, he worked as an assembly line worker for a car manufacturer. His net annual salary in that job was about \$47,000, and he was

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<sup>1</sup> Tr. 11-14.

<sup>2</sup> Tr. 6-7, 45-49; GE 1, 2.

<sup>3</sup> Applicant's Answer to the SOR.

financially stable then. Due to a downturn in the economy, the car manufacturer offered buy-outs to its employees. Applicant accepted a buy-out of \$75,000 before taxes and two years of tuition. The buy-out amounted to about \$46,000 after taxes. From May 2009 to August 2010, he was unemployed while attending school for information technology and network engineering. His wife was the sole wage earner in the home during that period, but they also lived off his buy-out. In August 2010, he obtained a job that required him to climb ladders. He had a seizure on that job, which ultimately resulted in him resigning because he could no longer climb the ladders. He was then unemployed from November 2011 to March 2012. From March to June 2012, Applicant was employed at a minimum wage job. He then moved to a higher-paying temporary job before starting his current job.<sup>4</sup>

In the past year, Applicant resolved \$7,824 in delinquent debts that are not listed on the SOR. These include:

Type	Amount	Status
Judgment	\$3,444	Judgment filed October 2010; satisfied July 2013; GE 2, AE C, F, I.
Cable bill	\$1,140	Assigned for collection in November 2011; paid November 2013; GE 2, AE A, F.
Cable bill	\$179	Assigned for collection in June 2011; paid October 2013; GE 2, AE F, I.
Cellular bill	\$1,988	Assigned for collection in July 2013; paid October 2013 for less than full balance; GE 2, AE F, I.
Medical bill	\$488	Assigned for collection in December 2012; paid October 2013; GE 2, AE F, I.
Banking debt	\$534	Assigned for collection in February 2011; paid August 2013 for less than full balance; GE 2, AE B, F, I.
Medical debt	\$51	Assigned for collection April 2012; paid August 2013; GE 2, AE F, I.

Applicant was a credible witness. He stated that he intends to continue resolving all of his negative debts. Each of the alleged debts is addressed separately below:

SOR ¶ 1.a – medical account for \$1,521. In his post-hearing submission, Applicant presented a plan for resolving this debt. It indicated that he would make an initial payment of \$500 in September 2014 and then three monthly payments of \$255 until it is paid off in about December 2014.<sup>5</sup>

<sup>4</sup> Tr. 31-32, 49-53; GE 2.

<sup>5</sup> GE 3, 4; AE I; Applicant's Answer to the SOR

SOR ¶ 1.b – medical account for \$60. Applicant indicated that he has attempted to pay this debt, but it appears the creditor is no longer in business. He noted the telephone number of the creditor reflected in the credit reports and on the internet is no longer in service. This is minor debt of negligible security significance.<sup>6</sup>

SOR ¶ 1.c – charged-off account for \$2,636. This was a utility bill for the rental property discussed in SOR ¶ 1.e below. Applicant indicated that he has not yet addressed this debt because he has been paying other delinquent debts. At the time of the hearing, he last talked to the creditor in about June 2014 to discuss potential ways of resolving this debt. In his post-hearing submission, he presented a plan in which he would make an initial payment of \$500 in February 2015 and monthly payments of \$267 until it is paid off in about September 2015.<sup>7</sup>

SOR ¶ 1.d – past-due account for \$20,140. This was a mortgage loan on a rental property that Applicant purchased in 2000. While the property was rented, the house caught on fire in December of 2008 and was severely damaged. Applicant hired a contractor and signed over \$45,000 of fire insurance proceeds to the contractor. In about August 2009, the contractor disappeared after collecting the insurance payment without completing the repairs. Applicant never heard from the contractor again. At that time, Applicant was still employed by the car manufacturer and was able to continue making the monthly payments on the property. However, with the downturn in the economy and leaving his job with the car manufacturer, he eventually was unable to keep up with the mortgage payments. Foreclosure proceedings started in about 2010. In his Answer to the SOR, Applicant submitted an IRS Form 1099-A that indicated the property was acquired by the creditor on July 2, 2012, the balance of the principal outstanding was \$42,162, and the fair market value of the property was \$54,635. Since the fair market value was greater than the amount owed, the creditor recouped what was owed. This debt is resolved.<sup>8</sup>

SOR ¶ 1.e – mortgage account past due for \$10,917 in foreclosure, with a balance of \$101,581. This was a mortgage loan on a rental property purchased in 2003. The property was rented until the tenants lost their jobs in 2009. The tenant vacated the property and Applicant was not able to keep up with the monthly payments. A credit report reflected that the foreclosure process had started on this property. At the hearing, Applicant indicated that he did not know the status of this debt. He stated that he called the creditor several times and no one seemed to know anything about the debt. He noted that the creditor stopped reporting anything about the debt on his credit reports in 2009. He indicated that employees of the creditor told him to hire an attorney. In his

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<sup>6</sup> Tr. 41-42; GE 3, 4; Applicant's Answer to the SOR.

<sup>7</sup> Tr. 65-66; GE 2, 3, 4; AE I; Applicant's Answer to the SOR.

<sup>8</sup> Tr. 55-63; GE 2, 3, 4; Applicant's Answer to the SOR. As noted in the Procedural Matter section, this is the debt in which the amount listed in the SOR was amended.

post-hearing submission, he stated that he would contact an attorney for assistance in resolving this debt.<sup>9</sup>

SOR ¶ 1.f – charged-off account for \$2,567. This debt was for a loan on a vehicle that was repossessed 2010. He requested a statement of deficiency from the creditor, but has not received one. He indicated that the debt has been transferred to another creditor and the original creditor would not advise him of the name of the new creditor. In his post-hearing submission, he stated that he would contact an attorney for assistance in resolving this debt.<sup>10</sup>

SOR ¶ 1.g – collection account for \$4,198. This debt was a student loan that was placed for collection in April 2012. Applicant indicated that he intended to pay off this debt next because it would enable him to obtain his degree and compete for higher paying jobs. He has been making payments on his other student loans that recently become due. In his post-hearing submission, he presented a plan to resolve this debt in which he would make an initial payment of \$1,000 in December 2014 and monthly payments of \$399 until it is paid off in about July 2015.<sup>11</sup>

Since obtaining his current job, Applicant has been living within his means and has incurred no new delinquent debts. In March 2013, Applicant contacted a debt consolidation agency and began making payments to them. However, he discontinued making those payments when he realized the agency's fees amounted to a large percentage of his payments. He eventually decided he would resolve the debts himself without the agency's assistance.<sup>12</sup>

Applicant's annual salary is about \$46,000. In February 2014, he submitted a Personal Financial Statement (PFS) that reflected his total net monthly income was \$2,772 and his total monthly expenses were \$1,903, which left him a net monthly remainder of \$869. Since submitting that document, he received a three percent raise. His PFS did not list any monthly debt payments. It also did not list a spouse's net monthly salary because he is still divorced; however, he still lives with his ex-wife and shares living expenses with her. His PFS listed that he had \$225 in a bank account and \$769 in a 401(k) account.<sup>13</sup>

Applicant indicated that his ex-wife has great credit. She owns a house that is located in an economically depressed city. They both lived in that house before moving

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<sup>9</sup> Tr. 55-56, 63-65, 80; GE 2, 3, 4; AE I; Applicant's Answer to the SOR.

<sup>10</sup> Tr. 66-67, 79-80; GE 2, 3, 4; AE I; Applicant's Answer to the SOR.

<sup>11</sup> Tr. 67-69; GE 3; AE I; Applicant's Answer to the SOR.

<sup>12</sup> Tr. 33-34, 77-78, 84-88; Applicant's Answer to the SOR.

<sup>13</sup> Tr. 69-88; GE 2.

to their current location to pursue employment opportunities. They have an arrangement in which she pays the mortgage on the property and he pays other expenses. A relative is living in that property and the monthly payments on it are in good standing.<sup>14</sup>

Applicant submitted his annual performance review for 2013. He was rated as “outstanding” (highest level) in three performance categories, as “exceeds expectations” in two categories, and as “meets expectations” in two categories. The performance review indicated that he was a valuable employee who is reliable.<sup>15</sup>

## Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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), Section 3. Thus, a clearance decision is merely an indication that the applicant has or has not met the strict

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<sup>14</sup> Tr. 71-73, 84-88.

<sup>15</sup> AE G, H.

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 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**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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.

Because Applicant accumulated a number of delinquent debts that he was unwilling to satisfy for an extended period, the following disqualifying conditions under AG ¶ 19 are applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Security clearance adjudications are not debt collection procedures, but assessments of reliability, trustworthiness, and good judgment. In such adjudications, an applicant is not required to establish that he or she had paid off each and every alleged debt. Likewise, there is no requirement that an applicant establish a plan to pay all debts simultaneously or that he or she first pays the debts listed in the SOR. All that is required is that an applicant act responsibly given his or her circumstances and develops a reasonable repayment plan accompanied by actions showing a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) and ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009).

In the present case, Applicant experienced periods of unemployment and underemployment due to a downturn in the economy and medical problems. During the period under review, he also went through a divorce and was defrauded by a contractor. These were conditions beyond his control that contributed to his financial problems. Since obtaining his current job, Applicant has acted responsibly in resolving seven delinquent debts totaling \$7,824. For three of the remaining debts, he has proposed realistic repayment plans. His resolution of the seven delinquent debts is sufficient to establish that he has a serious intent to effectuate the proposed repayment plans.

The two largest remaining debts involve a foreclosed property and a repossessed vehicle. Applicant contacted the creditors of those two large debts in an effort to determine the amount owed after the home and vehicle were reacquired by the creditors. Despite his requests, the creditors have not informed him of what, if any, deficiency remains on those debts. In response to his inquiries, employees of the mortgage loan creditor advised him to hire an attorney. Given that one of his foreclosed properties resulted in no deficiency, it is not unreasonable for Applicant to insist on the creditors adequately establishing the amount of any deficiencies before taking further steps to resolve these debts. He indicated that he does intend to hire an attorney to assist him in resolving these two debts.



Since obtaining his current job, Applicant has incurred no new delinquent debts. His financial problems are under control and are being resolved. Additional delinquent debts are unlikely to recur. AG ¶¶ 20(c) and 20(d) apply. AG ¶¶ 20(a) and 20(b) partially apply.

### **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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 valued employee. He has taken sufficient action to show he is serious about resolving his delinquent debts. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings 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 – 1.g:	For Applicant

## **Decision**

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

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James F. Duffy  
Administrative Judge