



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 09-04670
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

August 30, 2010

**Decision**

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TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On June 18, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on March 18, 2010, and DOHA received his answer on March 23, 2010. Department Counsel was prepared to proceed on April 21,

2010. The case was assigned to me on April 27, 2010. DOHA issued a notice of hearing on May 3, 2010, scheduling the hearing for May 18, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 6, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through P, which were received without objection, and he testified on his own behalf.

I held the record open until June 1, 2010, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE Q through Z, which were received without objection. DOHA received the hearing transcript (Tr.) on May 25, 2010. The record closed on June 1, 2010.

### **Findings of Fact**

Applicant denied all of the SOR allegations except for SOR ¶¶ 1.a., 1.c., 1.p., 1.q., 1.t., and 1.w. He admitted those six allegations. His answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 43-year-old test vehicle operator, who has worked for a defense contractor since May 2007, except for a six-month employment gap between contractors in 2009. Applicant has successfully held an interim secret security clearance during these periods of employment. He seeks a permanent clearance, which is a requirement for his continued employment. Applicant previously held a security clearance while he was on active duty in the U.S. Army, discussed *infra*. (GE 1, Tr. 25-26, 30-31, 37-38.)

Applicant graduated from high school in June 1987. He has no formal education beyond high school. Applicant has attended various Army service schools and job-related training courses. (GE 1, Tr. 36-37.)

Applicant served in the Army from February 1988 to October 1998, and was honorably discharged as a staff sergeant (pay grade E-6). His military occupational specialty was 11C20 (indirect fire infantryman). Applicant's discharge from the Army was for medical reasons for which he receives disability pay. He held a security clearance at the secret level or higher during his Army service. (Tr. 27-31, 34-35.)

Applicant married in 1988, separated in January 2005, and divorced in January 2008. He had two children with his former wife, a 23-year-old daughter, and a 5-year-old daughter. His older daughter lives on her own, and his younger daughter lives with his former wife. Through an informal child support agreement, Applicant sends his former wife approximately \$450 per month in child support. His former wife is

employed as a program assistant at an Army base. (GE 1, GE 2, Tr. 31-36.) Applicant's current marital status is single. (Tr. 43.)

## **Financial Considerations**

Applicant's background investigation addressed his financial situation and included the review of his June 2007 e-QIP; his September 2009 Responses to DOHA Interrogatories; his May 2008 Personal Financial Statement; as well as his July 2007, June 2009, and December 2009 credit reports. Applicant's SOR identified 22 separate debts totaling \$48,106. (GE 1 – 6, Tr. 12; SOR ¶¶ 1.a. – 1.v.)

Applicant has settled, paid, attempted to resolve, or successfully disputed the 22 debts alleged. A brief summary of each debt follows. The debt alleged in SOR ¶ 1.a. is for an \$11,962 amount on a home mortgage jointly owed by Applicant and his former wife. They fell behind on the mortgage as a result of their divorce and loss of employment. The original monthly payment was approximately \$663; however, in August 2009, Applicant contacted their lender and negotiated a 24-month repayment plan to bring their account current. Since September 2009, Applicant and his former wife have been jointly paying \$1,046 with a payoff date of August 1, 2011, at which time their arrearages will be current. (Tr. 47-55, AE F.)

The debt alleged in SOR ¶ 1.b. is a charged-off credit card account in the amount of \$1,199. Applicant established that this account is his former wife's account and she is solely responsible for that debt. (Tr. 55-61, AE J, AE Q.)

The debt alleged in SOR ¶ 1.c. is a charged-off personal loan in the amount of \$7,547. Applicant contacted the creditor to set up a payment plan and is waiting for a response from the creditor. (Tr. 64-69, AE B.)

The debt alleged in SOR ¶ 1.d. is a collection account for furniture rental in the amount of \$560. Applicant established that this account is his former girlfriend's account and she is solely responsible for that debt. (AE L, AE R, Tr. 69-73.)

The debt alleged in SOR ¶ 1.e. is a collection account for a credit card in the amount of \$1,256. Applicant contacted the creditor and is making \$50 monthly payments. (Tr. 62-63, AE H, AE S.)

The debt alleged in SOR ¶ 1.f. is a collection account for an overdrawn checking account in the amount of \$201. Applicant contacted the creditor and is making \$40 monthly payments. (Tr. 73—76, AE M, AE T.)

The debt alleged in SOR ¶ 1.g. is a collection account for cell phone service in the amount of \$998. Applicant submitted documentation that payments on his cell phone service are current. (Tr. 76-79, AE D, AE U.)

The debt alleged in SOR ¶ 1.h. is a collection account for automobile insurance in the amount of \$270. Applicant paid this account in full. (Tr. 79-81, AE D, AE N, AE V.)

The debt alleged in SOR ¶ 1.i. is a collection account for a credit card in the amount of \$1,206. Applicant contacted the creditor and is making \$50 monthly payments. (Tr. 62-63, 81, AE H, AE S, AE W.)

The debt alleged in SOR ¶ 1.j. is a collection account for cell phone service in the amount of \$1,658. Applicant established that this account is his former wife's account and she is solely responsible for that debt. (Tr. 81-82, AE O, AE Q.)

The debt alleged SOR ¶ 1.k. is a collection account for dental services in the amount of \$60. Applicant paid this account in full. (Tr. 82-86, AE D.)

The debt alleged in SOR ¶ 1.l. is a collection account for cable service in the amount of \$91. Applicant submitted documentation that payments on his cable service are current. (Tr. 86-88, AE D, AE X.)

The debt alleged in SOR ¶ 1.m. is a collection account for a separate cable service in the amount of \$183. Applicant submitted documentation that payments on his cable service are current. (Tr. 88-90, AE Y.)

The debt alleged in SOR ¶ 1.n. is a collection account for medical care in the amount of \$30. Applicant paid this account in full. (Tr. 90, AE D.)

The debt alleged in SOR ¶ 1.o. is a collection account from a furniture company in the amount of \$275. Applicant submitted documentation that payments on this account are current. (Tr. 90-93, AE Z.)

The debt alleged in SOR ¶ 1.p. is a judgment in favor of an automobile company for \$8,607. Applicant's truck was voluntarily repossessed in October 2006 following the loss of his job. Applicant has contacted the creditor several times to negotiate a settlement and is waiting for a response. (Tr. 93-99, AE E.)

The debt alleged in SOR ¶ 1.q. is a tax lien in favor of the Internal Revenue Service (IRS) in the amount of \$11,508. Applicant contacted the IRS, set up a payment plan, and is making monthly payments through payroll deductions. Applicant's tax liability stems from his 2007 tax return. He did file an extension; however, the amount of lien reflects tax owed, interest and penalties. (Tr. 99-106, AE D, AE G.)

The debts alleged in SOR ¶¶ 1.r. and 1.s. are past-due medical accounts from an unknown provider in the amounts \$277 and \$33, respectively. The Government's evidence did not provide the identity of the creditors or contact information.

Furthermore, Applicant does not recognize the debts. Accordingly, Applicant is unable to pursue these debts. (Tr. 106-108, GE 2, AE D.)

The debt alleged in SOR ¶ 1.t. is a collection account for cable service in the amount of \$127. This bill is for cable service when Applicant and his former wife were married and lived together. Applicant recognizes that the cable bill is in his name and he is legally responsible for payment. He intends to pay this debt; however, given his resources and other outstanding debts, he has not been able to resolve this debt to date. (Tr. 108-110.)

The debt alleged in SOR ¶ 1.u. is a collection account for a check returned for insufficient funds in the amount of \$56. Applicant paid this account in full. (Tr. 110-111, AE D.)

The debt alleged in SOR ¶ 1.v. is a collection account from a DVD company in the amount of \$129. Applicant asserts these are for DVDs he never ordered and were sent to an address where he did not live. Applicant intends to resolve this account; however, given his resources and outstanding debts, he has not been able to resolve this debt to date. (Tr. 111-112, AE D.)

In April 2000, Applicant filed for Chapter 13 bankruptcy protection. He testified at the time his former wife's hours had been cut back and they were unable to remain current on their bills. He chose Chapter 13 over Chapter 7 because he wanted to repay his creditors. After making payments under Chapter 13 for approximately one year, he was able to get his monthly payments under control and his case was dismissed in June 2001. (SOR ¶ 1.w.; Tr. 112-114.)

Applicant attributes his financial problems to his separation, divorce, and cross-country move to begin his current job. (Tr. 39-40, 123-125.)

Applicant's budget, although strained, reflects that he maintains a modest lifestyle and is living within his means. He estimates that he has a net remainder of approximately \$350 after paying off his monthly bills. Applicant is involved in a relationship with a significant other, who is pregnant, and had a due date at the end of June 2010. (GE 3, Tr. 114-122.)

In conclusion, Applicant has paid, settled, made good-faith efforts to repay his creditors, successfully challenged the validity of several debts, or resolved or intends to resolve all debts alleged. Given his resources, it appears Applicant is doing as well as can be expected and has addressed the vast majority of his debts. He remains current on the rest of his monthly bills.

### **Character Evidence**

Applicant submitted three reference letters. The first letter is a personal reference from his significant other. She has assisted Applicant in developing a

financial plan. She stated that she is impressed with his commitment to becoming debt free and verified that he has communicated with his creditors and made payment arrangements with them. (AE A.)

The remaining two reference letters are work-related. The first letter is from his supervisor, who has known Applicant for three years. The supervisor has “always admired [Applicant’s] work ethic, commitment to work and family.” Also, he has discussed Applicant’s financial situation with him at length and observed him “striving to work these situations out.” The second letter is from a co-worker, who has also known Applicant for three years. The co-worker has found Applicant to be “a dependable asset to our crew and someone we have grown to realize we can always count on.” He is aware of Applicant’s financial situation and, in spite of his difficulties, noted that Applicant “remain[s] optimistic as he faces these circumstances head on.” Both individuals describe Applicant as trustworthy and support his being granted a clearance. (AE B, AE C.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists 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 established by his admissions and the evidence presented. As indicated in SOR ¶¶ 1.a. to 1.v., he had 22 delinquent debts totaling \$48,106 that have been in various states of delinquency for at least several years. 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) because there is more than one delinquent debt and his financial problems are not isolated. Therefore, his debt is "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)). He receives partial credit under AG ¶ 20(a) because the debt "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."

Under AG ¶ 20(b), he receives full credit because his separation and divorce were largely beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds for full repayment, he did remain in contact with his creditors during this timeframe. The costs associated with his cross-country move to accept his present job added additional financial stress.<sup>1</sup>

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. He has, however, produced evidence that reflects he is living within his means and has regained financial responsibility. Furthermore, there is sufficient

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<sup>1</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.



information to establish full mitigation under AG ¶ 20(d).<sup>2</sup> Applicant has paid, is paying, is attempting to pay, or has otherwise resolved his debts. AG ¶ 20(e) is applicable because Applicant has established that several of the debts alleged are not his.

The Government was unable to establish the identity of the two creditors listed in SOR ¶¶ 1.r. and 1.s. The 2000 Chapter 13 bankruptcy filing lacks security significance both because of the passage of time, and because Applicant requested to have his bankruptcy dismissed in 2001 after he regained his financial footing.

### **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 relevant 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).

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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) 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)).

There is evidence against mitigating Applicant's conduct. The SOR lists 22 debts totalling \$48,106 that were at one time or another in various states of delinquency. For several years, he failed to keep his accounts current or negotiate lesser payments, showing financial irresponsibility and lack of judgment. His lack of success in resolving delinquent debt until recently raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of military service, family involvement, and good employment weighs in his favor. There is no evidence of any security violation during the time Applicant may have held a security clearance, which includes his Army service and employment with a Government contractor. He is a law-abiding citizen. Although he is not debt-free, there is sufficient evidence that he is putting forth his best effort given the resources available to him. I did not detect any recalcitrance or reluctance on his part to address his past debts. On the contrary, Applicant views this process seriously and recognizes his failure to regain financial responsibility can adversely affect his future employment. His monthly expenses are current. 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 making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. He has put forth a noteworthy effort to resolve his debts and has established a "meaningful track record" of debt payments. These factors show responsibility, rehabilitation, and mitigation. 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 adjudicative guidelines. Applicant has fully 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.w.:           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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Robert J. Tuidor  
Administrative Judge