



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 14-06448  
 )  
Applicant for Security Clearance )

**Appearances**

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

02/29/2016

**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 March 24, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On March 26, 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. 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 or denied.

On April 23, 2015, Applicant responded to the SOR. On June 2, 2015, Department Counsel was ready to proceed. On June 6, 2015, DOHA assigned Applicant's case to me. On June 11, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for July 7, 2015. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection.

Applicant did not call any witnesses, testified, and did not offer any exhibits. I held the record open until July 24, 2015 to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE A through AE G, which were received into evidence without objection. On July 15, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In his SOR answer, Applicant 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 46-year-old program manager employed by a defense contractor since January 2014. He seeks a security clearance as a condition of his continued employment. (GE 1; Tr. 16-17)

Applicant graduated from high school in May 1987. He was awarded a bachelor of science degree in electrical engineering in May 1993. He was previously married from July 1993 to October 2001. That marriage ended by divorce. He remarried in June 2003. Applicant has a 21-year-old emancipated daughter and a 17-year-old stepdaughter from his first marriage. He also has a 12-year-old daughter from his second marriage. Applicant's stepdaughter from his previous marriage lives with him and his wife. Applicant's wife works fulltime as a probation officer. Applicant did not serve in the U.S. armed forces. (GE 1, GE 2; Tr. 17-22)

### **Financial Considerations**

Applicant's SOR lists 11 debts ranging from an \$82 charged-off medical account to a \$21,849 charged-off automobile loan. (SOR ¶¶ 1.a – 1.k; Tr. 31; GE 3, GE 4) Details regarding those 11 debts and their status follow.

Applicant's financial difficulties stem from periods of unemployment or underemployment. He was unemployed from November 2008 to December 2009,

from January 2010 to February 2010, and from September 2012 to February 2013. From March 2013 to December 2013, he was significantly underemployed. (GE 1, GE 2; Tr. 24-29, 31-33) During Applicant's employment from March 2013 to December 2013, his hourly rate was \$22 an hour in contrast to his previous employment when he was making \$56 an hour. (SOR answer)

Applicant has initiated a plan to regain financial responsibility. He contacted his employee assistance program and was provided with several referrals. Applicant retained a certified financial planner to help him develop a comprehensive and systematic plan to address his outstanding debts. Before that, he had consulted with a bank to determine whether he qualified for a consolidation loan and was informed that option was not available to him. (Tr. 42-43, 45-48; AE A – B, AE F)

Applicant's debt consolidation plan was presented in matrix format that listed the name of creditor, corresponding SOR allegation, amount owed to each creditor, payment date, projected payoff date, number of payments, and amount of payment. Applicant's budget demonstrates that he maintains a modest lifestyle and lives within his means. He has a net monthly remainder of \$206. (SOR ¶¶ 1a – 1.j) (AE A – AE B, AE C, Tr. 29, Tr-41-42) One of Applicant's debts, a past-due amount of \$641 for an automobile loan, has been paid off. One of his larger debts, a student loan, is in forbearance. (SOR ¶¶ 1.b, 1.k; Tr. 33-40; AE C, AE G)

To help reduce his family expenditures, Applicant advised that his teenage daughter will be getting a job, and she will pay for her automobile expenses. Applicant stated that if he gets his clearance, he will receive a \$105 monthly salary increase that he will apply towards his debts. He registered for an on-line debt reduction class and will follow up with his certified financial planner on an as needed basis. (AE F)

### **Character Evidence**

Applicant has spent the majority his adult working life working for defense contractors on defense-related projects. During his career, he received numerous awards and commendations, and received four performance-related "SPOT" awards from two different employers. (SOR answer)

### **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.

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 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 financial considerations 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 by the evidence establishing disqualifying conditions AG ¶¶ 19(a) and 19(c).

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 his 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 as a result of Applicant's unemployment and underemployment, which could not have been anticipated. During this time, Applicant remained in contact with creditors. AG ¶ 20(c) is fully applicable. Applicant received financial counseling and his financial problems are being resolved and under control. AG ¶ 20(d) is also fully applicable. Applicant has taken reasonable steps to regain financial responsibility. Most notably, he has benefited from the counsel he received from his certified financial planner. All of Applicant's debts are resolved or being resolved.<sup>1</sup> AG ¶ 20(e) is not relevant because he did not dispute his responsibility for any SOR debts.

### **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

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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.

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

There is some evidence against mitigating Applicant's financial conduct. Credit reports submitted by the Government document his SOR delinquent accounts. This process has no doubt made an impression on Applicant and he now demonstrates the need to exercise diligence when monitoring one's credit.

The mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. There is no evidence of any security violations. Applicant is a law-abiding citizen and a productive member of society. His current financial problems were caused by factors beyond his control. Applicant's employment in the defense industry weighs heavily in his favor. 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 Guideline 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 has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He holds a bachelor of science degree in electrical engineering. Applicant is making a significant contribution to the defense industry and has received recognition for his contributions from his employers. I specifically considered Applicant's 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, and his testimony and demeanor.

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 his debts and maintain his financial responsibility.<sup>2</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 Guidelines. Applicant has fully mitigated or overcome the Government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

### **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 - 1.k:               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

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<sup>2</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 [him] the opportunity to have a security clearance while [he] works on [his] financial problems.”). This footnote does not imply that this Applicant’s security clearance is conditional.