



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



In the matter of: )  
)  
) ISCR Case No. 10-08123  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia , Esq., Department Counsel  
For Applicant: *Pro Se*

September 29, 2011

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 5, 2010. On March 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant

or continue Applicant's eligibility for a security clearance. On March 12, 2011, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the File of Relevant Material (FORM) dated May 26, 2011, was provided to him. Applicant received his copy of the FORM on June 11, 2011. He was given 30 days from the date he received the FORM to file objections or submit material in refutation, mitigation, or extenuation. He did not submit additional information within the 30-day period. The case was assigned to me on August 29, 2011. On September 12, 2011, Department Counsel submitted an Amendment to the FORM that indicated no documents concerning Applicant's medical conditions were attached to his Answer to the SOR (contrary to his assertion in that document) and added an additional document, Item 10, which was a release of medical records with photocopies of doctors' business cards. Applicant's response to the Amendment to the FORM dated September 21, 2010, was entered into the record without objection.

### **Findings of Fact**

Applicant is a 44-year-old information-technology help-desk specialist. A defense contractor sponsored him for a security clearance in April 2010. He attended college in 1992-1994 and 2006-2007, but has not yet received a college degree. He is married and has four children, ages 11, 18, 21, and 29. He has not served in the military. This is the first time that he has applied for a security clearance.<sup>1</sup>

The SOR lists six debts consisting of three charged-off accounts and three collection accounts. Those delinquent debts total about \$60,994. Credit reports dated May 20, 2010; November 18, 2010; and May 26, 2011; establish prima facie evidence of the alleged debts.<sup>2</sup>

In his Answer to the SOR, Applicant admitted five of the alleged debts (SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.f) totaling about \$46,124. His admissions are incorporated herein as findings of fact. Some of the admitted debts have been delinquent for a number of years. For example, the date of first delinquency/date of last activity for the debt in SOR ¶ 1.a was July 2004.<sup>3</sup>

Applicant attributed his financial problems to medical problems and periods of unemployment or underemployment. He has chronic diabetes and deep vein thrombosis. He also suffered from failing eyesight that apparently has been cured. Because he is insulin resistant, medications that were being prescribed to him had no effect on his diabetes, which left him in a weakened state. He was unemployed from April 2003 to October 2003 for health reasons. From October 2003 to 2006; he worked

---

<sup>1</sup> Items 4 and 6.

<sup>2</sup> Items 1, 7, 8, and 9. As reflected in Item 9, the delinquent debts in SOR ¶¶ 1.a and 1.b have been charged off, but the amount of the alleged delinquency in the SOR was based on the "high credit" amount instead of a "past-due" amount for those debts. Nonetheless, Applicant admitted those debts.

<sup>3</sup> Items 3 and 7.

part time and earned just enough to pay his living expenses, including his mortgage. When he resumed fulltime employment in 2006, he continued making payments on at least his student loan (SOR ¶ 1.d). During his interview with an investigator from the Office of Personnel Management (OPM), he indicated that he voluntarily resigned from his job with a university in November 2009. In his e-QIP, he explained why he resigned by stating,

After their claim of me socializing and fraternizing with students and or faculty, I made counter allegations against employees there and the company itself, of the very same thing they were accusing me of. Then their response was then “we don’t want you here any way” and was told to sign a document that was a clear fabrication and misrepresentation of the facts for which I then refuse to sign and then left the premises and never to return.

He was unemployed in November and December 2009. In December 2009, he began working on an intermittent basis for a company and, in that job, did not earn sufficient income to make payments to creditors. In his intermittent job, he was unemployed from January 22, 2010, to March 29, 2010; and from April 20, 2010, to an unspecified date. During periods of unemployment since November 2009, he received unemployment compensation. Based on the record evidence, it is apparent that he did not begin fulltime employment with the defense contractor in April 2010 when that company sponsored him for a security clearance.<sup>4</sup>

Applicant provided no proof of payments or settlement agreements for the delinquent debts. In responding to interrogatories in December 2010, he indicated that “[n]othing has been done [to resolve his debts] at the current time due to only obtaining temporary employment . . . . Resolution will happen when full time employment is fulfilled (sic).” His take-home pay from his intermittent job for the period from October, 15, 2010, to October 28, 2010, was \$315, while his bills for that month totaled over \$650. His mortgage bill reflected that he was behind one payment.<sup>5</sup>

Applicant denied the debt in SOR ¶ 1.e, a vehicle loan. He claimed that he was sold a defective vehicle in November 2002. The vehicle had constant mechanical problems with its powertrain that the dealership would not repair. On one occasion the vehicle stalled on a set of railroad tracks. Because of safety concerns with this car, he arranged for its repossession in 2007. He disputes that he owes the alleged balance because the dealership had a responsibility to repair the vehicle while it was still under warranty. In his e-QIP, he indicated that this account was closed. However, he presented no documentary proof to substantiate that he has a legitimate basis for

---

<sup>4</sup> Items 3, 4, and 6; Applicant’s Response to the FORM Amendment. In his Response to the FORM Amendment, Applicant referred to his departure from his job in November 2009 as a “mutual separation.”

<sup>5</sup> Items 3, 4, 5, and 6; Applicant’s Response to the FORM Amendment.

disputing this debt. Specifically, he provided no proof that he disputed it with the credit reporting agencies.<sup>6</sup>

In 2002, he went to an agency to obtain financial counseling and assistance, but was told he earned too much to qualify for their services. In his Answer, Applicant indicated that he previously worked in a job in which he was bonded and trusted with millions of dollars on a daily basis. He stated that no issues regarding his trust and reliability were ever raised about him during that period of employment. Applicant submitted no reference letters or performance evaluations tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.<sup>7</sup>

### **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

---

<sup>6</sup> Items 3, 4, and 6.

<sup>7</sup> Item 3; Applicant’s Response to the FORM Amendment.

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**

### **Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated six delinquent debts totaling over \$60,000 that he has been unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations 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.

Applicant's has multiple delinquent debts that are recent, ongoing, and significant. He suffered from diabetes and deep vein thrombosis that have contributed to his financial problems. He was unemployed from April 2003 to October 2003 due to his medical problems. It also appears that he was employed part time due to his medical problems from October 2003 to an unspecified time in 2006. In November 2009, he resigned from his fulltime employment after he was suspected of engaging in inappropriate conduct. Since then, he has had intermittent employment. His medical problems are conditions beyond his control. To obtain full credit under AG ¶ 20(b), both prongs of that mitigating condition, i.e., conditions beyond the individual's control and responsible conduct, must be established. Here, Applicant has failed to establish that he acted responsibly under the circumstances. In this regard, the record does not reflect exactly what action he took to try to resolve his delinquent debts when he was employed fulltime from 2006 to November 2009. The record also does not reflect whether he was making all of his debt payments during that period of full employment or whether he was communicating with his creditors in an attempt to resolve his delinquent

debts. Additionally, he has been employed only on an intermittent basis since resigning from his job in November 2009 after questions arose about the propriety of his conduct. These circumstances do not support a determination that he acted responsibly since 2006. Moreover, based on the record evidence, I cannot find that his financial problems arose under circumstances that are unlikely to recur or that they do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply and AG ¶ 20(b) applies partially.<sup>8</sup>

Applicant provided no proof of payments or settlement arrangements for the delinquent debts. As noted above, the record does not reflect whether he has been in contact with creditors to make partial payments to keep the debts current. In the absence of proof of good-faith efforts to repay creditors or otherwise resolve the debts, AG ¶ 20(d) does not apply. In 2002, he sought financial counseling from an agency, but was told that he earned too much money to qualify for their services. AG ¶ 20(c) has marginal applicability because he has not shown that his delinquent debts are being resolved or are under control.<sup>9</sup>

Applicant disputes the debt in SOR ¶ 1.e, but failed to provide documentation to substantiate that he has a legitimate basis for disputing that debt. In the absence of such documentation, AG ¶ 20(e) does not apply.

### **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

---

<sup>8</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his 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>9</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 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)).

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).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. Applicant's has suffered from medical conditions that have contributed to his financial problems. Nevertheless, he has not shown a track record of taking meaningful steps to address his financial problems. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person concept, I find that he has not mitigated the financial security concerns. For the reasons stated, I conclude he is not eligible for access to classified information.

### **Formal Findings**

Formal findings 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.f:	Against Applicant

### **Decision**

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. Clearance is denied.

---

James F. Duffy  
Administrative Judge