



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 10-07079  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Paul M. Delaney, Esq., Department Counsel  
For Applicant: *Pro se*

July 19, 2011

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On March 1, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On March 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 29, 2011, and DOHA received his answer on April 1, 2011. Department Counsel was prepared to proceed on May 3, 2011. The case was assigned to me on May 20, 2011. DOHA issued a notice of

hearing on June 3, 2011, scheduling the hearing for June 20, 2011. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which were received without objection. Accompanying GE 1 through 5 was a List of Government's exhibits, which was marked as Exhibit (Ex.) I. The Applicant offered Applicant Exhibits (AE) A through L, which were received without objection, and he testified on his own behalf.

I held the record open until July 5, 2011, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE M, consisting of 50 pages, which was received without objection. DOHA received the hearing transcript (Tr.) on June 30, 2011. The record closed on July 5, 2011.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations. His answers with explanations are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 38-year-old computer support specialist, who has worked for a defense contractor since September 2008. He is a first-time applicant for a security clearance. Successfully vetting for a security clearance is a condition of his continued employment. (GE 1, Tr. 23-25.)

Applicant graduated from high school in June 1992. He was awarded an associate's degree in electronics in September 2001, and was awarded a bachelor of science degree in information system security in June 2011. (GE 1, Tr. 25-27.)

Applicant was married from June 2005 to June 2011. That marriage ended by divorce. He has no dependents. Applicant's former wife is a home health aide. Applicant did not serve in the armed forces. (GE 1, Tr. 27-28.)

### **Financial Considerations**

Applicant's SOR alleges 24 debts totalling approximately \$32,000. (Tr. 10.) These debts consist of one judgment and various collection, past-due, and unpaid accounts. In March 2010, Applicant was interviewed by an Office of Personnel Management (OPM) investigator and during that interview, the investigator reviewed Applicant's debts with him in detail. During that interview, Applicant stated that he had fallen behind on his bills after he was laid off in 2008 and that he would be contacting his creditors to set up payment plans or resolve his debts. (GE 2.)

Since his March 2010 OPM interview, Applicant has made an extraordinary effort to pay, set up payment plans, or otherwise resolve all of his debts. By December 2010 and in response to DOHA interrogatories, he had demonstrated that he had made substantial progress in paying down his debts. For those debts he had not resolved, he submitted documentation that he had contacted his remaining creditors to set up payment plans. (GE 3.) By his hearing date, Applicant was able to demonstrate that he had paid off 13 debts, that he is making payments on two debts, that two debts are not his, that he is making a good-faith effort to pay off two debts, and that his former wife was responsible for paying five debts per their divorce decree. Applicant's former wife also submitted a letter acknowledging that she is responsible for those five debts. (AE H - AE M, Tr. 32- )

Applicant sought financial counselling from an accredited financial counsellor in March 2011. His financial counsellor submitted a letter dated May 20, 2011, indicating that Applicant "has been very diligent" in attending on-base basic financial management classes in budgeting, credit and debt management, and savings and investment. Also, Applicant has met individually with his financial counsellor frequently since March 2011 to discuss his financial situation. His financial counsellor noted Applicant's overall understanding of budgeting and responsible money management. His financial counsellor verified Applicant's superb efforts in regaining financial responsibility and recommended him for a security clearance. (AE B, Tr. 29.)

Applicant attributes his financial problems to being unemployed from May 2005 to February 2007 and then being underemployed until he began his current job. He also went through a divorce, which he reported when he submitted his December 2010 DOHA interrogatories. (GE 1, GE 3, Tr. 30-32.)

In conclusion, Applicant has paid, settled, made good-faith efforts to repay overdue creditors, or resolved all debts alleged. Applicant remains current on the rest of his monthly bills. His budget further demonstrates that he maintains a modest lifestyle and is living within his means. (GE 3, AE M.)

### **Character Evidence**

Applicant submitted five work-related reference letters. The individuals who submitted these reference letters represent a cross-section of supervisory and co-worker personnel. One of the supervisory personnel has known Applicant since they attended college over 15 years ago. The overwhelming sense of these letters supports the notion that Applicant is hard working, has a tremendous sense of integrity, and is contributing to the national defense. All of Applicant's references are familiar with his financial situation and with his efforts to overcome those problems. All references enthusiastically and without hesitation support Applicant for a security clearance. (AE A – AE B, AE D – AE F.)

## 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.” *Egan* at 528.

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* at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline F (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 financial considerations 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.” Applicant’s history of delinquent debt is established by his admissions and the evidence presented. These debts have been in a delinquent state for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through (e) 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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. It was not until recently that these debts were paid or resolved. Therefore, his debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant receives partial credit under AG ¶ 20(a) because the debt "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." Under AG ¶ 20(b), he receives full credit because his unemployment and underemployment, as well as his divorce, were largely beyond his control and he acted responsibly under the circumstances.<sup>1</sup>

AG ¶ 20(c) is applicable because Applicant actively sought financial counseling and has demonstrated that his financial problems are under control. He has produced evidence that reflects he is living within his means and has regained financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).<sup>2</sup> Applicant has paid, is paying, or has otherwise resolved his debts.

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<sup>1</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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

<sup>2</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 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].

AG ¶ 20(e) is applicable to several of Applicant's debts because he successfully demonstrated that they belong to his former spouse or to his former employer.

### **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 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).

There is evidence against mitigating Applicant's conduct. The SOR lists 24 debts totaling approximately \$24,000 that were at one time or another in various states of delinquency. For several years, he failed to keep his accounts current. His lack of success in resolving his delinquent debt until recently raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of good employment and resolving his debt once he had the means to do so weighs in his favor. Applicant is a highly trusted and valued employee, who is making a contribution to the national defense. He is a law-abiding citizen and respected member of the community. All of his SOR debts are paid, resolved, or being resolved. His monthly expenses are current. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant

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(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)).

demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant’s company fully supports him and recommends him for a security clearance. He made mistakes, and debts became delinquent. Having sought financial counselling, he has regained control over his finances and demonstrated financial responsibility and has established a “meaningful track record” of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the Government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

### **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 1a to 1x:                      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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

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Robert J. Tuider  
Administrative Judge