



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



In the matter of:)
)
-----) ISCR Case No. 08-06591
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

July 29, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) listed seven debts totaling \$22,559. He paid three debts; however, he made insufficient progress resolving four debts totaling \$22,260. He failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 6, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF-86) (Government Exhibit (GE) 1). On December 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations). 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 Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On February 13, 2009, Applicant responded to the SOR (GE 10). Department Counsel was prepared to proceed on April 14, 2009. On April 16, 2009, DOHA assigned the case to me. On April 17, 2009, DOHA issued a hearing notice. The hearing was held on May 20, 2009. At the hearing, Department Counsel offered seven exhibits (GE 1-7) (Transcript (Tr.) 16-17), and Applicant offered one exhibit (Tr. 53-54; AE A). There were no objections, and I admitted GE 1-7 (Tr. 17) and AE A (Tr. 54). Additionally, I admitted the Notice of Hearing, SOR, and response to the SOR (GE 8-10). Applicant submitted one document, which I admitted without objection on May 28, 2009 (AE B). I received the transcript on May 28, 2009. Applicant submitted a bank statement, which I admitted on June 29, 2009 (AE C). On July 9, 2009, I sent an email through Department Counsel to Applicant requesting information about the five checks he submitted as part of his SOR response (AE D). On July 9 and 13, 2009, Applicant sent his responses (AE E and F). Department Counsel did not object to my consideration of any post-trial exhibits, and I admitted them (AE E and F). I closed the record on July 15, 2009.

Findings of Fact¹

In his SOR response, Applicant admitted responsibility for the debts in SOR ¶¶ 1.a to 1.d with explanations (GE 10). He denied responsibility for the debts in SOR ¶¶ 1.e to 1.g (because they were paid)(GE 10). He provided a \$65 payment receipt resolving the debt in SOR ¶ 1.f (GE 10 at 19). His admissions are accepted as findings of fact.

Applicant is a 39-year-old employee of a defense contractor (Tr. 7). He graduated from high school in 1988 (Tr. 7). Shortly after graduation from high school, he joined the Army and served on active duty in the Army for eight months (Tr. 18). He has an associate's degree in electronic engineering and is close to completion of his bachelor's degree (Tr. 7). He currently holds an interim secret clearance, which is required for his employment (Tr. 8, 20). He married his wife in 1996 (Tr. 19). She has been employed for the last 12 years as a teacher (Tr. 55). He has a 22-year-old son, and two children, ages eight and six with his spouse (Tr. 19). A defense contractor has employed him as a network administrator since February 2008 with an annual salary of \$51,500 (Tr. 19).

Applicant's initial financial problems resulted from unemployment and underemployment. A large corporation hired Applicant in February 2001 and laid him off from his employment about six months later in 2001 (Tr. 30). He received full pay for the

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

next six months as a severance package (Tr. 31, 56). He purchased most of the items associated with his delinquent debts in the 2000 to 2001 timeframe (Tr. 30-31). He worked at various low-paying jobs from February 2001 to February 2008 to earn income and support his family, such as selling insurance, waiting tables, repairing computers, and constructing fences and patios (Tr. 31-37, 56-58). The following table shows his income for 1998 to 2007 (AE A).

Year	Amount	Year	Amount
1998	\$29,729	2003	\$19,060
1999	\$37,492	2004	\$21,351
2000	\$46,917	2005	\$11,847
2001	\$57,985	2006	\$21,578
2002	\$13,441	2007	\$33,428

Debts in SOR ¶¶ 1.a to 1.d

Applicant said in his SOR response that the four debts in ¶¶ 1.a (\$2,070), 1.b (\$3,791), 1.c (\$4,167), and 1.d (\$12,232), totaling \$22,260, were “part of the [his debt consolidation company’s (DCC)] settlement package” (GE 10 at 3). These four debts constitute 98 percent of his total SOR debt.

SOR ¶ 1.a (\$2,070) is an animal hospital bill (Tr. 20). In 2004, Applicant picked up a dog that a car hit and took it to the hospital (Tr. 21-23). He kept the dog (Tr. 21).² At first he disputed the debt because he was not the owner at the time the dog was injured (Tr. 21-23). Eventually he decided to pay it and added it to his DCC payment program (Tr. 21).

SOR ¶ 1.b (\$3,791) is a credit card debt (Tr. 23). He stopped making payments in 2002 (Tr. 23).

SOR ¶ 1.c (\$4,167) is a debt to a department store for electronic purchases in 1999 to 2002 (Tr. 24). His last payments were in 2002 or 2003 (Tr. 24).

SOR ¶ 1.d (\$12,232) is a debt owed for a vehicle loan (Tr. 25). His vehicle was voluntarily repossessed (Tr. 26). He stopped making payments at the end of 2001 (Tr. 26-27).

Debts in SOR ¶¶ 1.e to 1.g

SOR ¶¶ 1.e (\$25), 1.f (\$65) and 1.g (\$209) are medical debts (Tr. 25, 27-30; GE 9, 10). He said he previously paid these three debts (Tr. 25, 28). He provided documentation to show he paid the debt in SOR ¶ 1.e in July 2008 (Tr. 28; GE 10 at 19). The debts in SOR ¶¶ 1.e and 1.g are not on his credit report (Tr. 25, 29-30).

² He said on his SF-86, “I don’t even have the dog. I guess the[y] fixed him up and adopted him out and left me with the bill. This debt is in dispute” (GE 1 at Section 28).

Applicant's personal financial statement

Applicant and his wife's combined current net monthly income is \$5,759 (Tr. 44; GE 2 at 46). Their monthly expenses are as follows: first and second mortgage (\$980); food (\$400); clothing (\$100); car expenses (\$350); child support (\$500); daycare (\$260); and about \$1,000 in miscellaneous expenses (Tr. 44-51). Most of Applicant's child support payments were used to address interest on his child support arrearage (Tr. 48-50). He did not pay child support for the first 10 years of his son's life and the arrearage is substantial (Tr. 48-50). Applicant and his wife have about \$900 left at the end of the month to address their debts (Tr. 51). They have about \$800 total in savings and checking accounts (Tr. 52). They have not taken out any new credit cards in the last five years (Tr. 53).

Applicant's relationship with DCC

Applicant's statements about making payments to DCC from October 2008 through February 2009 as part of his SOR response raised credibility concerns. On August 11, 2008, Applicant first disclosed his reliance on DCC to address his four large delinquent debts (Tr. 51; GE 2 at 5). He also provided his contract with DCC (dated August 13, 2009), an automatic bank withdrawal authorization form, and his August 2008 checking account, which showed a payment to DCC on August 4, 2008 (GE 2 at 6-13 and 15).

On October 20, 2008, DOHA received a response to interrogatories (GE 3). DOHA asked for information about payments DCC made to creditors. Applicant provided an unrelated bank statement from August 2008; however, he did not provide any information about DCC's payments to creditors (GE 3).

As part of his SOR response on February 13, 2009, Applicant provided another copy of the DCC agreement (GE 10 at 5-9). He also provided a bank statement, showing \$334 payments on August 4, 2008 and September 3, 2008 (GE 10 at 11 and 13). He provided photocopies of five checks allegedly written to DCC with a notation indicating for "Debt Settlement," on them as indicated in the following table.

Check Date	Check Number	Check Amount	Citation
Oct. 1, 2008	1029	\$343.63	GE 10 at 16
Nov. 1, 2008	1040	\$343.63	GE 10 at 17
Dec. 1, 2008	1052	\$343.63	GE 10 at 18
Jan. 2, 2009	1060	\$343.63	GE 10 at 19
Feb. 1, 2009	1073	\$343.63	GE 10 at 20
TOTAL	5 Checks	\$1,718.15	GE 10 at 16-20

Department Counsel asked Applicant to show these five checks were sent or cashed, or the payments were actually made (Tr. 39). Applicant responded:

I don't have it with me, and I don't know if I'll be able to get it, because it went so far back. And just so the Court knows, the last couple of months, which the Court [does not] have any documents, I have an unauthorized draft of my account, and we did not know what it was, and I had my account with [a company], everything closed out.

So any drafts that [were] made to my account, they stopped and [DCC] was one of them. And then after I got everything reinstated, I had to get with [DCC], and they started up again. And the Court does not have any documents on that, but I – you know, I want to let the Court know that everything's in order with that. . . . [He did not recognize the amount of an automatic withdrawal from his account, subsequently determined to be related to a mortgage account and the bank] suggested I freeze all drafts on my account until we could – they could figure out who it was.

(Tr. 39-40). Applicant said his payments stopped in February or March and restarted in May 2009 (Tr. 40). He said he was considering terminating the relationship with DCC, and seeking a different debt consolidation or resolution service (Tr. 41). He thought DCC's charges were excessive (Tr. 41, 61). I advised Applicant that the key to his case was proving he made the payments to DCC (Tr. 60, 62). Applicant received a 10-day post-hearing delay to seek a statement from DCC showing how much he paid into his account (Tr. 59).

On May 28, 2009, Applicant provided an unsigned letter from DCC indicating Applicant is a client of DCC "in good standing since July 7th, 2008;" however, privacy laws prevent DCC from disclosing further information about DCC's representation of Applicant (AE B at 3).

On June 11, 2009, I responded to Applicant that unless he provided a statement from DCC showing how much he paid DCC, "his failure is likely to result in an adverse security clearance determination." (AE C at 2). On June 29, 2009, I received a bank statement from Applicant indicating he paid DCC \$312.22 on June 16, 2009 (AE C at 5).

On July 9, 2009, I sent the above five checks to Applicant and asked him to provide an account statement from DCC showing the amounts DCC received from him, monthly bank statements showing his payments to DCC, or the cancelled checks listed in the above table (AE D at 1). I suggested that his failure to provide this information may be construed as an attempt to mislead the government by providing five checks to the government even though he knew those checks were never cashed by DCC (AE D at 1).

On July 9, 2009, Applicant admitted that his payments to DCC "were ceased for a bit;" however, he emphasized that his account remained in good standing (AE F at 2).

On July 13, 2009, Applicant said he wrote DCC post-dated checks (AE E at 2). A week or two after he sent the post-dated checks, he told DCC not to cash them and he

asked them to shred the checks (AE E at 2). He explained how the checks were included in his SOR response (AE E at 2):

I realize how this looks with those five checks submitted to the government as part of my paperwork. I really don't understand how those were sent in as part of my defense. It was never my intention [nor] is it now to ever deceive the government in anyway.

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 (4th 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 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 also documented in his SOR response and his oral statement 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 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 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)). Four substantial SOR debts are currently delinquent. He does not have a credible plan to address these four SOR debts. His delinquent debts occurred under such circumstances that they are likely to recur and continue to cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant receives partial credit under AG ¶ 20(b) because his financial problems initially resulted because of his unemployment and underemployment. He does not receive full mitigating credit because he has been continuously employed at a salary of \$51,500 since February 2008. He did not establish that he acted responsibly under the circumstances.

Applicant received information about debt resolution from his church and DCC, constituting some mitigation under AG ¶ 20(c). I have credited Applicant with payment of the medical debts in SOR ¶¶ 1.e (\$25), 1.f (\$65), and 1.g (\$209). He has also established some, but not full mitigation under AG ¶ 20(d) because he showed some, recent good faith³ in the resolution of his SOR debts. I credit him with making some

³The 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

payments to DCC. Applicant did not provide documentation contesting the validity of any debts and AG ¶ 20(e) does not apply.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. He did not establish that he maintained contact with his creditors, or that he made or attempted to make partial payments to them. His overall recent conduct with his creditors shows he did not act responsibly under the circumstances.⁴ He said he was using a plan developed with DCC to pay his four large delinquent debts. As part of his SOR response, he provided photocopies of the fronts of five checks to corroborate his statement that he had an established payment plan. When additional information about those checks was requested, he initially failed to respond or provided evasive responses. Eventually, he admitted that he did not pay DCC the amounts indicated on his checks.

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

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)).

⁴Even 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.

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.

The mitigating evidence under the whole person concept is summarized in this paragraph; however, it is insufficient to mitigate security concerns. There is no evidence of any security violation. He is a law-abiding citizen. His security clearance application did not disclose any problems with alcohol or drug abuse. His financial problems were initially caused by unemployment and underemployment, which are factors largely beyond his control. He paid three SOR debts. He pays his non-SOR debts, including his mortgage. He has a plan to pay his other SOR debts. He has not received any new credit cards. Applicant has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility, and dedication. He briefly served on active duty in the Army. He obtained employment with his current employer in February 2008. He understands how to budget and what he needs to do to establish his financial responsibility. Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service to the Department of Defense as a contractor. He supports his family and is paying his child support. These factors, especially his past government service, show sufficient responsibility and rehabilitation to provide important mitigation.

The evidence against mitigating Applicant's financial conduct is more substantial. Several of Applicant's debts became delinquent more than five years ago. In February 2008, he began his present employment as an employee of a government contractor and his pay was increased to an annual salary of \$51,500. Applicant said in his SOR response that the four debts in ¶¶ 1.a (\$2,070), 1.b (\$3,791), 1.c (\$4,167), and 1.d (\$12,232), totaling \$22,260, were "part of [DCC's] settlement package." These four debts constitute 98 percent of the total SOR debt. As part of his SOR response, he provided checks showing \$343 payments to DCC from October 1, 2008, to February 1, 2009. A reasonable inference is that for five months he had made payments into his debt consolidation plan. Eventually, he admitted this was false and that these five payments were not made. He claimed the five checks were submitted to DCC; however, he admitted these five checks were never cashed.

He should have made greater progress on these four debts. He should have acted more aggressively to pay his delinquent debts, to pay into his debt consolidation/resolution program, and to better document his remedial efforts. Most importantly, he should have ensured his documentation was accurate, and his post-hearing statements were candid and forthright. These factors show some financial irresponsibility and a significant lack of judgment. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not 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 not mitigated or overcome the government's case. For the reasons stated, I conclude he is not 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: **AGAINST APPLICANT**

Subparagraphs 1.a to 1.d: **Against Applicant**

Subparagraphs 1.e to 1.g: **For Applicant**

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

MARK HARVEY
Administrative Judge