



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-03920

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2012

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns for Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On November 23, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued 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*, 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 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 September 30, 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 November 26, 2011, was provided to him by cover letter dated December 8, 2011. Applicant received his copy of the FORM on December 14, 2011. He was given 30 days from the date he received the FORM to submit any objections, and information in mitigation or extenuation. He did not submit additional information within the 30-day period. The case was assigned to me on February 8, 2012.

### **Findings of Fact**

Applicant admitted all of the SOR allegations except for SOR ¶¶ 1a, 1d, 1j, and 1n.

Applicant is a 48-year-old shipfitter, who has been employed by a defense contractor since November 2010.<sup>1</sup> He is a first-time applicant for a security clearance. Applicant received two technical degrees from trade schools located in two different countries in June 1987 and September 1988.

Applicant was previously married from July 1992 to March 2001. That marriage ended by divorce. He remarried in April 2001. Applicant listed four children on his security clearance application – ages 22, 16, 7, and 2. The two youngest children live with Applicant and his wife.

As supported by the record evidence, including information he submitted in his e-QIP and information contained in two credit reports,<sup>2</sup> Applicant has delinquent debts totaling more than \$36,280.<sup>3</sup> During a December 2010 Office of Personnel Management (OPM) interview, Applicant attributed his financial problems to (1) poor money management skills, and (2) lack of money, which in large part was caused by two periods of unemployment from February 2007 to August 2007 and from November 2008 to July 2010.<sup>4</sup> At that time of his OPM interview, he acknowledged most of the

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<sup>1</sup> Background information is derived from Applicant's e-QIP unless otherwise stated.

<sup>2</sup> The Appeal Board has held that an applicant's credit report showing the delinquent debts alleged in an SOR is sufficient to establish the Government's *prima facie* case. See ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006).

<sup>3</sup> Items 1 – 8.

<sup>4</sup> Item 5 at I-2.

delinquent accounts listed to him and said that he does not plan to have future delinquencies by better money management.<sup>5</sup> He had not sought or received financial counseling. He does not plan to acquire any new credit cards and pay his debts with cash.<sup>6</sup> During his OPM interview, Applicant clarified that he was supported by workers compensation from November 2008 until February 2009, by his savings from February 2009 until June 2009, and by unemployment benefits from June 2009 until July 2010.<sup>7</sup>

Although it appears from statements made during his OPM interview that he largely attributes his financial problems to poor money management and his periods of unemployment, he has not provided information or detail sufficient to show the full financial impact of those periods of unemployment, or that he managed his finances responsibly through that time period. Notably, he traveled overseas for 27 days in May to June 2006 to visit family and friends, at a time when the debts alleged in SOR ¶¶ 1e, 1g, and 1k were already delinquent.<sup>8</sup>

Applicant's SOR lists 15 allegations – one arrest for failure to appear at court regarding his daughter's state-funded health insurance, one judgment, and 13 allegations of collection, charged-off accounts, and past-due debts totaling \$36,280. These debts include medical accounts, credit cards, student loans, consumer debt, and child support arrearages. Applicant has been accruing these debts since 2004.<sup>9</sup>

The record contains little explanation or detail showing why or how Applicant became delinquent in an amount totaling more than \$36,280 on his credit accounts. Nor does the record establish that the conditions or circumstances surrounding his financial situation were beyond his control, or that his responses to that situation over time were reasonable, prudent, and responsible. In short, there is no evidence that Applicant has made any efforts to address any of the alleged delinquent debts. All of the SOR allegations remain unmitigated.

### **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*

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Item 5 at 6.

<sup>8</sup> *Id.*

<sup>9</sup> Item 7 at 1.

*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).

## Conclusions

Under Guideline F, the security concern is that an applicant's failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The evidence establishes that Applicant owes approximately \$36,280 to numerous creditors. These debts have been ongoing since 2004. AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations" apply.

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. 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)).

Under AG ¶ 20(b), in order for this mitigating condition to apply, Applicant would be required to show that circumstances largely beyond his control caused his debt and that he then acted responsibly. The record contains little explanation or detail showing why or how he became delinquent in an amount totaling more than \$36,280 to his creditors, does not establish that the conditions or circumstances surrounding his financial situation were beyond his control, or that his responses to that situation over time were reasonable, prudent, and responsible. AG ¶ 20(b) is not applicable.<sup>10</sup>

AG ¶ 20(c) is not applicable because there is no record evidence that Applicant sought financial counseling, and clearly his financial problems are not under control. Likewise, there is not sufficient evidence in the record to establish full mitigation under AG ¶ 20(d) because of Applicant's inability to repay his creditors or documentation to show that he is repaying his creditors.<sup>11</sup> AG ¶ 20(e) is not applicable because Applicant has not submitted documentation that would establish a reasonable basis to dispute any of his SOR debts.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole-person concept. I specifically considered Applicant's age, education, his service as a defense contractor employee, and other limited evidence contained in the record. However, given the facts as they have been presented in this case, I am unable to grant Applicant's security clearance.

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<sup>10</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>11</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)).

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.

**Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1a – 1o:	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.

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ROBERT J. TUIDER  
Administrative Judge