



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 09-07666
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

April 27, 2011

**Decision**

TUIDER, Robert J., Administrative Judge:

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

**Statement of the Case**

On July 23, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On May 7, 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 July 2, 2010. Department Counsel was prepared to proceed on July 22, 2010. The case was assigned to another administrative judge on July 28, 2010, and was reassigned to me on September 1,

2010. DOHA issued a notice of hearing on September 20, 2010, scheduling the hearing for October 13, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 7, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through S, which were received without objection, and he testified on his own behalf. DOHA received the hearing transcript (Tr.) on October 21, 2010.

### **Findings of Fact**

Applicant admitted all of the SOR 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 56-year-old quality inspector, who has worked for a defense contractor since April 2009. He seeks a security clearance, which is a condition of his continued employment. Applicant has worked as a defense contractor for approximately 25 years, and he held a security clearance from October 2002 to April 2008. (GE 1, Tr. 26, 27-29, 44-45.)

Applicant was awarded his high school diploma in August 1982. He attended community college from September 1985 to June 1987, but did not graduate. (GE 1, Tr. 27.) He is the youngest of six children. During high school, Applicant showed an aptitude for electronics and photography and was selected for trade school. After high school, he was offered and accepted a job with a prominent aerospace company. While working for this company, he attended community college part time. (AE L.) Applicant has never married and has no dependents; however, he had a long-term relationship with a woman (W) that ended in 2008, discussed *infra*. (GE 2, GE 3, AE H, AE L, Tr. 19-22.)

### **Financial Considerations**

Applicant's SOR identified 14 separate debts totalling \$40,718. The vast majority of these debts are for credit cards. (Tr. 9.) Up until 2008, Applicant maintained an excellent credit history. He was financially responsible and paid his bills in a timely manner. He always held two jobs, started two different businesses, and invested in real estate. (GE 2, AE L.) Two significant events intervened.

First, Applicant fell victim to the current economy and was unemployed two times in the last two years. He was laid off from April 2008 to November 2008, was employed briefly from November 2008 to February 2009, and was laid off again from February 2009 to April 2009. During these two periods of unemployment, he did not have the income necessary to remain current on his financial obligations. In April 2009, he started his current job. (GE 1, Tr. 19.)

Second, Applicant encountered difficulties when W's gambling habits spun out of control. He had been with W for 18 years and, for the majority of that time, their relationship prospered. W was supportive of Applicant's work and business ventures. In 2006, they purchased an investment home together. Around this time, W became heavily involved in gambling – slot machines, black jack, and roulette. W began diverting Applicant's and her money, intended for household expenses, to gamble. W's gambling binge lasted from about 2006 to 2007. Applicant expressed his disapproval of W's gambling; however, W was not receptive to his criticism. In 2008, Applicant broke up with W and moved in with his parents. (AE H, AE L.)

Since breaking up with W and finding his current job, Applicant has recovered from his temporary financial setback. He appeared at his hearing fully prepared to discuss the details of his financial history and corrective action taken. Applicant and his attorney methodically went through each of the debts alleged. He has settled or paid all of the 14 debts alleged. His settlements and payments are complete and fully supported by documentation. In short, the SOR debts alleged have been fully satisfied. All of his debts were paid before the hearing convened. (AE A – AE N, Tr. 16-21.)

Applicant completed a credit counselling class on October 12, 2010. (AE S.) His current credit report and bank statements reflect that his credit is on the mend and that he is financially solvent. (AE B - AE D, AE P, AE Q.)

### **Character Evidence**

Applicant submitted five reference letters. Four letters are work-related and one letter is from W. His work-related references are all individuals who see Applicant on a daily basis. They represent senior management within Applicant's company, who uniformly support Applicant for a security clearance. The collective sense of these letters reflects that Applicant is honest, has superb character, is hard working, and contributes to the national defense. W also attests to the fact that Applicant is hard working, and she accepts responsibility for her conduct which lead to Applicant's financial problems. (AE F – AE J.) Applicant also submitted evidence of his part-time business ventures, which cover a line of high-end head wear, as well as design and installation of interiors for upscale automobiles. (AE O, AE R.)

### **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 unfavorable 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. 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

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 ¶¶ 1a to 1n, he had 14 delinquent debts totaling \$40,718 that were in various states of delinquency until recently. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) to (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. It was not until recently that these debts were paid or resolved. 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 the downfall in the economy and his being laid off two times were largely beyond his control, and he acted responsibly under the circumstances.<sup>1</sup> AG ¶ 20(c) is applicable because Applicant sought financial counseling and there are clear indications that his financial difficulties were under control before then. In any event, he made the effort to enhance his financial acumen. Applicant produced evidence that clearly indicates that he is living within his means and regained financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d). Applicant has settled, paid, or otherwise resolved all of his debts. AG ¶ 20(e) is not applicable because Applicant did not dispute the legitimacy of any of his debts.

### **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,

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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.

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).

There is evidence against mitigating Applicant's conduct. The SOR lists 14 debts totalling \$40,718 that were at one time or another in various states of delinquency. For about two 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 was laid off and experienced a sudden loss of income. These events were clearly beyond his control. The challenges he faced in dealing with W and her gambling problems, and the collateral affects of her spending indiscretions significantly contributed to his financial problems. Before 2008, Applicant maintained an excellent credit record. Applicant's excellent employment record also weighs in his favor. He is a hard-working and productive member of society. There is no evidence of any security violation during the time Applicant may have held a security clearance from 2002 to 2008. He is a law-abiding citizen.

Applicant's company fully supports him and recommends him for a security clearance. He made mistakes, and debts became delinquent. He has paid his debts. Furthermore, he 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 1a to 1n:           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