



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-05168
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 23, 2009

**Decision**

HARVEY, Mark W., Administrative Judge:

Applicant mitigated the financial consideration security concerns. His 1997 Chapter 7 Bankruptcy was not recent. He paid or settled and paid the ten debts listed on the statement of reasons (SOR). He does not currently have any delinquent debt. Clearance is granted.

**Statement of the Case**

On July 1, 2005, Applicant submitted a Security Clearance Application (SF 86). On October 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), 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 a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In January 2009, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 30, 2009. The case was assigned to me on January 31, 2009. On February 18, 2009, DOHA issued a hearing notice. The hearing was held on March 11, 2009. At the hearing, Department Counsel offered nine exhibits (GEs 1-9) (Transcript (Tr.) 20-22), and Applicant offered five exhibits (Tr. 23-25; AE A-E). There were no objections, and I admitted GEs 1-6 (Tr. 22), and AEs A-E (Tr. 26). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 10-12). I received the transcript on March 17, 2009. I held the record open until March 18, 2009 (Tr. 74). I received AEs F, G, and H after the hearing and they were admitted without objection (Tr. 74; AE F, G, H).

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

In his SOR response, Applicant admitted his responsibility for the debts listed in the SOR, said he had paid the SOR debts; however, he was waiting for confirmatory documentation of the debt's resolution (GE 12). 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 56 years old (Tr. 6). He graduated from high school in 1971 (Tr. 6). He did not attend college (Tr. 6). He currently has a top secret security clearance; however, he has previously held a top secret clearance with access to sensitive compartmented information (Tr. 7-8). He first received a security clearance in 1978, when he was serving on active duty as a U.S. Marine (Tr. 7). He served in the U.S. Marines from March 1977 to May 1980 and then from April 1981 to May 1991 (Tr. 28-29; GE 1). He left active duty as a noncommissioned officer (Tr. 29). He married in October 1980 and was separated from his spouse in October 2003 (Tr. 29). His divorce was final in July 2006 (Tr. 29).

In the 1990s, Applicant had a medical problem similar to a stroke and was partially paralyzed (Tr. 37). He was an inpatient for about seven months and then received outpatient therapy about eight hours a day for four months (Tr. 37, 44-45). He received sixty percent of his pay while on long-term disability (Tr. 38). His debts became delinquent because of the loss of income. In 1997, his debts were discharged under a Chapter 7 Bankruptcy (SOR ¶ 1.a).

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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.

Applicant eventually recovered sufficiently to return to full employment. However, in January 2005, Applicant received an injury to his elbow and shoulder and again went on long-term disability (Tr. 33, 36). He received disability pay until January 2006 (Tr. 35). Around June of 2005, a defense contractor hired Applicant for sporadic, part time employment (Tr. 33-34). He fell behind on his debts because he was only receiving sixty percent of his pay, while he was on long-term disability (Tr. 39-40).

Applicant's current employer has employed him for the last two years as a security agent (Tr. 30). His current employment is part time, usually about 32 hours a week; however, he also receives occasional overtime pay (Tr. 30-31; AE G). Applicant has full-time employment at another firm waiting, provided he receives a security clearance as a result of this proceeding (Tr. 32-33). He is not currently receiving any disability pay (Tr. 46).

### **Financial considerations**

Applicant's statement of reasons (SOR) lists a 1997 Chapter 7 Bankruptcy discharge of his debts (SOR ¶ 1.a) and ten delinquent debts, totaling \$12,066 (SOR ¶¶ 1.b to 1.k). In Applicant's response to the SOR, he said he paid the SOR debts and was waiting for proof of payment (GE 12). Applicant established through his hearing statement and the following documents that his SOR debts were paid or settled and paid:

- (1) credit card judgment for \$763 (SOR ¶ 1.b, Tr. 38-39, 68, AE G);
- (2) credit card judgment for \$1,316 (SOR ¶ 1.c, Tr. 38-39, 69; AE A);
- (3) credit card debt for \$2,858 (SOR ¶ 1.d, Tr. 40-41, 54, 69; AE C at 2);
- (4) credit card debt for \$2,428 (SOR ¶ 1.e, Tr. 40-41, 54, 70; AE C at 3);
- (5) credit card charge for \$29, which is part of the debt in SOR ¶ 1.d (SOR ¶ 1.f, Tr. 40-41, 70; GE 12, AE G);
- (6) credit card debt for \$2,951 (SOR ¶ 1.g, Tr. 42, 54-57, 71; AE C at 1, AE D);
- (7) credit card debt for \$482 (SOR ¶ 1.h, Tr. 42-43, 71; AE B at 3);
- (8) credit card debt for \$346, which is part of the debt in SOR ¶ 1.h (SOR ¶ 1.i, Tr. 42-43, 71; AE B at 3, GE 12);
- (9) credit card debt for \$251 (SOR ¶ 1.j, Tr. 43); and
- (10) credit card debt for \$642 (SOR 1.k, Tr. 71-72; AE G, AE H).

Applicant did not recognize one judgment for \$498 filed on January 5, 2000 (Tr. 58-59; GE 5). He recently paid the two SOR judgments for \$1,316 and \$763 filed in 2004 (Tr. 60-61; SOR ¶¶ 1.b and 1.c; GE 6 and 7).

Applicant originally planned to use a credit counseling service (CCS) to resolve his SOR debts and he began CCS' process of debt resolution in October 2008 (Tr. 47-51; GR 8). He gave CCS about \$500; however, CCS wanted him to contact all creditors and determine the amount of his debts (Tr. 48-49). After contacting his creditors, he chose to pay his debts without using that CCS' services (Tr. 48-49). CCS has agreed to refund \$487 to Applicant (Tr. 49).

Applicant has not had any problems paying his rent (Tr. 62). He owns two vehicles and they are both paid off (Tr. 63). He has about \$100 in savings (Tr. 63) and about \$2,100 set aside for emergencies (AE H). He has two credit cards, one has \$500 on it and the other does not have any charges on it (Tr. 65). His credit cards are current (Tr. 66). He does not have any other credit accounts and all accounts, such as for utilities and cell phones are current (Tr. 66-67).

### **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 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.” Applicant’s history of delinquent debt is documented in his credit reports, in his SOR

response and at his hearing. In 1997, Applicant's debts were discharged using Chapter 7 Bankruptcy. As indicated in SOR ¶¶ 1.b to 1.k, he had ten delinquent debts totaling about \$12,066. Several debts became delinquent as early as 2004. Several SOR debts were not paid until December 2008. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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 ten 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(a) because his financial problems "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." AG ¶ 20(e) does not apply because he did not dispute any of the SOR debts.

AG ¶ 20(b) applies. Applicant's financial situation was damaged due to medical problems, reduction of income while he was on disability, underemployment, unemployment, and divorce. He lacked the income to pay some of his debts. About two

years ago, he obtained his current employment and thereafter he paid his SOR debts. He established that he acted responsibly under the circumstances.<sup>2</sup>

AG ¶ 20(c) applies. Applicant received financial counseling. He paid his delinquent debts. Moreover, there are “clear indications that the problem is being resolved or is under control.” He understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt. He has also established mitigation under AG ¶ 20(d) because Applicant showed good faith<sup>3</sup> in the resolution of his SOR debts.

Although Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts, his payment of the remaining SOR debts in December 2008 are adequate 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

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<sup>2</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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

<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)).

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 conduct. Around 1995-1996, Applicant had delinquent debts because his disability pay was insufficient to repay his creditors. His delinquent, unsecured debts were discharged in 1997 using a Chapter 7 Bankruptcy. The SOR lists ten debts totalling \$12,066 that were at one time or another delinquent during the last four years. He failed to keep his accounts current and negotiate lesser payments when his income decreased, showing some financial irresponsibility and lack of judgment. When he returned to employment, he did not aggressively seek debt repayment or resolution. 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. Serious medical problems caused his income to significantly decline, and his debts became delinquent. Ultimately, he paid his delinquent SOR debts. His remaining debts are current. He only has two credit cards and one has a zero balance, the other has a balance of about \$500. The loans on both of his vehicles are paid. 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 is a security agent. He is a high school graduate, but did not attend college. He is not sophisticated in the area of finance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. Moreover, he has established a “meaningful track record” of debt payments by actually paying all of his delinquent SOR debts. These factors show responsibility, rehabilitation, and mitigation. He honorably served more than ten years on active duty as a U.S. Marine. He left active duty as a gunnery sergeant. He had demonstrated his loyalty, patriotism and trustworthiness through many years of service to the U.S. Marines and to the Department of Defense through his employment with defense contractors. 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.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. Eligibility for a security clearance is granted.

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Mark W. Harvey  
Administrative Judge