



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 10-10342
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

August 31, 2011

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns under Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On July 7, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On April 8, 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*, 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) 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 a security clearance for Applicant, and recommended referral to an

administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant answered the SOR on April 21, 2011, 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 12, 2011, was provided to him by letter dated May 23, 2011. Applicant received the FORM on June 1, 2011. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did submit additional materials within the 30-day period in response to the FORM. Department Counsel did not object the additional materials that Applicant submitted in response to the FORM. The case was assigned to me on July 12, 2011.

### **Findings of Fact**

Applicant admitted SOR ¶ 1a and denied SOR ¶¶ 1b – 1e. His admission is incorporated as a finding of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

### **Background Information**

Applicant is a 50-year-old field service representative, who has been employed by a defense contractor since June 2010.<sup>1</sup> He attended a trade school from February 1995 to November 1996. Applicant attended numerous U.S. Army service schools during his 20-year Army career, discussed *infra*.

Applicant was previously married from August 1989 to March 2005. That marriage ended by divorce. He remarried in July 2009. Applicant lists four adult children and two adult stepchildren on his e-QIP. He served in the Army for 20 years from October 1984 to October 2004, and retired as a staff sergeant (pay grade E-6). His military occupational specialty in the Army was 13B30 – cannon crewmember. (FORM response, Item 8.) Applicant successfully held a secret security clearance while on active duty. (Item 5.)

### **Financial Considerations**

Applicant disclosed several adverse areas regarding his financial history in his July 2010 e-QIP. (Item 5.) In August 2010, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. During that interview, the investigator discussed in detail Applicant's financial situation with him. The investigator reviewed Applicant's debts from his credit reports and discussed the circumstances that led to his indebtedness. (Item 6.)

During his OPM interview, Applicant attributed his financial problems to his reduction in take-home pay from \$4,000 a month to \$2,000 after he retired from the

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<sup>1</sup>The source for Applicant's biographical information is derived from his July 2010 e-QIP unless otherwise stated.

Army in 2004, his 2005 unplanned divorce, and being laid-off in January 2006. After being laid off, Applicant held four different jobs where he was underemployed. It was not until Applicant began his current job in June 2010 that he was able to earn a steady living wage. (Item 6.)

When Applicant and his wife divorced, he was required to pay \$711 a month in child support. His military retirement was further reduced following his divorce because his wife had been married to him for 14 years and 5 months while he was on active duty. As such, the Uniformed Services former Spouses' Protection Act was applicable. After child support and spousal support is deducted from his retired pay, Applicant's net monthly remainder is \$497. (Item 6.)

Applicant's SOR alleges five debts totaling \$31,264. A brief summary of those debts follows.

1a – **UNRESOLVED.** Collection account in the amount of \$20,690. This account represents a deficiency owed after Applicant's car was voluntarily repossessed and sold at auction. Although the SOR alleges \$20,690 as being owed, Applicant noted in his FORM response that the Government's most recent credit report of April 2011 shows a balance of \$12,939, not \$20,690 – a \$7,751 difference. This is the only account that Applicant has not paid, or is in the process of paying. He stated he will contact the creditor when his financial situation improves.

1b – **PAID.** Collection account in the amount of \$378. Applicant's SOR answer stated that he had paid this account in full. Department Counsel challenged this assertion stating that Applicant provided a copy of a check with no proof that the check had ever been mailed or that the debt was actually paid. Applicant responded to Department Counsel's challenge and provided definitive proof of payment in the form of a canceled check. (FORM, FORM response, Item 4.)

1c – **PAID.** Collection account in the amount of \$55. Applicant provided proof of payment in his SOR answer. Department Counsel acknowledged that Applicant had paid this account in full in her FORM. He submitted duplicate proof of payment in his FORM response. (FORM, FORM response, Item 2.)

1d – **MAKING MONTHLY PAYMENTS OF \$478 AND IS CURRENT.** Collection account in the amount of \$9,841. This account represents a deficiency owed on a second car after it was voluntarily repossessed and then sold at auction. Applicant contacted the creditor in January 2010 and settled the debt for \$5,845, which is \$3,996 less than he originally owed. He is required to pay \$478 monthly for 12 months beginning in February 2011. Applicant provided proof that he is current on his payments. (FORM, Form response, Item 5.)

1e – **PAID.** Collection account in the amount of \$300. Applicant provided proof of payment in his SOR answer. Department Counsel acknowledged that Applicant had

paid this account in full in her FORM. He submitted duplicate proof of payment in his FORM response. (FORM, FORM response, Item 2.)

As noted, Applicant has paid three of the five debts alleged in full. The two largest debts are deficiencies owed on two automobiles that were voluntarily repossessed in 2005 and 2006. At the time Applicant and his former wife purchased these cars, they were able to afford the car payments. After his retirement from the Army and unplanned divorce, Applicant experienced a significant reduction in income. The divorce decree allowed Applicant and his wife to keep their respective cars. However, after their divorce, Applicant's former wife informed him that she could not nor would she make the payments on her car. Her car was in both of their names. Applicant did not want his credit to be adversely affected so he took possession of his former wife's car with the intent to sell the car. He sold her car to his brother, but unfortunately his brother did not make the payments as promised. Applicant attempted to negotiate with the creditor, but was unsuccessful. (Item 6, FORM response.) The balances on the two largest debts are significantly less than the \$30,531 alleged. The total updated amount of those two debts is \$18,787, a difference of \$11,747.

Department Counsel noted in her FORM that Applicant had filed for Chapter 13 bankruptcy in August 2000. He had listed \$48,400 in liabilities on his Summary of Schedules. Applicant made his payments as required and was awarded a discharge in December 2002. The bankruptcy discharged approximately \$21,000 in debt after those creditors failed to respond to the trustee after having been given notice. Applicant's former wife was responsible for managing the family finances. She either overspent or did not make timely payments. Applicant's deployment schedule precluded him from playing an active role in managing the family finances; however, he acknowledged his failure of not being more pro-active in managing the family budget during the limited times he was home. (Item 6.)

Applicant submitted a budget reflecting a net remainder of \$203 after paying all of his bills. He and his second wife manage their finances together. They lead a modest lifestyle and live within their means. (Item 6, FORM response.) Applicant's DD-214 reflects that he received numerous personal awards and decorations to include six Army Commendation Medals and five Army Achievement Medals. His deployments include Desert Storm. Applicant served eight years and ten months overseas. (FORM response, Item 8.)

## **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

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 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." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern." Applicant's history of delinquent debt is also documented in his responses to DOHA interrogatories, his SOR response, and his FORM response. He failed or was unable to ensure his creditors were paid as agreed. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

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.

Applicant's conduct warrants full application of AG ¶ 20(a). His debts were incurred during a previous failed marriage that ended in 2005. Applicant has been involved in a stable relationship for some time and has made substantial progress in resolving his lingering debts with his available means. Apart from these "old debts," he remains current on all of his bills and lives within his means. He continues to make progress and his delinquent debts are likely to be paid or resolved, and are unlikely to recur. They do not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant receives credit under AG ¶ 20(b). Several factors contributed to his current financial problems for which Applicant had little or no control over to include his unplanned divorce, unemployment, and underemployment. Applicant anticipated that his Army pay would be reduced when he retired; however, he was not prepared to have it reduced from an anticipated \$2,000 to \$497. The \$497 figure reflects the net remainder after spousal and child support is deducted. Applicant attempted to negotiate with his creditors holding his car loans, but was unsuccessful in reaching a satisfactory result.<sup>2</sup> He receives full mitigating credit because he established that he acted with sufficient initiative and resolve to address his delinquent debts. Applicant provided sufficient documentation about his income and expenditures to receive full credit under AG ¶ 20(b).

AG ¶ 20(c) partially applies. Although Applicant did not seek financial counseling, he has prepared a detailed budget. Moreover, he demonstrated a firm grasp of budgeting, payment plans, and expense reduction. He leads a modest lifestyle, lives within his means, and manages to remain current on his present obligations yet still managed to make payments to former creditors. He has the self-discipline necessary to reduce and resolve his debts. There are "clear indications that the problem is being resolved or is under control." He has also established full mitigation under AG ¶ 20(d) because he showed good faith<sup>3</sup> in the resolution of his SOR debts. Although, he has

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<sup>2</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 the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

<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,

one outstanding unresolved debt, he demonstrated that he has a viable plan to pay this debt and a demonstrated track record of paying off or making payments on all debts alleged. Furthermore, the amount initially alleged is substantially less than what Applicant actually owed, *i.e.* \$19,517 versus \$31,264, a difference of \$11,747.

Other than challenging the amount he actually owed, Applicant has not contested the validity of the debts alleged. AG ¶ 20(e) has no direct applicability.

In sum, Applicant has acted responsibly under the circumstances. He is current on his payment plans. He took the honorable route of validating his debts and is in the process of repaying his creditors. While his journey to financial responsibility is not yet complete, I am confident he will keep his promise because of his continued progress on SOR debt resolution.

### **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.

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 that guideline, but some warrant additional comment.

There is evidence against mitigating Applicant's conduct. His debts have been ongoing for several of years. His delinquent debts raise security concerns. However, the mitigating evidence under the whole-person concept is more substantial. Applicant's record of 20 years of honorable military service and good employment weighs in his

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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 [or statute of limitations]) 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)).



favor. Aside from the delinquent debt (which is a civil, non-criminal issue), he is a law-abiding citizen. The overall amount of debt is relatively low. 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 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). Applicant was a career soldier, who honorably served his country for 20 years. He successfully held a security clearance during his Army career. While his post-Army career got off to a rough start due to his divorce and difficulty finding suitable employment, he appears to have turned the corner. He is involved in a successful relationship and has a job that provides him with a living wage. I considered his Chapter 13 bankruptcy; however, I note that Applicant and his former wife filed in 2000, 11 years ago, and they were awarded a discharge in 2002 after complying with their payment plan. This was not alleged as an SOR allegation, but was raised in Department Counsel’s FORM. I find Applicant’s 11-year-old Chapter 13 bankruptcy of limited security concern given the length of time that has elapsed, the fact it occurred during a previous marriage, and the fact that Applicant successfully complied with the terms of the Chapter 13. The record supports the fact that he has paid numerous debts over the years. He has established a “meaningful track record” of debt payment sufficient to trust his promise to pay or otherwise resolve his debts. These factors show responsibility, rehabilitation, and mitigation. Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service as a former 20-year Army veteran and as a defense contractor employee.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole-person, I conclude Applicant has mitigated financial considerations and personal conduct 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 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 – 1e: 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 eligibility for a security clearance to Applicant. Clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge