



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



In the matter of: )  
)  
) ISCR Case No. 09-07856  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

November 22, 2010

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant disclosed the two Statement of Reasons (SOR) debts in his security clearance application. He then disputed and later attempted to settle the debts. He is still in the process of resolving the two SOR debts. However, his financial record shows he resolved six other debts not alleged in the SOR. It appears that he currently does not have financial problems and, if he did, his financial situation is under control. He mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on July 8, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On April 29, 2010, DOHA issued Applicant an SOR, which specified the basis for its decision - security concerns addressed in the Directive under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).<sup>2</sup>

On May 25, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on August 3, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on August 17, 2010. The hearing was convened as scheduled on August 19, 2010. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and presented Exhibit (AE) 1. Post-hearing, he submitted AE 2; both exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 5, 2010.<sup>3</sup>

### **Procedural Issue**

Applicant requested an expedited hearing.<sup>4</sup> He had sufficient time to prepare for his hearing, was ready to proceed, and affirmatively waived his right to have 15 days advance notice of day of the hearing. (HE 1, Tr. 13-15).

### **Findings of Fact**

Applicant denied both factual allegations under SOR ¶¶ 1.a and 1.b. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following findings of fact.

Applicant is a 45-year-old help desk analyst (computer support). He has worked for a government contractor providing support to a government agency since July 2009, and requires a security clearance to continue his job. He was issued an interim security clearance shortly after his employment, which was terminated upon the issuance of the SOR. In August 2010, he was suspended from his employment pending the resolution of his clearance.

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<sup>1</sup> Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

<sup>2</sup> Adjudication of this case is controlled by the AGs, implemented by the DoD on September 1, 2006.

<sup>3</sup> The wrong transcript was delivered in late August 2010. DOHA received Applicant's transcript on November 5, 2010.

<sup>4</sup> Hearing Exhibit (HE) 1 is an email record of the scheduling process in this case.

Applicant completed an associate's degree in computer science around 1995-1997. He has been married twice. He married his first wife in 1982, and they were divorced in 1995. He married his present wife in 1999. She is employed with another government agency. She contributes to the payment of the household expenses. He has four grown children, ages 27, 26, 23, and 21.

Applicant testified that in the late-1990s, he was employed by another government agency and received access to classified information. He did not recall the level of his access, but indicated that he has never been involved in any security violations. There is no evidence Applicant has compromised or caused others to compromise classified information. Between 2000 and 2009, Applicant was self-employed. He established two information technology companies and derived his income from his two companies.

In his July 2009 security clearance application, Applicant disclosed he had recently discovered he had two delinquent accounts and that he was in the process of investigating and disputing the alleged debts. His background investigation addressed his financial situation. In August 2009, he was interviewed by a government background investigator and asked questions about eight possible charged-off or delinquent accounts reflected on his credit report: RECO (\$9,662); ECMC (\$7,925); ECMC (\$4,499); SALLIE MAE (\$2,625); SALLIE MAE (\$4,000); APPLIED BANK (\$2,854); APPLIED BANK (\$1,940); and BANK OF AMERICA (\$4,000).

Applicant submitted documentary evidence showing that in July 2009, he disputed, in writing, two of his delinquent debts with the credit bureaus. (GE 2) He paid two other delinquent debts that concerned credit card accounts he co-signed for his children, and they failed to pay. Applicant's credit reports (GEs 3-5) confirmed that he resolved six of the eight delinquent debts he was questioned about during his July 2009 interview. He has not resolved two of his delinquent accounts as alleged in the SOR.

Concerning SOR ¶ 1.a, Applicant explained that around 1995-1997, he took two student loans to pay for his college education. When he applied for the loans, the college (no longer in business) informed him that the two loans would be consolidated and that he would pay both loans at the same time. Applicant was billed and made payments for one of his student loans from 1997 until November 2009, when the loan was paid off. (GE 2)

The second student loan was never consolidated with the first loan. According to Applicant, he never received a payment statement from the second loan creditor, and he believed he was paying both student loans at the same time. In March 2009, Applicant was denied a mortgage loan application because his credit indicated two delinquent debts. After some investigation, he determined that his student loans had not been consolidated. He still owed the second student loan and it was in collection. He unsuccessfully disputed the student loan through the credit bureaus. He also contacted the creditor in writing and attempted to settle the debt for approximately the value of the

original loan, without interest and penalties. The creditor has failed to act on his offer. (AE 2)

Applicant also contacted an ombudsman's office seeking assistance resolving what he believes is an injustice. He is willing to repay the loan, but he believes it is not fair to be charged with accumulated interests and penalties because the creditor never contacted him about the student loan, never attempted to collect the debt, and it is not his fault that the loans were not consolidated as promised by the college. Applicant admitted he owes part of the debt, but he intends to continue disputing the interest and penalties accumulated on his student loan. He plans to reach a settlement with the assistance of the ombudsman and then he plans to pay the debt.

Concerning SOR ¶ 1.b, Applicant explained that in 2000, he and a business partner established a computer services business. He used his individual credit card account to pay for some of his business expenses. Around 2003, he and his business partner separated. Applicant left that business to open a second business. He claimed that unbeknownst to him, his business partner ran up a number of debts on his individual credit card without his permission and failed to pay the charges. He also claimed that he recently contacted the credit card company and informed them of the unauthorized charges on his account. He asked the credit card company for copies of the charges made on his credit card so that he could confront his ex-partner about the unauthorized charges. The credit card company refused to provide him with any documents.

Applicant claimed that after he left the business, he never received any credit card bills because his statements were mailed to his old business. He claimed he did not find out about the charges until March 2009, when he was denied the mortgage loan. Applicant intends to dispute the credit card charges, file a claim against his old partner, and request third party arbitration.

Applicant's financial statement indicates he and his wife have a monthly net income of around \$7,000, monthly expenses of about \$1,800; and monthly debt payments of \$4,700; with a net remainder of around \$500 a month.

### **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 AGs. 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, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any expressed or implied determination about Applicant's allegiance, loyalty, or patriotism. It is merely an indication that 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 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

Under Guideline F, the security concern is that 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 ¶ 18.

The SOR alleged two delinquent debts in collection totaling approximately \$17,740, which have been delinquent for many years. Applicant admitted, and the record evidence confirms that both are his delinquent accounts, but he disputed the validity of the total charges. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Around March 2009, Applicant found out about the two delinquent debts alleged in the SOR. He then started to investigate the debts and ultimately disputed them. He disclosed these debts in his July 2009 security clearance application. In August 2009,

Applicant was interviewed concerning possible financial problems and eight delinquent debts that were reflected on his credit report. Shortly after the interview, Applicant started making efforts to resolve his delinquent debts. He disputed the two debts alleged in the SOR, paid two credit card debts he co-signed for his two children, and successfully disputed the other four debts. In sum, Applicant resolved six of the eight debts he was questioned about in July 2009.

Outside of the eight delinquent debts discussed above, there is no evidence Applicant had other delinquent debts, or that he was living beyond his financial means. There is no evidence Applicant currently has financial problems, and he appears to be living within his means.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because the two SOR debts are unresolved (recent behavior) and he failed to address his six other delinquent debts until he was confronted by the government investigator. It partially applies because he resolved six of the eight delinquent debts he was questioned about, and he appears to have a valid reason to dispute the two SOR debts. The evidence failed to fully establish any circumstances beyond his control contributing to his inability to pay his debts, except for the misuse of his credit card by his business partner. Notwithstanding, leaving his personal credit card with his business partner and failing to track or account for his credit card charges cannot be considered as acting responsibly. AG ¶ 20(b) is partially established by the evidence.

AG ¶ 20(c) fully applies. Although Applicant has not participated in financial counseling, he demonstrated he has the self-discipline necessary to reduce and resolve his debts. After he was interviewed about the eight delinquent debts in August 2009, he contacted his creditors and either disputed, established payment plans, or paid his delinquent debts. His actions establish partial mitigation under AG ¶ 20(d). He receives only partial credit because he should have been more diligent and aggressive in the resolution of his debts. AG ¶ 20(e) applies because he successfully disputed some debts not alleged in the SOR, and is in the process of disputing the interest and charges on the two SOR debts.

Considering the evidence as a whole, Applicant does not have a financial problem. And, if he did, there are clear indications that his financial problems are being resolved or are under control. Applicant's evidence shows he maintained contact with his creditors, he paid, settled, or resolved all but two of his delinquent debts. He has a viable plan to resolve his two SOR debts.<sup>5</sup> Now that he understands the possible adverse security clearance consequences of not maintaining financial responsibility, I

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<sup>5</sup> “[A]n applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009), citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

believe Applicant will resolve the two SOR debts and avoid similar financial problems in the future.

Although Applicant should have been more diligent addressing his debts, and he still has two unresolved debts, his past behavior and current financial situation do not raise doubts about his current reliability, trustworthiness, and judgment. Financial considerations concerns are mitigated.

### **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 and 1.b: 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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

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JUAN J. RIVERA  
Administrative Judge