



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-03388  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 19, 2010

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed nine delinquent debts totaling \$26,833. His salary increased by about \$40,000 early in 2009. However, he provided proof of only about \$500 in payments, which he used to resolve four SOR debts. He failed to make sufficient effort to resolve five of his delinquent debts. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 26, 2009, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) (Item 5). On November 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations) (Item 1). 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 (Item 1).

On December 10, 2009, Applicant responded to the SOR allegations, and on January 27, 2010, he elected to have his case decided on the written record in lieu of a hearing (Items 3, 4). A complete copy of the file of relevant material (FORM), dated February 2, 2010, was provided to him, and he was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.<sup>1</sup> On February 22, 2010, Applicant provided a telefax cover sheet and 12 pages of documents (FORM response). Department counsel did not object to consideration of the FORM response. The case was assigned to me on March 7, 2010.

### **Findings of Fact<sup>2</sup>**

In Applicant's response to the SOR, he admitted responsibility for the nine debts in SOR ¶¶ 1.a to 1.i (Items 1, 2).<sup>3</sup> The nine SOR debts total \$26,833 (Items 1, 2). He also described his resolution of several debts. His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 37-year-old employee of a defense contractor.<sup>4</sup> He has been employed in information technology for at least five years. In 2000, he married, and he has three children who are ages seven, seven (twins), and five. His wife was medically discharged from the military in 2000 (Item 7 at 3-4). She was unemployed from 2002 to 2007 and from 2008 until about August 2009 (*Id.*; Item 6 at 2). Applicant has never served in the military.

Applicant did not disclose any unpaid liens, garnishments, illegal drug use, alcohol-related offenses, or felonies on his January 26, 2009, security clearance application. He disclosed he left employment under unfavorable circumstances in November 2004; he had an unpaid judgment for \$8,234 that occurred in June 2003; and

---

<sup>1</sup>The DOHA transmittal letter is dated February 2, 2010, and Applicant's receipt is not part of the file. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information (file).

<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup>Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's July 8, 2009, SOR response (Item 4).

<sup>4</sup>Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's January 26, 2009, SF 86 (Item 5).

he had one debt currently over 90 days delinquent or over 180 days delinquent in the last seven years (the debt in SOR ¶ 1.h relating to a vacation time share).

## **Financial Considerations**

Applicant said his spouse's unemployment, medical bills, and variations in Applicant's salary caused him to fall behind on his debts (Item 7 at 3-4, FORM response at 1-2). He was unemployed for about a month in December 2006 (Item 5). He did not provide supporting documentation to corroborate these assertions of unexpected circumstances causing financial problems.

Applicant's SOR lists nine delinquent debts totaling \$26,833. Applicant said he plans to pay off the debts in SOR ¶¶ 1.a, 1.f, 1.g, and 1.h after he pays off some other debts. A detailed description of the status of those debts follows:

**SOR ¶ 1.a (\$16,346)—DEBT UNRESOLVED.** In June 2003, a judgment for this credit card account was entered against Applicant (Items 1, 2, 7 at 3). There is no evidence Applicant contacted the creditor in the most recent 12 months or attempted to establish a payment plan to resolve this debt.

**SOR ¶ 1.b (\$50)—RESOLVED.** Applicant had a television-type account, and it was transferred to a collection company (Items 1, 2). On December 3, 2009, the debt was transferred back to the television company (Item 2, FORM response at 5). The creditor said the delinquent account would be removed from his credit report. *Id.*

**SOR ¶ 1.c (\$240)—PAID.** Applicant had a debt owed to a credit union. On December 7, 2009, he paid \$240 resolving this debt (Item 2, FORM response at 6).

**SOR ¶ 1.d (\$411)—PAYMENT PLAN, BUT NO PROOF OF ANY PAYMENTS.** Applicant had a debt to a telecommunications company, which was transferred to a collection company (Items 1, 2). On December 3, 2009, he settled the debt for \$127 (FORM response at 7). The payment was due on December 3, 2009. He said he paid it; however, he did not provide any proof he paid this debt (FORM response at 1, 7).

**SOR ¶ 1.e (\$60)—PAID.** Applicant's medical debt for \$60 was paid on December 4, 2009 (Items 1, 2, FORM response at 8).

**SOR ¶ 1.f (\$825)—PAYMENT PLAN, BUT NO PROOF OF ANY PAYMENTS.** Applicant had a debt owed to a home improvement center (Items 1, 2). A February 18, 2010, payment plan indicates payments of \$413 are due on February 18, 2010, and on March 18, 2010 (FORM response at 9).

**SOR ¶ 1.g (\$1,218)—PAYMENT PLAN, BUT NO PROOF OF ANY PAYMENTS.** Applicant had a debt to a collection company (Items 1, 2). A February 18, 2010, payment plan indicates five payments of \$256 are due on the 18<sup>th</sup> of each month beginning on February 18, 2010 (FORM response at 10). Applicant set up an automatic allotment to pay this debt in accordance with his payment plan (FORM response at 11).

**SOR ¶ 1.h (\$7,566)—DEBT UNRESOLVED.** Applicant had a debt to a collection company resulting from a time-share account (Items 1, 2, 7 at 8). There is no evidence Applicant made any payments to the creditor in the last year.

**SOR ¶ 1.i (\$117)—PAID.** Applicant had a debt to a collection company (Items 1, 2). On December 10, 2009, he made an \$85 payment to the creditor (Item 2, FORM response at 12).

Applicant is using the Dave Ramsey debt resolution plan, which involves paying off the smaller debts first (Item 2). Then, one-by-one, the other debts are paid using the extra money that becomes available when the lesser accounts are paid and no longer require monthly payments (Item 7 at 6). Applicant said he is currently making payments on the debts in SOR ¶¶ 1.f and 1.g. The Dave Ramsey plan includes some financial counseling.

### **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 overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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 applicant 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).

#### **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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations

under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, responses to interrogatories, Office of Personnel Management interview, his SOR response, and his FORM response. His delinquent debts include a large credit card debt for \$16,346, and a time-share debt for \$7,566. His largest delinquent debt became delinquent in 2003, establishing a history of delinquent debt. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Additional inquiry about the possible applicability of mitigating conditions is required.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of any mitigating conditions 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 does not receive credit under AG ¶ 20(a) because he did not establish that his financial problems "occurred under such circumstances that [they are] unlikely to recur." There is some residual doubt about whether Applicant is fully committed to resolving his delinquent SOR debts and is making adequate steps to do so.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by his own brief period of unemployment in December 2006, and his spouse's years of unemployment, as well as his family's medical problems. However, there is insufficient evidence about these circumstances to show their effect on his financial situation, and that he acted responsibly under the circumstances. There is insufficient evidence he maintained contact with his creditors on several of his SOR debts.<sup>5</sup>

AG ¶ 20(c) partially applies. Applicant learned about how to resolve his delinquent debts using the Dave Ramsey plan. He understands what he must do to establish his financial responsibility. Although he did not provide a copy of his budget, I have credited him with satisfaction of the financial counseling requirement in AG ¶ 20(c). However, Applicant cannot receive full credit under AG ¶ 20(c) because he has not paid, established payment plans (by making payments), adequately disputed, or otherwise resolved five of his SOR debts.

There are some initial, positive "indications that the problem is being resolved or is under control." He has admitted responsibility for nine SOR debts, and documented his resolution of four of them. Although he has payment plans on three debts, he did not provide documentation showing any payments to these three creditors. He also established some mitigation under AG ¶ 20(d) by showing some good faith<sup>6</sup> in the resolution of his SOR debts by admitting responsibility for his SOR debts, paying four SOR debts, and promising to resolve his remaining delinquent SOR debts. AG ¶ 20(e) is not applicable because Applicant did not dispute any of his SOR debts.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He has had steady employment for the last five years, except for one brief period of unemployment. He noted that he received a

---

<sup>5</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>6</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) 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)).

\$40,000 salary increase in early 2009, and his spouse returned to employment in August 2009. However, he only provided proof of \$467 in payments to his SOR creditors, and the \$467 in payments were all made in December 2009. He has not shown significant progress on five of his SOR debts. His steps are simply inadequate 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 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 those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his clearance. Applicant is 37 years old. He is sufficiently mature to understand and comply with his security responsibilities. He has been an expert in information technology and networks for many years. He deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor. There is no evidence that he has ever violated security rules. There is every indication that he is loyal to the United States, the Department of Defense, and his employer. There is no evidence that he abuses alcohol or uses illegal drugs. His brief period of unemployment, his spouse's unemployment over several years, and his family's medical problems contributed to his financial woes. He paid four debts for \$50, \$240, \$60, and \$177. He communicated with three creditors and made payment arrangements. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a history of financial problems. He began to have financial difficulties in 2003 when a credit card became delinquent for several thousand dollars, and the creditor obtained a judgment in June 2003. When he completed his security



clearance application on January 26, 2009, he disclosed his two largest SOR debts. He was fully aware that his debts raised security concerns when he responded to DOHA interrogatories, and on December 12, 2009, when he responded to the SOR. He had ample notice of his delinquent SOR debts, and sufficient opportunity to contact his creditors. He did not make sufficient progress in the resolution of his SOR debts. He did not pay, start payments, document and justify any disputes, or otherwise resolve five SOR debts. He did not prove he lacked sufficient income to make greater progress resolving his debts. Applicant has not proven that he has an established payment plan on the debts in SOR ¶¶ 1.d, 1.f, and 1.g because he has not provided documentary evidence of any payments. His promises to pay the debts in SOR ¶¶ 1.a, 1.d, 1.f, 1.g, and 1.h are insufficient to mitigate these debts because there is insufficient evidence to explain why he has not done more to address these five debts after becoming aware that they raised a security concern.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant 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 and Adjudicative Process factors and supporting evidence, and my interpretation of my responsibilities under the Guidelines. Applicant has failed to mitigate 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f to 1.h:	Against Applicant
Subparagraph 1.i:	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