



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-07821

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel

For Applicant: *Pro Se*

June 22, 2009

**Decision**

ABLARD, Charles D., Administrative Judge:

Several of Applicant's debts became delinquent due to circumstances beyond his control. After he received his current employment, 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 1, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On October 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 November 18, 2008, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 2, 2008. On February 12, 2009, the case was assigned to another administrative judge. Applicant requested a delay and the case was transferred to me on March 10, 2009. On April 1, 2009, DOHA issued a hearing notice. The hearing was held on April 21, 2009. At the hearing, Department Counsel offered four exhibits (GE 1-4) (Transcript (Tr.) 11-12), and Applicant offered five exhibits (AE A-E) (Tr. 13-17). There were no objections, and I admitted GEs 1-4 (Tr. 12-13), and AE A-E (Tr. 17). Additionally, I admitted the Second Notice of Hearing, Notice of Cancellation of Hearing, First Notice of Hearing, SOR, and response to the SOR (GEs 5-9). I received the transcript on April 29, 2009. I held the record open until May 22, 2009, to provide Applicant an opportunity to provide additional evidence (Tr. 50-51, 58). However, he did not provide any post-hearing evidence.

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

In his SOR response, Applicant admitted responsibility for the debts in SOR ¶¶ 1.d to 1.g; and he denied responsibility for SOR debts in ¶¶ 1.a to 1.c, and 1.h (GE 9). His admissions are accepted as findings of fact.

Applicant is a 31-year-old employee of a defense contractor. Since January 2008, he has provided instructor services to soldiers on a military installation about how to use various simulators (Tr. 36). Applicant has never been married (Tr. 47).

Applicant attended the U.S. Army Military Academy Preparatory School (USAMAPS) and then the U.S. Military Academy at West Point, New York (USMA) (Tr. 18; AE A). When Applicant was a senior at USMA, he suffered a head injury while playing Rugby for USMA and was medically separated from Army service on May 24, 2004 (Tr. 19, 45; AE A). Applicant suffered from a depressive-mood disorder as a result of his head injury (AE A). However, he did not receive a military medical retirement (Tr. 30). He received a Veterans Affairs disability rating of 60%, which pays \$974 a month (Tr. 30-31). He does not receive any other disability payments (Tr. 31).

After Applicant's discharge from the Army, he worked as a security supervisor (Tr. 23-24). In 2006-2007, he returned to school because he needed about 30 credits to obtain his bachelor's degree (Tr. 23-24). However, he was unable to complete requirements and obtain a degree because of issues of depression and difficulty

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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.

concentrating (Tr. 24, 35). He would like to return to college on a part-time basis and complete his degree (Tr. 35).

## **Financial Considerations**

Applicant served on active duty as an enlisted soldier for two years, including one year at USAMAPS (Tr. 22). He received a small salary for four years while he attended USMA (Tr. 22). After Applicant was discharged from the Army, his income was low (Tr. 19). His social security records show the following income (does not include disability payments from the Department of Veterans Affairs (VA)) for the years 2004 to 2007: 2004-\$8,387; 2005-\$13,710; 2006-\$5,736; and 2007-\$2,886 (AE B).

Applicant borrowed money while he was a USMA cadet (Tr. 20). His largest loan was known as a "Career Starter Loan" for \$25,000, which was provided to USMA cadets by a large bank as they approach graduation (Tr. 20; SOR ¶ 1.f). He borrowed for uniforms and to purchase a car (Tr. 21-22). The source, status, and amount of his individual SOR debts are more specifically described as follows (paragraph letters correspond with the SOR subparagraphs):

- (a) Debt for \$942 (SOR ¶ 1.a). He denied responsibility for this debt (Tr. 27);
- (b) Debt for \$125 (SOR ¶ 1.b). He denied responsibility for this debt (Tr. 27);
- (c) Debt for \$144 (SOR ¶ 1.c). He denied responsibility for this debt (Tr. 27);
- (d) Credit card debt for \$4,058 (SOR ¶ 1.d). Applicant has not paid anything on this debt (Tr. 37-38). The creditor declined to allow a payment plan, and Applicant is saving money to pay this debt with a lump sum payment on September 1, 2009 (Tr. 28-29, 38);
- (e) Credit card debt for \$1,320 (SOR ¶ 1.e). Applicant has not paid anything on this debt (Tr. 37-38). The creditor declined to allow a payment plan, and Applicant has saved enough money to pay this debt with a single payment on June 1, 2009 (Tr. 28-29, 38);
- (f) Credit card debt for \$24,174 (SOR ¶ 1.f). He said he had been making payments for a longer period than he had documentary evidence showing such payments (Tr. 37). He provided proof of payments on the following dates in the listed amounts: January 31, 2009 for \$125; February 28, 2009 for \$125; and March 31, 2009 for \$150 (Tr. 36; AE E);
- (g) Debt for \$536 (SOR ¶ 1.g). He made a payment of February 28, 2009 to settle and pay this debt for \$412 (Tr. 25-26, 36; AE D);
- (h) Debt for \$612 (SOR ¶ 1.h). Applicant denied owing this debt (Tr. 27). He provided a cancelled check to the creditor to corroborate that he had paid the creditor

(Tr. 27, 41). However, he did not retain the documentation, and so he said he would pay the debt again (Tr. 42-45).

Applicant denied the debts in SOR ¶¶ 1.a to 1.c (Tr. 27). He investigated these three debts, and all he was able to discover was that the debts pertained to medical services (Tr. 27). He received all medical assistance from Army and VA hospitals (Tr. 31-32). The creditors were not able to provide sufficient information for Applicant to verify the authenticity of or his responsibility for the three debts (Tr. 27).

Applicant borrowed \$3,000 from his aunt to repair his vehicle and he needed to make payments to her (Tr. 39). He paid that debt and is making payments on his other debts (Tr. 39). Applicant does not have any other credit cards (Tr. 40).

Applicant promised to repay his creditors and emphasized he had proven his intention to make restitution to his creditors (Tr. 24-25, 57). He made three payments totaling \$500 on a non-SOR-listed student loan of \$1,175 to bring it to current status: February 2, 2009 for \$200; February 22, 2009 for \$200; and March 1, 2009 for \$100 (Tr. 25, 33; AE C). He now pays \$60 monthly on this debt using an automatic allotment (Tr. 25). The student loan resulted from his college attendance in 2006 to 2007 (Tr. 32).

Applicant's gross pay (including his disability pay) is about \$3,800 monthly (Tr. 40-41; GE 2). His monthly deductions are \$692 and his monthly expenses are \$1,375 (GE 2). His personal financial statement shows monthly payments of \$200 for a student loan, \$220 for a personal loan, \$125 for a commercial bank loan (SOR ¶ 1.f), and \$100 for another student loan (GE 2). He has about \$1,000 monthly remaining to address his other SOR debts (Tr. 40-41). Applicant has about \$650 in his savings account (Tr. 38). He has about \$2,000 in his 401K plan (Tr. 38). His vehicle, a 1996 Lexus, is paid off (Tr. 38-39).

Applicant has always been honest about his financial problems. When Applicant submitted his SF-86 on February 1, 2008, he provided a list of debts that were delinquent in the last seven years for more than 180 days (GE 1). He did not receive any credit counseling (Tr. 41).

## **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 full credit under AG ¶ 20(b) because his financial problems initially resulted because of his injury at USMA and his subsequent unemployment and underemployment. 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 debt in SOR ¶ 1.g and has been making payments on the debt in SOR ¶ 1.f. He has a plan to pay the debts in SOR ¶¶ 1.d and 1.e with a single lump sum payment, and those two debts should be resolved by September 1, 2009.

AG ¶ 20(c) partially applies. Applicant did not receive financial counseling and therefore this mitigating condition cannot be fully applied. However, 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 substantial good faith<sup>2</sup> in the resolution of his SOR debts.

Applicant contests the validity of the remaining four debts, which total less than \$2,000. However, he did not provide documentation contesting these four debts. He credibly promised to pay these four debts if he could establish their validity. His overall conduct over the last 17 months with his creditors shows he acted responsibly under the circumstances.<sup>3</sup> AG ¶ 20(e) does not apply because he did not provide corroborating documentation showing his disputes of any of his SOR debts.

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<sup>2</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)).

<sup>3</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.

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(b). 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 January 2008, he began his present employment; however, he should have made greater progress on his debts because he has about \$1,000 monthly remaining after deductions, expenses and debt payments. He admitted responsibility for four delinquent SOR debts. He failed to obtain financial counselling. 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 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 three factors beyond his control: (1) his injury, (2)

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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.



unemployment, and (3) underemployment. He paid one SOR debt. He is making payments on his largest SOR debt. He has a plan to pay two other SOR debts by September 1, 2009. He is making payments on his non-SOR student loan. He paid off a non-SOR, personal loan for \$3,000. He has ample income to pay his debts. 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 31 years old, he has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He served on active duty for six years, including almost four years at USMA. In 2004, he received a brain injury, which dramatically changed his prospects for financial security, and his debts became delinquent. His severe injury was in the line of duty, and he is receiving 60% disability from the VA. He obtained employment in January 2008 with a government contractor, and he is continuing to support the Army. 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 one SOR debt, making payments on his largest SOR debt, and making payments on his student loan. He has a plan to pay two SOR debts by September 1, 2009 with a lump sum payment to each creditor. The four remaining, unaddressed SOR debts are of questionable validity and total less than \$2,000; nevertheless, he has promised to pay them if he can establish they are valid debts. 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. Army. 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