



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-01752
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Marc G. Laverdiere, Esq., Department Counsel  
For Applicant: *Pro se*

May 5, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant owes 12 delinquent debts, totaling near \$71,000, 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 August 25, 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.

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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.

On September 3, 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 November 8, 2010, to determine whether a clearance should be granted or denied. DOHA issued notices of hearing on November 22 and 29, 2010, convening a hearing for December 6, and then December 15, 2010, respectively. At the December 15<sup>th</sup> hearing, the Government offered exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified, presented one witness, and submitted exhibits (AE) 1 through 4, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 2010.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a through 1.c, and 1.g through 1.o. He denied SOR allegations 1.d through 1.f, because he did not recognize the creditors and was not sure these were his accounts. 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 48-year-old physical security officer employed with a defense contractor since August 2009. He served in the U.S. Marine Corps from December 1985 until October 1989. He achieved the rank of corporal (pay grade E-4), and his service was characterized as honorable. He married his spouse in October 1992, and divorced her in November 2010. He has two children, ages 17 and 15. Applicant completed his bachelor's degree in May 1993. Additionally, he recently completed approximately two years in a business administration program.

In his August 2009 SCA, Applicant disclosed he was having financial problems. The ensuing background investigation revealed the 15 delinquent debts alleged in the SOR, totaling approximately \$90,000. Applicant admitted, and the credit reports confirmed, that 12 of the delinquent debts, totaling approximately \$71,000, are his delinquent debts. Applicant denied SOR 1.d through 1.f. He stated he did not recognize the creditors and was not sure these were his accounts. These three accounts could be duplicate collections; however, he failed to present any evidence of efforts to ascertain the validity of the debts or to dispute them.

Applicant testified that before 2008, he had good credit and no financial problems. He and his wife were working in the housing business and their combined income allowed them to live well. He attributed his financial problems to several factors,

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

the 2007-2008 down spiral of the housing market and the U.S. economy, his separation and subsequent divorce, a couple of failed business ventures, and his periods of unemployment. He was employed from October 1993 until June 2001; unemployed from July 2001 until December 2001; employed from December 2001 until December 2003; unemployed from December 2003 until August 2004; employed from August 2004 until April 2005; unemployed from April 2005 until June 2007; employed from June 2007 until September 2007; unemployed from September 2007 until March 2008; employed from March 2008 until August 2008; unemployed from September 2008 until May 2009; employed during May and June 2009; and unemployed during July 2009. He started working for his current employer in August 2009.

Most of Applicant's periods of unemployment were voluntary. He explained that while he was married and the housing market was doing well, his then wife was making around \$200,000 a year selling real estate. Because they were having problems with their teenage children, they decided that he would stay home and take care of them. They believed that his wife's income was sufficient to support the family and pay their debts. The only period he was involuntarily unemployed was from September 2007 until March 2008, when he was laid off from his job because of the housing market decline. He and his wife separated in July 2009.

Applicant and his then wife purchased a home in 2002 together. She purchased another home on her own in December 2005. Applicant claimed that most of the delinquent debts alleged in the SOR were incurred by him and his wife to refurbish<sup>3</sup> and furnish both homes. Later on, when the housing market took the downturn, her yearly income went from \$200,000 to around \$40,000. They used his credit cards to "survive" and to pay for the family's day-to-day living expenses. One of the homes was foreclosed. Applicant's ex-wife lives in the second home, and it is pending foreclosure too.

Applicant's current take-home monthly income is approximately \$1,800. He is paying \$800 a month in child support. In 2010, he purchased a 2006 vehicle with his father's financial assistance and pays \$460 a month. 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 is living with his parents. 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. He intends to consolidate his debts in the future, but is concerned about being ripped off by an unscrupulous debt consolidation firm. He is also thinking about taking a second job, but he has not taken any action to that effect.

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<sup>3</sup> SOR ¶ 1.h concerns a \$37,000 home equity loan made to upgrade one of the real estate properties Applicant and his wife purchased. SOR ¶ 1.j is a \$2,600 personal loan Applicant made while unemployed. SOR ¶ 1.m is a \$6,000 delinquent credit card debt incurred to purchase furniture for one of the homes.

Applicant presented no additional information concerning his current monthly living expenses or the debts he pays on a monthly basis. Applicant claimed he is trying to rectify his financial problems. However, except for his payment agreement to the creditor alleged in SOR ¶ 1.j, Applicant failed to present any documentary evidence of any debt payments, contacts or negotiations with creditors, debt disputes, or of any efforts to otherwise resolve his delinquent SOR debts since he acquired them.

At his hearing, Applicant presented the testimony of his direct supervisor. Applicant is considered to be a reliable, dependable, trustworthy, and hard-working employee. His supervisor recommends him for access to classified information. This is his first security clearance application.

### **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 12 delinquent debts, totaling near \$71,000, 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 raise 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 some evidence to establish circumstances beyond his control contributing to his inability to pay her debts, e.g., the downturn of the housing market and the U.S. economy, his period of involuntary unemployment<sup>4</sup> from September 2007 until March 2008, and his separation and divorce. Notwithstanding, Applicant's evidence is not sufficient to show that he and his wife acted responsibly in the acquisition of his debts, that he made 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. There is insufficient evidence about his living expenses and existing debts to make an informed judgment about his financial situation. 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 and his wife were living beyond their financial means. Applicant's information is insufficient to establish that his financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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<sup>4</sup> Applicant's voluntary periods of unemployment do not constitute "circumstances beyond his control."

## **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 comments on the analysis of 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 work for a government contractor. He is a good father and provides financial support for his children. He is a good reliable, dependable, and hard-working employee. Additionally, he has established a payment plan with one of his creditors. These factors show some responsibility.

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. Considering the number of debts, the aggregate value of the debts, and the reasons why the debts were incurred, it appears that Applicant and his wife were living beyond their financial means. His failure to address all but one of the SOR debts indicates he is probably financially overextended. 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.c:	Against Applicant
Subparagraphs 1.d – 1.f:	For Applicant
Subparagraphs 1.g - 1.o:	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