



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-02110  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 23, 2009

**Decision**

ABLARD, Charles D., Administrative Judge:

Several of Applicant's debts initially became delinquent due to circumstances beyond his control. Recently, he demonstrated a meaningful track record of debt repayment. He mitigated the financial considerations security concerns. Access to classified information is granted.

**Statement of the Case**

On February 20, 2006, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On December 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR detailing the basis for its preliminary decision to deny Applicant eligibility for access to classified information, citing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. The SOR detailed

reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue his security clearance, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked.

On January 12, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 24, 2009. Between March 30, 2009, and April 3, 2009, Applicant received oral notice of the hearing (Tr. 8). On April 7, 2009, DOHA issued a hearing notice. At the hearing, Applicant elected to proceed without delaying the hearing (Tr. 8-9). The hearing was held on April 20, 2009. At the hearing, Department Counsel offered seven exhibits (GE 1-7) (Transcript (Tr.) 11-12), and Applicant did not offer any exhibits (Tr. 20). There were no objections, and I admitted GEs 1-7 (Tr. 12). Additionally, I admitted the Notice of Hearing, SOR, and response to the SOR (GEs 8-10). I received the transcript on April 28, 2009. I held the record open until May 22, 2009, to provide Applicant an opportunity to provide additional evidence (Tr. 57-58). After the hearing I received five exhibits from Applicant. Department Counsel did not object to my consideration of these five exhibits and I admitted them into evidence (AE A-E).

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

In his SOR response, Applicant admitted responsibility for the debts in SOR ¶¶ 1.c to 1.e and 1.h; and he denied responsibility for SOR debts in ¶¶ 1.a, 1.b, 1.f and 1.g (GE 10). His admissions are accepted as findings of fact.

Applicant is a 33-year-old employee of a defense contractor (Tr. 40, 47). He has been employed in security by a defense contractor since May 2001, and he has been a supervisor for a government contractor that provides security services since 2005 (Tr. 35, 39). He supervises personnel who provide physical security at three sites (Tr. 36). He was selected employee of the year in 2004 (Tr. 44). He married in 1997 and divorced in 1999 (GE 1, Tr. 47). He has two children, ages 10 and nine (Tr. 37). He is engaged and plans to marry in November 2009 (Tr. 40). He served in the U.S. Marine Corps from 1996 to 2000 and earned an Honorable Discharge from the Marine Corps (Tr. 42-43).

### **Financial Considerations**

Applicant was unemployed from February to May 2001 (Tr. 43). When he was hired at his current employment, he was paid \$10.50 an hour, and now, four years later, he is making \$1650 per hour (Tr. 44). The debts in SOR ¶¶ 1.a and 1.g are paid. The debts in SOR ¶¶ 1.b and 1.d as well as 1.c and 1.h are duplications of each other. The source, status, and amount of his individual SOR debts are more specifically described as follows (paragraph letters correspond with the SOR subparagraphs):

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<sup>1</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

(a) Debt for \$608 (SOR ¶ 1.a). He admitted he had an account; however, he did not believe he owed the creditor because the telephones he received were turned off and then turned on again (Tr. 16-17, 21). He disputed the applicability of the original two-year contract with the creditor because he used the telephone services for five years (Tr. 21-22). He telephoned the creditor about the dispute; however, he did not provide documentation disputing the debt (Tr. 21-22). On May 18, 2009, he received a settlement offer for \$250 (AE E). On May 19, 2009, he paid this debt (AE E);

(b) Credit card debt for \$4,100 (SOR ¶ 1.b) became delinquent when Applicant was unemployed (Tr. 22). He used this credit card for living expenses when he was unemployed (Tr. 44). He thought this debt was a duplication of his debt in SOR ¶ 1.d (Tr. 17). When he contacted the bank, he learned the debt was transferred from the bank to a collection company (Tr. 24). His credit reports dated March 15, 2006, September 9, 2008, and November 21, 2008, indicate the account was transferred or sold (GE 4 at 2; GE 6 at 1; GE 7 at 3). I conclude this debt is duplicated in SOR ¶ 1.d;

(c) Department store credit account for \$4,926 (SOR ¶ 1.c). Applicant said this debt involved repossession of one of Applicant's vehicles (Tr. 17). However, his credit report showed it was a department store account and indicated it was assigned to an attorney for collection (GE 7 at 5, 6). He had not contacted the creditor at the time of his hearing about resolving this debt (Tr. 31). I conclude he is confused about the origin of this account, and this debt is a department store account that is duplicated in SOR ¶ 1.h;

(d) Debt for \$16,053 is owed to a collection company (SOR ¶ 1.d, Tr. 24; GE 6 at 2). His September 9, 2008, credit report shows a high credit of \$8,433 and a balance of \$16,053 (GE 6 at 2). He made contact with the creditor in the fall of 2008 (Tr. 27). He attempted to establish a payment plan, but the bank wanted monthly \$1,000 payments (Tr. 22-23, 27-28);

(e) Automobile financing installment account debt for \$3,987 (SOR ¶ 1.e; GE 7 at 4). The creditor orally advised Applicant that this debt duplicates the debt in SOR ¶ 1.c (Tr. 29-31; GE 2 at 1-2). However, there was no documentation corroborating the assertion that the two debts were duplications (Tr. 30-31), and I find that this debt is not duplicated in the SOR. Applicant's former fiancé was using the vehicle and she was supposed to make the payments (Tr. 25). She stopped making the payments, and Applicant called the creditor and asked them to pick-up the vehicle (Tr. 25). The creditor sold the vehicle at auction (Tr. 25). Applicant has not made arrangements to pay this debt, but plans to work on setting up a payment plan (Tr. 23);

(f) Debt for \$896 (SOR ¶ 1.f) is listed at GE 7 at 4. Applicant denied the debt because he did not recognize it (Tr. 31; GE 10). At the time of his hearing, he had not contacted the creditor (Tr. 31). This debt became delinquent in June 2003 (GE 7 at 4);

(g) Collection account for \$293 related to a delinquent medical bill for care Applicant's son received (SOR ¶ 1.g; GE 7 at 5; AE A). On May 4, 2009, Applicant

received an account statement showing the balance due was zero (AE C). Applicant said his most recent credit report, dated May 15, 2009, did not show this account (Tr. 33, 34);

(h) Department store debt for \$3,776 (SOR ¶ 1.h; GE 7 at 4). This is the same department store as listed in SOR ¶ 1.c above. Applicant admitted this debt (Tr. 34). Applicant's 2006 credit report indicates the account was transferred or sold (GE 7 at 4). Applicant had not contacted this creditor by the time of his hearing (Tr. 33-35). Applicant said his most recent credit report, dated May 15, 2009, did not show this account (Tr. 33). I conclude that this debt is a duplication of the debt in SOR ¶ 1.c.

Applicant paid the following non-SOR debts for \$959 in the fall of 2008 and \$66 (Tr. 13, 20, 28; GE 2 at I-23, I-27). He also maintained his child support in a current status for the last ten years (Tr. 15-16).

Applicant's net pay is about \$2,200 monthly (Tr. 36). His expenses are: rent--\$500; child support--\$375; groceries and dining out--\$250; utilities, phone and cable--\$365; automobile insurance and gasoline--\$300; and Miscellaneous--\$165 (Tr. 37-38; AE D). His former spouse may seek an increase to \$450 in his child support payment as it is 25% of his income (Tr. 45-46). He owns one car, a 1995 model which cost \$2,000 (Tr. 37). He does not have any credit cards, and has not had any credit cards since 2004 (Tr. 38). He has \$1,500 in a savings account and no 401K account (Tr. 41).

On May 5, 2009, Applicant received credit counseling and assembled a spending plan (AE A, D). He did not provide a debt repayment plan because he is attempting to "clean up all discrepancies" (AE A). The credit counseling service told Applicant to investigate his debts and determine their validity (Tr. 41). After he determines their validity, the credit counseling services is supposed to help him set up a payment plan (Tr. 41; AE A).

A member of the management team employing Applicant, described him as intelligent, motivated, dependable and trustworthy (AE B). Applicant saved the life of an employee by providing emergency medical assistance (AE B; Tr. 47-48). He shows strong performance and extreme competence with a high degree of integrity, honesty, responsibility, and loyalty (AE B). Applicant is a dependable leader who contributes to mission accomplishment (AE B).

## **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

Applicants 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 and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). 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 over-arching adjudicative goal is a fair, impartial and common sense 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. 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 as to 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline F (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." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had [ ] delinquent [SOR] debts that are of security concern." Applicant's history of delinquent debt is documented in his SF 86, his responses to DOHA interrogatories, his SOR response and at his hearing. He failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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) or 20(e) because he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are "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)).

Applicant receives partial credit under AG ¶ 20(b) because his financial problems initially resulted because of his unemployment and underemployment after leaving active duty in the U.S. Marine Corps. He receives substantial mitigating credit because his delinquent debts "occurred under such circumstances that it is unlikely to recur and does not cast doubt on [his] current reliability, trustworthiness, or good judgment." He established that he paid the debts in SOR ¶¶ 1.a and 1.g and he paid two non-SOR debts. He has a plan to pay the remaining debts through a debt counseling service. He credibly promised to pay his debts once he establishes their validity.<sup>2</sup>

AG ¶ 20(c) applies. Applicant received financial counseling, and there are "clear indications that the problem is being resolved or is under control" for the reasons stated in the preceding paragraph. He understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt. He has also established some, but not full mitigation under AG ¶ 20(d) because he showed some, recent good faith<sup>3</sup> in the resolution of his SOR debts.

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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/or additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. 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. This does not imply that this clearance is conditional.

<sup>3</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 [or statute of limitations]) 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)).

Applicant did not provide documentation contesting the validity of any debts and AG ¶ 20(e) does not apply. His overall recent conduct with his creditors shows he acted responsibly under the circumstances.<sup>4</sup>

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. Nevertheless, he established the full applicability of AG ¶ 20(c). Moreover, security concerns are fully mitigated under the “Whole Person Concept,” *infra* at pages 8-10.

### **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 that guideline, but some warrant additional comment.

There is evidence against mitigating Applicant’s financial conduct. Several of Applicant’s debts became delinquent years ago. In 2005, he began his present employment as a supervisor and his pay was increased. And, he should have made greater progress on his debts. He essentially admitted responsibility for his repossessed car-related debt and two credit card/department store-originated collection debts. His total admitted, unpaid delinquent debt is about \$25,000. He showed some effort in 2008 and 2009 to resolve his delinquent debts, but could have acted more aggressively to pay his delinquent debts, to seek debt repayment or resolution, and to better document his

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<sup>4</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 the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.



remedial efforts. These factors show some financial irresponsibility and lack of judgment. His history of delinquent debt raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is more substantial. There is no evidence of any security violation. He is a law-abiding citizen. His current financial problems were caused by a factor somewhat beyond his control: (1) unemployment, and (2) underemployment. He paid two SOR debts. He paid two non-SOR debts. He has a plan to pay his other SOR debts. He does not have any credit cards. 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).

Although Applicant is only 33 years old, he has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He served on active duty for four years, including service overseas in Southwest Asia. He obtained employment with his current employer in 2001; however, his pay as a security guard was low. In 2005, he was promoted to his current position and began to achieve financial stability. He understands how to budget and what he needs to do to establish his financial responsibility. Clearly, he could have acted more aggressively to resolve his debts, after receiving employment with a government contractor. There is, however, simply no reason not to trust him. Moreover, he has established a “meaningful track record” of debt payments by paying two SOR debts and two non-SOR debts. He is attempting to validate his remaining SOR debts. He has promised to pay them if he can establish they are valid debts. See n. 2, *supra*. I found his statement to be candid, forthright and credible. Applicant has demonstrated his

loyalty, patriotism and trustworthiness through his service to the Department of Defense as a contractor and to the U.S. Marine Corps. He was employee of the year in 2004, and saved another employee's life while on duty. These factors, especially his past government service, show sufficient responsibility and rehabilitation to mitigate security concerns.

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 Guidelines. Applicant has 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 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. Eligibility for a security clearance is granted.

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CHARLES D. ABLARD  
Administrative Judge