



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-01034  
 )  
Applicant for Security Clearance )

**Appearances**

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

05/05/2012

**Decision**

Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges four delinquent debts, totaling \$55,354. He paid one debt and established payment plans on the other three debts. Applicant’s financial problems were caused by unemployment and failure of the family business. Before 2008, his debts were paid. Once Applicant and his spouse secured employment, they showed excellent self-discipline and good judgment and made substantial payments to their creditors. All SOR debts will be paid in about 11 months. Financial considerations are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 18, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF-86) (GE 1). On November 29, 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). (Hearing Exhibit (HE) 2) 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. (HE 2)

On December 21, 2011, Applicant responded to the SOR and requested a hearing. (HE 3) On February 16, 2012, Department Counsel was ready to proceed on Applicant's case. On February 17, 2012, DOHA assigned Applicant's case to me. On March 1, 2012, DOHA issued a hearing notice, setting the hearing for March 27, 2012. (HE 1) The hearing needed to be moved to March 29, 2012, because of transportation problems. Applicant's hearing was held on March 29, 2012. Applicant waived his right to 15 days of notice of the time and place of his hearing. (Tr. 13-14) At the hearing, Department Counsel offered four exhibits, and Applicant offered seven exhibits. (Tr. 27-30, 35; GE 1-4; AE A-G) There were no objections, and I admitted GE 1-4 and AE A-G. (Tr. 28, 30, 35) On April 13, 2012, I received the transcript of the hearing. I held the record open until April 30, 2012, to permit Applicant to provide additional documentation. On April 30, 2012, I received 14 additional exhibits. (AE H-U) There was no objection and I admitted them into evidence.

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

In his Answer to the SOR, Applicant admitted responsibility for the four SOR debts. (HE 3) His admission is accepted as a finding of fact.

Applicant is a 49-year-old senior analyst for a major defense contractor. (Tr. 4, 18) He earned a bachelor's degree in 1987 and a master's degree in business administration in 2002. (Tr. 5) He married in 1996, and he has five children, who are ages 12, 13, 14, 16, and 17. (Tr. 5-6) He has held a Secret or higher-level security clearance for 30 years. (Tr. 6) He served as an enlisted soldier, a warrant officer for seven years, and as a commissioned officer. (Tr. 79) He honorably retired from active duty Army service in July 2005 as a major. (Tr. 17) He served in Iraq in 2004 and 2005, where he was awarded a Bronze Star. (Tr. 80; AE I) His final officer evaluation report on active duty describes him as a superb officer, who provided important support to the Army while serving in Iraq. (AE J) His security clearance application does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts. There is no evidence that he abuses alcohol or uses illegal drugs.

### **Financial Considerations**

Applicant disclosed his delinquent debts in his October 18, 2010 SF-86. (GE 1) The SOR and his credit reports alleged four delinquent, charged-off, credit-card debts, totaling \$55,354 as follows: 1.a is for \$5,935; 1.b is for \$19,086; 1.c is for \$29,058; and 1.d is for \$1,275. Applicant and his spouse started a publishing business as a limited

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<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.

liability company (LLC) in May 2005 after he retired from active duty. (Tr. 17, 21) One large customer filed for bankruptcy, owing Applicant and his spouse's LLC \$25,000. (Tr. 75) Other businesses failed to pay their bills in a timely fashion, and their business failed in 2009. (Tr. 21) Over the last three years, Applicant maintained contact with his creditors and made numerous attempts to establish payment plans or settle those debts. He hired attorneys, placed funds in escrow, and made multiple settlement offers and proffered substantial payments to no avail until recently.

The debt in SOR ¶ 1.a for \$5,935 was settled and paid. This debt was generated to fund an on-line database to market his business. (Tr. 23) Over the past three years Applicant made several written attempts to settle the debt. For example, a law firm offered \$2,500 to settle the debt on July 10, 2009. (Tr. 39-40; AE B at 24) The creditor did not cash Applicant's checks and did not respond to Applicant's settlement offers. On February 28, 2012, Applicant offered to settle the account for \$2,000, and he provided a March 10, 2012 check for \$2,000 to the creditor. The creditor cashed the check, resolving the debt. (Tr. 34-35, 38-45; AE B at 5, 8; AE G) The settlement letter is cited on the face of the check. (Tr. 44-45)

The debt in SOR ¶ 1.b for \$19,086 is in an established payment plan. This account was current except for a period in 2008 when Applicant was unemployed and the publishing business was having cash flow problems. (Tr. 24-25) He made regular payments on the account for the last three years. (Tr. 24) In 2009, he made nine monthly payments, ranging from \$100 to \$150, for a total paid in 2009 of \$1,400. (AE B at 5-13) In 2010, he made nine monthly payments, ranging from \$100 to \$300, for a total paid in 2010 of \$2,325. (AE B at 4) In 2011, he made 12 monthly payments, ranging from \$200 to \$300, for a total paid in 2011 of \$3,150. (AE B at 2) From January 4, 2012 to April 24, 2012, he paid \$1,750. (AE B at 1; AE L) His current balance owed is about \$16,000. (Tr. 46) Starting in July 2012, he plans to make payments of \$1,000 each month. (Tr. 49)

The debt in SOR ¶ 1.c for \$29,058 is in an established payment plan. On January 27, 2012, Applicant offered to settle the account for 12 monthly payments of \$1,000 each. (Tr. 50; AE D at 6-9) Applicant made the first \$1,000 payment to the creditor on March 26, 2012. (Tr. 45, 50; AE B at 5; AE D at 1) He made the second \$1,000 payment on April 12, 2012. (AE K; N) He expects to pay off this debt by February 15, 2013. (Tr. 58)

The debt in SOR ¶ 1.d for \$1,275 is in an established payment plan. Applicant had difficulty locating the creditor holding the debt, and three of his letters were returned without being opened. (Tr. 52-55) The creditor had legal difficulties and was unable to legally operate for a time. *Id.* On January 27, 2012, Applicant offered to settle the debt by making four payments for \$500 each, starting in March 2012. (AE E at 7, 12) On March 15, 2012, and April 9, 2012, Applicant paid the creditor \$500 for a total paid of \$1,000. (Tr. 45; AE B at 5; AE N) He intends to pay \$500 each month until June 15, 2012, when the debt will be paid. (Tr. 45; AE B at 7, 12)

Applicant's personal financial statement (PFS) showed sufficient income and net monthly remainder for him to pay all of his SOR debts in 11 months. (AE F, U) He is current on his mortgage and car payments. (Tr. 62-64) All of their other non-SOR accounts and payments are current. All of his federal and state income taxes are paid. (Tr. 69)

Applicant had some residual doubt about whether he was personally liable for three of the four SOR debts, because the debts in SOR ¶¶ 1.a, 1.c, and 1.d were opened as business accounts and not in his name. (Tr. 71-73) His spouse was the primary manager of their LLC. Nevertheless, Applicant has elected to accept personal responsibility for them and to pay them. (Tr. 72)

### **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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guideline F (financial considerations).

### **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 SF-86, credit reports, his SOR response, and his statement at his hearing.

Applicant's debts became delinquent in 2008 and 2009. His SOR alleges four delinquent debts, totaling \$55,354. 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.

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) and 20(b). He receives credit under AG ¶ 20(d) for the debt in SOR ¶ 1.a, which is paid.<sup>2</sup> Unemployment and the failure of the family business were circumstances largely beyond Applicant's control, which caused the four SOR debts to become delinquent. There is no evidence that he acted irresponsibly by purchasing expensive vehicles or taking expensive vacations.

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the applicant had \$41,000 in delinquent

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<sup>2</sup>Of course, Applicant loses some mitigating credit because he did not pay the debt in SOR ¶ 1.a in a more timely manner. Applicant has significant financial responsibilities supporting a spouse and five children. Evidently the family LLC's debts were given lower priority than some of his familial financial responsibilities.

credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the administrative judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment)” even though that applicant’s debts were unresolved at the time the administrative judge’s decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>3</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant who had been sporadically unemployed lacked the ability to pay his creditors noting that “it will be a long time at best before he has paid” all of his creditors. That applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Even though the applicant in ISCR Case No. 08-06567 had limited resources, he (1) resolved some of his debts; (2) established payment plans for the remaining debts; and (3) took “reasonable actions to effectuate that [payment] plan.” *Id.* The Appeal Board remanded the administrative judge’s decision denying a security clearance to the applicant because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the administrative judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

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<sup>3</sup>Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government. The Government is not required to prove that Applicant acted in a financially irresponsible manner.

Partial application of AG ¶¶ 20(c) and 20(d)<sup>4</sup> is warranted. Although Applicant did not receive formal financial counseling, he did generate a budget or personal financial statement. He understands how to establish his financial responsibility and eliminate delinquent debt. Applicant established that he acted responsibly under the circumstances. He maintained contact with his creditors,<sup>5</sup> and attempted to establish payment plans with small monthly payments. He hired attorneys, placed funds in escrow, and made multiple settlement offers with substantial payments to no avail until recently. He has established payment plans with three creditors, which will resolve his SOR debts in 11 months. He admitted responsibility for and is taking reasonable and responsible actions to resolve his debts. His financial problem is being resolved or is under control. AG ¶ 20(e) is not applicable.

In sum, Applicant fell behind on his debts because of unemployment and due to failure in the family publication business in 2009. After he and his spouse became consistently employed, they paid one debt, and established payment plans on the other three debts. It is unlikely that financial problems will recur. In 11 months, all of the SOR debts will be resolved. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AGs ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

### **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):

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<sup>4</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].

(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>5</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.



(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 Guideline F, but some warrant additional comment.

Applicant is a 49-year-old senior analyst for a major defense contractor. He earned a bachelor's degree in 1987 and a master's degree in business administration in 2002. He has held a Secret or higher-level security clearance for 30 years. There are no allegations of violation of security rules or compromise of classified information. He honorably retired from active duty Army service in July 2005 as a major. He served in Iraq in 2004 and 2005, where he earned a Bronze Star. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government on active duty for more than 20 years, and as an employee of a contractor. There is every indication that he is loyal to the United States and his employer. His security clearance application does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts. There is no evidence that he abuses alcohol or uses illegal drugs. His unemployment and the failure of the family business contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for his SOR debts.

Applicant's accounts and debts are all either paid or in established payment plans. I am confident he will keep his promise to continue resolving his debts and avoid future delinquent debt. 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) (internal quotation marks and citations omitted). Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility. There is simply no reason not to trust him. Moreover, he has established a “meaningful track record” of debt re-payment.

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. I conclude financial considerations concerns are fully mitigated, and eligibility for access to classified information is granted.

### **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 1.a to 1.d:               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 continue Applicant’s eligibility for a security clearance. Eligibility for a security clearance is granted.

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MARK HARVEY  
Administrative Judge