



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



In the matter of: )  
)  
) ISCR Case No. 10-02818  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

February 9, 2011

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems are partially the result of circumstances beyond his control. However, his evidence did not show he has been financial responsible, or that he understands what is expected of him to be eligible for a security clearance. He presented little or no evidence about his current financial situation, a working budget, or a viable plan to resolve the remainder of his debts and avoid similar financial problems in the future. Applicant failed to mitigate the financial considerations concerns. Clearance denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 10, 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 September 2, 2010, DOHA issued Applicant a statement of reasons (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>

Applicant's undated Answer to the SOR was received by DOHA on September 30, 2010. He elected to have his case decided without a hearing. A complete copy of the file of relevant material (FORM), dated October 27, 2010, was provided to him. Applicant received his copy of the FORM on November 1, 2010, and he timely submitted his response to the FORM (undated and not signed), which included numerous documents addressing the SOR allegations. The case was assigned to me on December 10, 2010, to determine whether a clearance should be granted or denied.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.b, 1.c, and 1.f through 1.k, with explanations. He denied SOR ¶¶ 1.a, 1.d, and 1.e. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 47-year-old carpenter working for a government contractor. He graduated from high school in June 1981. He married his wife in December 1985, and they have four children, ages 29, 24, 22, and 19. Applicant worked as a machine operator for a private company from 1992 until 2005. He has worked for two government contractors since March 2005. This is his first security clearance application.

In his November 2009 SCA, Applicant disclosed he had financial problems. In 2006, he defaulted on a \$130,000 mortgage, and the property was foreclosed and later sold in auction. His background investigation revealed the 11 delinquent or charged-off debts alleged in the SOR.

SOR ¶ 1.a alleges a state tax lien filed against Applicant in 1992. He resolved the tax debt around 1995, and the lien was erroneously filed against him. He contested the lien and it was removed from his credit report. (FORM Response)

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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 guidelines implemented by the DoD on September 1, 2006.

SOR ¶ 1.b alleges a \$137 debt in collection. Applicant did not receive collection notices after he moved in 2006 and he forgot about the debt. He made the last payment on the debt in December 2010. (SOR Answer, FORM Response)

SOR ¶ 1.c alleges a \$1,106 delinquent debt for medical services provided to his son because of a traffic accident. Applicant retained an attorney to handle his son's tort claim, which is pending. He intends to pay the debt after the lawsuit is settled.

SOR ¶ 1.d alleges a \$195 delinquent debt for medical services. Applicant did not recognize the debt and disputed it in writing through the credit bureau. The status of the dispute is unknown. (FORM Response)

SOR ¶ 1.e alleges a \$129 delinquent debt for medical services. Applicant paid this debt in 2004. He had it removed from his most recent credit report.

SOR ¶ 1.f alleges an approximately \$25,000 delinquent second mortgage. SOR ¶ 1.g alleges an approximately \$8,500 delinquent second mortgage that was charged off. SOR ¶ 1.h alleges a \$109,000 delinquent real estate mortgage in foreclosure. All the mortgages appear to relate to the same home, which was foreclosed and sold in auction in 2006. Applicant believes he no longer has any financial responsibility for the debts alleged in SOR ¶¶ 1.g and 1.h because he assumes the debts were covered by the proceeds of the sale of the property. He presented no documentary evidence to support his claim. Based on the record credit reports, I find the debts alleged in SOR ¶¶ 1.f and 1.g allege the same debt. I find SOR ¶ 1.f for Applicant. SOR ¶¶ 1.g and 1.h are unresolved.

SOR ¶ 1.i alleges a \$555 debt in collection. Applicant paid the debt in September 2010. (FORM Response)

SOR ¶ 1.j alleges a \$192 medical debt in collection. Applicant incurred the debt as a result of a work-related accident. He claimed his insurance company was supposed to pay the debt. He presented no documentary evidence of payment. Applicant's November 2010 shows the debt is unresolved.

SOR ¶ 1.k alleges a \$535 debt in collection. Applicant paid the debt, but it was not removed from his credit report. He then disputed the debt and it was removed from his credit report. (Item 4)

During a January 2010 interview, Applicant explained that his financial problems started in the 1980s when he was self-employed building homes. A customer refused to pay for a home he built at about the same time his son was born with medical problems. Applicant spent most of his time at the hospital, neglected his business, and accrued medical expenses. Other debts became delinquent because he could not afford to pay them. He filed for Chapter 7 bankruptcy protection around 1989. Additionally, around 1995, Applicant and his wife separated and she filed for divorce. His financial problems were aggravated because he had to financially support two households.

Applicant accrued \$10,000 in unpaid state taxes related to his home construction business. He refinanced his home and took a second mortgage to pay his tax debt. In early 2005, Applicant refinanced his home again with an adjustable rate mortgage. When the mortgage rate increased, he was not able to make the payments and the home was foreclosed and sold in auction in 2006.

During his interview, Applicant told the investigator that his financial situation had improved since he started working for a government contractor in 2005. He is now fully employed and making a good salary. Apparently, he and his wife are back together, and they have three grandchildren. Applicant presented no other evidence about his current financial situation. The record contains little or no information about his monthly income, living expenses, and outstanding debts. Nor is there evidence of financial counseling, that he follows a budget, or an established viable plan to resolve the remainder of his debts. In his response to the FORM, Applicant included a November 2010 credit report. It shows most of Applicant's financial obligations have been either delinquent or in collection.

## **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, 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); and ISCR Case 08-06605 at 3 (App. Bd. Feb. 4, 2010).

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.

Applicant has a history of financial problems dating from the 1980s, when he filed for bankruptcy protection, and they are still ongoing. The SOR alleged 11 delinquent debts in collection or charged off, some of which were delinquent for several years. The record evidence shows Applicant resolved SOR ¶¶ 1.a, 1.b, 1.e, 1.i, and 1.k. He also disputed SOR ¶¶ 1.d, but it has not been resolved. SOR ¶¶ 1.c, 1.g, 1.h, and 1.j are unresolved. I find SOR ¶ 1.f a duplicate of SOR ¶ 1.g, thus I find for him on this allegation.

Applicant's delinquent debts raise the applicability of AG ¶ 19(a): "inability or unwillingness to satisfy debts"; and AG ¶ 19(c): "a history of not meeting financial obligations."

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.

Applicant disclosed his financial problems in his security clearance application. He has been consistently employed by two different government contractors since 2005. Out of the 11 delinquent debts alleged in the SOR, Applicant resolved five debts, he is in the process of disputing another, and one allegation is duplicated. He has four delinquent debts that are unresolved. The main concern is for SOR ¶¶ 1.g and 1.h, for which he claimed he no longer has any financial responsibility because the property was foreclosed and sold at auction. He presented no documentary evidence to show he is no longer responsible for these debts.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because some of the SOR debts are unresolved (recent behavior). It partially applies because he resolved five of the delinquent debts, and he disputed another debt.

The evidence established circumstances beyond his control contributing to his inability to pay his debts, i.e., his construction business failure, his son's medical

problems, and his period of separation from his wife. AG ¶ 20(b) is partially established by the evidence. It does not fully apply, because Applicant's evidence is not sufficient to demonstrate he exercised financial responsibility in the acquisition of his debts and good-faith efforts to contact creditors and to resolve his debts after they became delinquent.

AG ¶ 20(c) does not apply since there is no evidence Applicant participated in financial counseling. He demonstrated some desire to resolve his debts by paying some and disputing others after receipt of his SOR. 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 one debt and is in the process of disputing another.

Applicant presented little or no evidence about his current financial situation, including his current monthly income, living expenses, and outstanding debts. There is no evidence that he follows a budget or that he has a viable plan to pay the remainder of his debts or to prevent similar financial problems in the future. Considering the record as a whole, Applicant's sparse favorable information is not sufficient to mitigate the financial considerations concerns.

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

Applicant is a good father and a good worker. He has successfully worked for two government contractors for approximately seven years. This is his first security clearance application. He disclosed his financial problems in his security clearance application. His delinquent debts were partially the result of circumstances beyond his

control. Notwithstanding, he does not fully understand what it is required of him to show financial responsibility and what is expected of him to be eligible for a security clearance. Considering the sparse favorable information available, Applicant failed to mitigate the security concerns arising from his financial considerations. The record evidence failed to establish Applicant's eligibility and suitability for a security clearance.

### **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.b, 1.d, 1.e, 1.f, 1.i, and 1.k:	For Applicant
Subparagraphs 1.c, 1.g, 1.h, and 1.j:	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 or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge