



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



In the matter of: )  
)  
) ISCR Case No. 10-01531  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

May 23, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant owes 11 delinquent debts, totaling near \$39,000, all of which are unresolved. He established circumstances beyond his control that contributed to his financial problems. Notwithstanding, he presented little evidence to show financial responsibility in the acquisition of the debts, good-faith efforts in the resolution of the debts, or a current track record of financial responsibility. There are no clear indications that his financial problems are being resolved or are under control. Clearance denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 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.

<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.

On September 21, 2010, DOHA issued Applicant a Statement of Reasons (SOR) which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).<sup>2</sup>

Applicant requested a hearing before an administrative judge. The case was assigned to me on January 13, 2011, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on February 2, 2011, convening a hearing for February 25, 2011. At the hearing, the Government offered exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and submitted exhibits (AE) 1 through 3, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 4, 2011.

### **Findings of Fact**

Applicant admitted all the SOR allegations, except for SOR ¶ 1.j, which he denied. His admissions are incorporated as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 38-year-old janitor employed with a defense contractor since July 2010. From 1995 until 1998, he served in the U.S. Navy as a deck seaman and achieved the pay grade of E-4. His service was characterized as honorable. Applicant attended college from 2000 until 2002, and completed an associate's degree.

Applicant married his spouse in 1994, and divorced her in 2003. He has three children, ages 13, 9, and 8 of this marriage. He claimed that he provides \$250 in child support to these children. He presented no documentary evidence to support his claim. He also has a 16-year-old child, born out of wedlock. In 1994, Applicant was ordered to pay \$555 in child support to his oldest child. He owes close to \$32,000 on this child support obligation, which is being collected by a state. This debt is alleged under SOR ¶ 1.j. At his hearing, Applicant acknowledged his delinquent child support obligation. He repeatedly testified that he does not intend to pay it. He claimed that the child has been living with his grandmother. He does not feel it is right for him to pay the child support to the mother since she is not taking care of the child and the child does not get the money. He claimed that he provides \$200-\$300 monthly in financial assistance to the child through one of his relatives. He presented no documentary evidence to support his claim.

In his October 2009 SCA, Applicant disclosed he was having financial problems. The ensuing background investigation revealed the 11 delinquent debts alleged in the SOR, totaling near \$39,000. Applicant admitted, and the credit reports confirmed, that

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

10 of the delinquent debts, totaling approximately \$7,000, are his delinquent debts. As stated above, Applicant denied SOR ¶ 1.j, because he feels he should not be paying the child support obligation. Notwithstanding, the child is his, and it is his legal obligation to provide financial support for his child, which was reinforced by a court order.

Applicant testified that while in the Navy he had good credit and no financial problems. He attributed his financial problems to his divorce, having to pay too much child support, and his periods of unemployment and underemployment. He used his credit cards to pay for his day-to-day living expenses and his child support obligations.

Applicant was employed from June 1999 until June 2001; unemployed from June 2001 until June 2002; employed from June 2002 until December 2004; partially employed from December 2004 until January 2006; unemployed from January 2006 until January 2007; partially employed from January 2007 until April 2007; employed from April 2007 until November 2007; unemployed from November 2007 until November 2008; employed from November 2008 until January 2009; and unemployed from January 2009 until August 2009. He started working for his current employer, a government contractor, in August 2009.

Applicant's current take-home monthly income is approximately \$1,460, around \$400 a week. Between his rent and child support he has little discretionary income left to pay for his day-to-day living expenses, let alone any debts. He has no insurance because he cannot afford it, and he cannot pay for his medical bills.

Applicant moved from his home state to his current location seeking a better paying, steady job. He needs his security clearance in order to keep his current job. He believes that having a security clearance will give him the opportunity to make more money, and ultimately provide better support to his children and pay his delinquent debts. He stated he wants to provide financial assistance to his children (but not to his ex-wife) and that he would like to pay his delinquent debts.

Applicant acknowledged that he should be trying to get a second job, but by the time he gets home from work it is late and he is too tired to do so. He plans to offer settlement agreements to his creditors paying 50 cents on the dollar for his debts, but at the present he does not have the financial ability to do so. He claimed that he telephonically contacted the creditors in SOR ¶¶ 1.d, 1.e, 1.f, and 1.h, and was offered settlements for less than what he owes. He could not take the settlement offers because he does not have the financial means. He also claimed he paid the debt alleged in SOR ¶ 1.b. He presented no documentary evidence to show that he paid this debt.

In 2010, he purchased a 1996 vehicle. He needed the vehicle to commute to his current job. Applicant believes he is doing the best he can do under his current financial circumstances. To reduce his financial expenses, he was living with a cousin. Applicant admitted that he has made mistakes managing his finances. He also admitted that he has not done what is required for him to resolve his financial problems. He would like to

resolve his financial problems, but does not know what to do. He has not participated in any financial counseling, and does not follow a budget.

Except for AE 1 (a letter from a collector stating that an attempted \$100 credit card payment did not go through), AE 2 (a settlement offer made to him by a collector), and AE 3 (a letter from a collector for medical services Applicant received), he presented no documentary evidence showing any debt payments, contacts or negotiations with creditors, debt disputes, or any efforts to otherwise resolve his delinquent SOR debts since he acquired them.

Applicant considers himself to be a good person. He acknowledged his bad financial situation and averred that having bad credit does not make him a bad person. He highlighted his honorable military service. He stated he never had any security clearance problems while in the service, and promised that he would never sell any Government secrets.

### **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**

### **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 alleges and the evidence established that Applicant owes 11 delinquent debts, totaling near \$39,000, all of which are unresolved. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

AG ¶ 20 lists five potentially applicable 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; 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 favorable evidence fails to fully establish the applicability of any mitigating condition. His financial problems are ongoing and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented evidence to establish circumstances beyond his control contributing to his inability to pay her debts, e.g., his 2003 divorce and his periods of unemployment and underemployment. Notwithstanding, Applicant's evidence is not sufficient to show that he acted responsibly in the acquisition of his debts, that he made any good-faith efforts to resolve his debts, or that he has a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not apply because there are no clear indications that his financial problem is being resolved or is under control. He has not participated in financial counseling, and he is not following a budget. Considering the number of delinquent debts, the dates the debts were acquired, the aggregate value of the debts, and the limited evidence of efforts to resolve his financial obligations, Applicant has failed to demonstrate any financial responsibility. I find particularly troublesome his recalcitrant refusal to pay his past-due, court-imposed child support obligation. The remaining mitigating conditions are not reasonably raised by the facts in this case.

### **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 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). I have incorporated in my whole-person analysis my analysis under Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for his military service and his work for a government contractor. I also considered his extensive history of unemployment and underemployment. He claimed to be a good father and to provide some financial support for his children.

Notwithstanding, security concerns remain about Applicant's current financial responsibility. Applicant's documentary evidence failed to show financial responsibility in the acquisition of the debts, good-faith efforts to resolve his financial problems in a timely manner, or a current track record of financial responsibility. The number of debts, the aggregate value of the debts, and his failure to address the SOR debts indicates he is financially overextended. Moreover, his unwillingness to pay child support, notwithstanding the court order, shows Applicant does not understand what is required of him to establish his ability to hold a security clearance. Considering the record as a whole, at this time, I have doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations.

### **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
Subparagraphs 1.a - 1.k:	Against 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 eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge