



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 10-02445  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

07/31/2012  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

TUIDER, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 20 delinquent debts, totaling \$62,988. He mitigated one \$72 debt. He did not provide documentary evidence of any payments to the SOR creditors. Financial considerations are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 2, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On August 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it

recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On December 12, 2011, Applicant responded to the SOR and requested a hearing. On January 4, 2012, Department Counsel was ready to proceed on Applicant's case. On January 10, 2012, DOHA assigned Applicant's case to an administrative judge. On March 28, 2012, Applicant's case was transferred to me for administrative reasons. On April 17, 2012, DOHA issued a hearing notice, setting the hearing for May 16, 2012. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered five exhibits, and Applicant offered three exhibits. (Tr. 12-17; GE 1-5; AE A-C) There were no objections, and I admitted GE 1-5 and AE A-C. (Tr. 16, 17) On May 31, 2012, I received the transcript of the hearing. I held the record open until May 31, 2012, to permit Applicant to provide additional documentation. (Tr. 68, 71-74) Applicant did not provide any post-hearing evidence.

### **Findings of Fact<sup>1</sup>**

In his Answer to the SOR, Applicant indicated "accept" next to SOR ¶¶ 1.a, 1.b, 1.d to 1.l, 1.o to 1.q, 1.s, and 1.t. He indicated "accept" and "paid" for SOR ¶¶ 1.c, 1.m, 1.n, and 1.r. His admissions are accepted as findings of fact.

Applicant is a 33-year-old field support (generator) technician for a defense contractor. (Tr. 17-19; GE 1) He has worked for the same employer since July 2009. (Tr. 17-19; GE 1) He graduated from high school in 1996 and earned approximately six college credits. (Tr. 20) He was on active duty in the Navy from September 1996 to October 2005. (Tr. 20) He served in Japan for three years and Bahrain for one year. (Tr. 22) When he left active duty, he was an engineman third class (E-4). (Tr. 20-21) He received an honorable discharge. (Tr. 21) He has held an interim clearance since October 2009. (Tr. 18)

Applicant married in April 2001 and was divorced in July 2002. (Tr. 25) He married in August 2004 and was divorced in March 2008. (Tr. 26) He married his current spouse in May 2008, and they were separated in December 2010, while he was deployed to Iraq. (Tr. 26) He has an eight-year-old son; however, the mother of his son was not one of his spouses. (Tr. 27) He is paying \$582 per month child support through a state court. (Tr. 28) Applicant's mother died in March 2010. (Tr. 30) Applicant paid for her funeral, which cost more than \$7,000. (Tr. 30) Applicant's sister is a senior in high school; she lives with Applicant; and he provides financial support for her. (Tr. 29)

### **Financial Considerations**

Applicant did not disclose any delinquent debts or derogatory financial information in his November 2, 2009 SF 86. (GE 1) He indicated in the comments

---

<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

section of Section 26 that he did not have a credit report, and he had retained a credit repair firm to help him correct his credit report. (GE 1) He believed his finances would be “squared away in less than six months.” (GE 1)

Applicant’s credit reports, SOR, and January 19, 2010 Office of Personnel Management (OPM) personal subject interview allege 20 delinquent debts, totaling \$62,988. Applicant provided the following status for his 20 SOR debts:

1.a is a medical debt for \$612—UNRESOLVED. Applicant’s medical bills are covered by TRICARE and a private insurance company. (Tr. 50-53) He disputes his responsibility for medical bills resulting from the treatment of his foot. (Tr. 50-53) He believes that TRICARE or his insurance should pay this debt. (Tr. 50-53)

1.b is a debt for an apartment lease for \$2,650—UNRESOLVED. Applicant said that he believed that credit counseling and debt resolution service (CCDRS) paid this debt. (Tr. 53-54)

1.c is a debt owed to a power company for \$150—UNRESOLVED. Applicant said this debt was from the utilities for his spouse’s apartment. (Tr. 46-47) His SOR response indicates this debt is paid. If this debt is not resolved, he intends to pay or settle it. (Tr. 54-55)

1.d and 1.e are debts owed to a credit union for \$283 and \$4,803—UNRESOLVED. Applicant believes that CCDRS is in the process of resolving or has resolved these two debts. (Tr. 55)

1.f is a debt for \$8,889—UNRESOLVED. This debt has been delinquent for several years. (Tr. 57) Applicant has not made any payments; however, either he or CCDRS is in the process of resolving it. (Tr. 57)

1.g and 1.h are debts to the same bank for \$2,514 and \$1,705—UNRESOLVED. Applicant or CCDRS are in the process of attempting to settle these two debts. (Tr. 57-58)

1.i is a collection debt for \$475 for a telecommunications account—UNRESOLVED. Applicant said this debt has been settled. (Tr. 58)

1.j, 1.k, and 1.l are three collection debt originating from the same credit union for \$3,807; \$11,505; and \$18,518—UNRESOLVED. The \$3,807 debt is for a credit card; the \$11,505 debt is for his first spouse’s vehicle; and the \$18,518 is for a debt consolidation loan. (Tr. 58-62) He said he is in the process of settling these three debts. (Tr. 62)

1.m is a power company debt for \$210—UNRESOLVED. Applicant’s SOR response indicates this debt is paid. He said he paid it around 2010. (Tr. 47-49)

1.n is a debt owed to Defense Finance for \$542—RESOLVED. Applicant's SOR response indicates this debt is paid. He said it was paid from his tax refund in 2005. (Tr. 48-49)

1.o is a debt from the purchase of furniture for \$72—RESOLVED. Applicant said it was settled more than 10 years ago. (Tr. 62) This debt is so old and of such minimal amount, it is unreasonable to require Applicant to produce corroborating documentation showing it has been resolved.

1.p is a collection debt for \$600; 1.q is a debt for \$819; 1.r is a collection debt for \$132; and 1.s is a telecommunications debt for \$586—UNRESOLVED. Applicant's SOR response indicates the SOR ¶ 1.r debt is paid. Applicant said these four debts were settled. (Tr. 62)

1.t is a debt for \$4,116—UNRESOLVED. Applicant said CCDRS is attempting to resolve this debt. (Tr. 62-63)

Applicant attributes his financial problems to his two divorces, unemployment for about two months after he left active duty in November 2005, supporting his sister, and his mother's funeral expenses. (Tr. 29-34) He was deployed to Kuwait, Haiti, Iraq, and Bahrain on behalf of his defense-contractor employer. (Tr. 35)

In 2010 with bonuses and salary, Applicant earned \$70,000. (Tr. 37) After deducting taxes and child support, Applicant's net monthly income is about \$3,000. (Tr. 37) He has a monthly vehicle payment of \$544 for a 2006 BMW LR he purchased in 2009 for \$32,000. (Tr. 38-39) Applicant received credit counseling. (Tr. 43)

In June 2011, CCDRS began working with Applicant to resolve his debts. (Tr. 44) On January 19, 2012, CCDRS wrote that CCDRS started working with Applicant on June 6, 2011, and expected to have incorrect issues on his credit reports corrected in seven to eight months. (AE A) CCDRS did not provide any information about paying or settling any of the SOR debts. (AE A) Applicant estimated that he paid a total of \$600 to \$700 to CCDRS in the previous year. (Tr. 45, 56)

In 2011 when he was deployed to Iraq, he earned \$165,000 to \$175,000; however, after paying taxes he only received \$140,000. (Tr. 38, 64) Aside from his SOR debts, all of Applicant's other bills are current. (Tr. 64) He has about \$13,000 in a 401(K) account; and about \$1,000 in the bank. (Tr. 41, 69)

I explained to Applicant that he needed to provide documentary corroboration of his statements that he had paid or resolved or was resolving his delinquent SOR debts. (Tr. 65-74) I suggested he obtain and provide a status report from CCDRS showing funds received, funds disbursed, and debts resolved. I suggested that he provide character references, evaluations, and his DD Form 214. (Tr. 70-71) He did not provide any of the suggested documentation after his hearing.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines 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 overarching 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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication 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 therein 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 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

### 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 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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his credit reports, his OPM interview, his SOR response, and his statement at his hearing.

Many of Applicant’s debts became delinquent at least two years ago. His SOR alleges 20 delinquent debts, totaling \$62,988. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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.

None of the mitigating conditions fully apply to all of Applicant's SOR debts. Applicant has found it very difficult to obtain corroborating documentary evidence for the \$72 debt in SOR ¶ 1.o because it is more than ten years old. Applicant is credited with mitigating his Defense Finance debt for \$542 in SOR ¶ 1.n because he indicated it was paid through a collection from Applicant's federal tax refund.<sup>2</sup> It is not unusual for Defense Finance debts to be resolved through this mechanism. Applicant received financial counseling. He understands how to establish his financial responsibility and eliminate delinquent debt.

Applicant attributes his financial problems to his two divorces, unemployment for about two months after he left active duty in November 2005, supporting his sister, and his mother's funeral expenses of about \$7,000. His deployments to Kuwait, Haiti, Iraq, and Bahrain on behalf of his defense-contractor employer made it more difficult for him to contact and pay his creditors. These were circumstances largely beyond Applicant's control.

Applicant did not establish that he acted in good faith to resolve 18 of his delinquent SOR debts totaling \$62,374.<sup>3</sup> He earned approximately \$170,000 in 2011.

---

<sup>2</sup>See ISCR Case No. 08-06059 at 6 (App. Bd. Sept. 21, 2009) (indicating involuntary payment of debts through garnishment is not necessarily mitigating).

<sup>3</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must

He had the means to make substantial progress resolving his delinquent SOR debts. He did not prove that he maintained contact with most of his SOR creditors,<sup>4</sup> and he did not prove that he made sufficient attempts to establish payment plans or otherwise resolve his SOR debts. He did not establish “there are clear indications that the problem is being resolved or is under control.” He did not prove that he acted responsibly under the circumstances. Once he learned of the delinquent debts, he failed to take reasonable action in a timely fashion to resolve his delinquent SOR debts.

AG ¶ 20(e) is not fully applicable. Applicant said he was disputing the medical debt in SOR ¶ 1.a for \$612, asserting it was the responsibility of TRICARE and a private insurance company. Applicant did not provide “documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

Applicant has not provided enough evidence to establish that his delinquent debt is unlikely to recur. His track record of financial responsibility shows insufficient effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations concerns. It is likely that financial problems will continue.

### **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 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.

---

do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>4</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 or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.



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 my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his access to classified information. Applicant is a 33-year-old field support (generator) technician for a defense contractor, who has worked for the same employer since July 2009. He is a high school graduate with approximately six college credits. He was on active duty in the Navy from September 1996 to October 2005, with service in Japan for three years and Bahrain for one year. He received an honorable discharge from the Navy. He has held an interim clearance since October 2009, and there were no allegations of security violations. Since 2001, Applicant has been divorced twice and is separated from his third spouse. He has an eight-year-old son and he is current on his child support. His mother died in March 2010, and Applicant became responsible for his sister. He paid for his mother's funeral, which cost more than \$7,000. His deployments to Kuwait, Haiti, Iraq, and Bahrain on behalf of his defense-contractor employer made it more difficult for him to contact and pay his creditors. Circumstances largely beyond Applicant's control adversely affected his finances. He had financial counseling, and he is sufficiently mature to understand and comply with his security responsibilities. He is an asset to his company and his family. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a defense contractor and for his years of active duty Navy service. There is every indication that he is loyal to the United States and his employer. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial. He is an intelligent person, and he had about \$170,000 in gross income in 2011. He had the ability and resources to make greater progress resolving 18 SOR debts totaling \$62,374. It was unreasonable for Applicant to conclude that paying \$600 to \$700 to CCDRS in the previous year would result in a substantial reduction in his delinquent debts. There are not "clear indications that the problem is being resolved or is under control." He did not prove that he acted responsibly with respect to his debts under the circumstances. Financial considerations security concerns are not fully mitigated at this time.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not fully mitigated, and eligibility for access to classified information is denied.

## 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 to 1.m:	Against Applicant
Subparagraphs 1.n and 1.o:	For Applicant
Subparagraphs 1.p to 1.t:	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 continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

---

ROBERT J. TUIDER  
Administrative Judge