



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



In the matter of: )  
)  
) ISCR Case No. 09-07060  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro Se*

July 29, 2011

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F, Financial Considerations. Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 17, 2009. On October 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant answered the SOR on February 3, 2011, and requested a hearing. The case was assigned to me on May 18, 2011. DOHA issued the Notice of Hearing on June 2, 2011. The hearing was held as scheduled on June 21, 2011. Department Counsel offered exhibits (GE) 1 through 5 that were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through D that were admitted without objection. The record was left open until July 22, 2011, for the Appellant to submit additional matters. He submitted no additional matters. The transcript (Tr.) of the hearing was received on July 6, 2011.

### **Findings of Fact**

Applicant is a 34-year-old employee of a defense contractor. He has worked for that contractor since July 2007. He graduated from high school in 1996. He is married and has four children, ages 11, 12, 17, and 19. He served in the U.S. Marine Corps from September 1996 to July 2007, when he was placed on the Temporary Disability Retired List (TDRL). He held a security clearance while on active duty without any security violations. He has been awarded the Navy-Marine Corps Achievement Medal and Good Conduct Medals.<sup>1</sup>

The SOR lists 19 delinquent debts totaling \$105,566. In his Answer to the SOR, Applicant admitted 11 of the delinquent debts totaling \$71,334 and denied 8 delinquent debts totaling \$34,232. Credit reports admitted into evidence provide substantial evidence of the denied debts. In his Answer to the SOR, Applicant admitted that he had been living beyond his means. He indicated that he started struggling with debts in the winter of 2004 and made the “bad decision” of ignoring his debts. At the hearing, he also testified that his financial problems were due to his irresponsibility. He stated that he has now cutback on his lifestyle so that he is able to meet his current financial obligations.<sup>2</sup>

In January 2006, Applicant suffered a stroke while serving on active duty in the Marine Corps. At that time, he was serving in the grade of staff sergeant. He received military medical treatment while on active duty until being placed on the TDRL. Since being placed on the TDRL, he receives disability retirement pay and has had periodic medical evaluations. During an interview with an Office of Personnel Management (OPM) investigator, he indicated that he had difficulty remembering things because of the stroke and participated in physical therapy to regain his mobility. At the hearing, he

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<sup>1</sup> Tr. 5, 38-39, 71-73; GE 1.

<sup>2</sup> Tr. 40-42, 81; Applicant’s Answer to the SOR, GE 2-5. See *also* GE 2 at 248. In his Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.h, 1.i, 1.j, 1.k, 1.m, 1.o, and 1.q, and denied the allegations in SOR ¶¶ 1.c, 1.f, 1.g, 1.l, 1.n, 1.p, 1.r, and 1.s.

testified that he has been medically cleared to return to active duty and is seeking to do so.<sup>3</sup>

Soon after being placed on the TDRL, Applicant began working for his current employer. He deployed to Kuwait and Iraq from December 2007 to June 2008. In approximately November 2007, he provided his wife a general power of attorney that he revoked in July 2008. While deployed, he sent home most of his earnings so that his wife could pay the bills. However, he stated she was unable to pay all the bills because his children keep getting sick and money was going towards medical bills and other expenses. From July to November 2009, he was laid off and collected unemployment compensation.<sup>4</sup>

In March 2007, he was charged with criminal domestic violence arising from an incident involving his wife, but that charge was later dismissed. Following that incident, they were required to stay away from each other for approximately three months. In early 2010, he separated from his wife. In April 2010, he began renting an apartment by himself and getting his finances in order. SOR ¶ 1.l is a delinquent mortgage on the home in which his wife and children reside. He testified that he had not made mortgage payments in the last 13 months, but he is working with the creditor to obtain a mortgage modification. He is paying child support.<sup>5</sup>

Applicant provided a photocopy of a cancelled check showing he made a \$109 payment to the collection agency servicing the debt alleged in SOR ¶ 1.k. Besides that payment, Applicant did not offer any documents showing that he made any other payments on the alleged debts, that he made any arrangements for repayment plans, or that he contacted any creditors in an effort to resolve the debts. In responding to interrogatories, he stated, "I did not make payment arrangements with any of the financial agencies because I did not want to make promises I couldn't keep at the time." He denied certain debts because he has no knowledge of them. He did not, however, provide any documentation establishing that he has a reasonable basis to dispute their legitimacy. He has not disputed the denied debts with the credit reporting agencies.<sup>6</sup>

Applicant attended general military training on financial matters and indicated he is learning about bankruptcy. On June 14, 2011, he contacted an attorney about filing bankruptcy. The attorney submitted a letter indicating that they anticipate Applicant will

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<sup>3</sup> Tr. 38-39, 70-71, 74; GE 2 at 248.

<sup>4</sup> Tr. 33-37, 76-78; GE 1 at 37-38, GE 2 at 246, 249.

<sup>5</sup> Tr. 33-37, 40-41, 52-55; GE 1 at 39, GE 2 at 246-247; AE A, C.

<sup>6</sup> Tr. 43-62; GE 2 at 244; AE D. Applicant indicated he made another payment of \$219 on the debt in SOR ¶ 1.k, but provided no proof of that payment. See Tr. 52. He also indicated the debt in SOR ¶ 1.n was being paid through the garnishment of his disability retirement pay, but provided no proof of that garnishment. See Tr. 55-57.

file Chapter 7 bankruptcy within the next month or two and that the debts should be discharged by the fall of this year.<sup>7</sup>

## Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 unfavourable, to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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, a clearance decision is merely an indication that the Applicant has or 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.

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<sup>7</sup> Tr. 36, 65, 68-70; AE D.

*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 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 or her] 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

### Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy his financial obligations for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several 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 has 19 delinquent debts totaling over \$100,000 that remain unresolved. His financial problems are significant and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

In 2006, Applicant suffered a stroke. He was treated for that condition in the military and eventually placed on the TDRL in July 2007. Soon after being placed on the TDRL, he was hired by his current employer, but was laid off from July to November 2009. In early 2010, he separated from his wife. These three events – his stroke, period of unemployment, and marital difficulties – were conditions beyond his control. Nevertheless, some of his financial problems predate those conditions. He admitted he was living beyond his means and was financially irresponsible. Moreover, despite having steady employment since November 2009, he has done little to resolve his financial problems. While AG ¶ 20(b) partially applies here, it does not mitigate the security concerns arising from his financial problems.

Applicant provided a receipt showing a payment of \$109 on one alleged debt. In June 2011, he consulted with an attorney about filing Chapter 7 bankruptcy. The attorney anticipates that Applicant will file bankruptcy in the next month or two. While in the military, Applicant received training on financial matters. As a precursor to filing bankruptcy, he will also receive financial counseling. Based on the evidence presented, he failed to establish that he initiated a good-faith effort to repay overdue creditors or that his debts are being resolved or are under control. AG ¶¶ 20(c) and 20(d) are not applicable.

Applicant denied eight delinquent debts because he had no knowledge of them. He has not disputed them on his credit reports. He presented no documentation to show he had a legitimate basis for disputing them. AG ¶ 20(e) is not applicable.

### **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).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. I have considered Applicant's service in the Marine Corps and his subsequent employment that included deployments to Kuwait and Iraq. Nevertheless, his financial problems are ongoing and significant. He is contemplating, but has not filed for, Chapter 7 bankruptcy protection. At this juncture, it would be mere speculation to conclude his delinquent debts will be resolved in the bankruptcy proceeding. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person concept, I conclude he has not mitigated security concerns pertaining to financial considerations.

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 not fully 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 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 – 1.s:                   Against Applicant

**Decision**

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 eligibility for a security clearance for Applicant. Clearance is denied.

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James F. Duffy  
Administrative Judge