



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 11-04255
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: Jeanne S. Lauer, Esq.

12/11/2012

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on November 6, 2006. On May 2, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to grant or deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on May 8, 2012; answered it on May 25, 2012; and requested a hearing before an administrative judge. DOHA received the request on June 1, 2012. Department Counsel was ready to proceed on July 18, 2012, and the case was assigned to an administrative judge on July 20, 2012. DOHA issued a notice of hearing on July 30, 2012, scheduling it for August 15, 2012. Applicant's attorney entered her appearance on July 31, 2012, and requested that the hearing be postponed. Her request was granted.

On August 2, 2012, DOHA issued an amended notice of hearing, rescheduling the hearing for September 11, 2012. The case was reassigned to another administrative judge on August 28, 2012, and the hearing was cancelled on August 31, 2012, in order to consolidate it with other hearings in the same area at a later date.

The case was reassigned to me on September 6, 2012. After coordinating with Applicant's attorney, DOHA issued a notice of hearing on October 2, 2012, scheduling it for October 26, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until November 13, 2012, to enable Applicant to submit additional documentary evidence. He timely submitted AX D through G, which were admitted without objection. DOHA received the transcript (Tr.) on November 7, 2012.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.g. He denied the allegations in SOR ¶¶ 1.c, 1.f, 1.h, and 1.i. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 58-year-old supervisory electrician employed by a defense contractor since March 1999. He served on active duty in the U.S. Navy from September 1976 to December 1997, when he retired. The record does not reflect his rate and rating at the time of his retirement.

Applicant worked as a master electrician for a private company from March 1998 until he began his current job. He attended college courses from January 2000 to July 2002 but did not receive a degree. His security clearance application reflects that he has held a security clearance since at least March 1996.

Applicant married in December 1977. He and his wife have four children, ranging in age from 20 to 35. One adult child lives with them and occasionally contributes to household expenses. (Tr. 32.)

Applicant and his wife used a tax preparer for their state and federal income taxes for tax years 2005, 2006, and 2007. They did not review their returns before filing them and did not notice that the tax preparer claimed several deductions and exemptions that were erroneous or unsupported. When Applicant learned in 2009 that

his returns were being audited, he did not contact the tax preparer, because the auditor informed him that several other clients of the tax preparer also were being audited. His pay was garnished for state taxes in late 2009. (GX 2 at 6-7.)

Applicant had started to have financial difficulties in 2007, when he was transferred from the field to an office job with reduced pay and no opportunity for overtime. However, he was able to make the minimum payments on his credit card debts until his pay was garnished.

In July 2012, after Applicant received the SOR, he contracted with a debt resolution company, which is handling the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. (AX E at 18.) He pays the debt resolution company \$618 per month. (Tr. 59; AX E at 1.) Three debts listed in his schedule of creditors do not correspond to any of the debts alleged in the SOR. (AX E at 18, items 1, 3, and 5.) Item 1 on the schedule of creditors is a \$19,373 debt to a credit union, which was not alleged in the SOR. At the hearing, Applicant identified this debt as a credit card account that “piled up over time.” (Tr. 39.) Item 3 is a \$3,491 debt to a financial institution and Item 5 is a \$1,135 debt to a home improvement store, neither of which is alleged in the SOR. Applicant was unable to provide any information about Items 3 and 5. (Tr. 42-45.)

During a personal subject interview (PSI) in July 2010, Applicant told an investigator that his wife paid all the family bills. He did not know what she had paid, the status of their debts, or the balances due on any of their debts. (GX 2 at 7.)

Applicant gave his credit report to the debt resolution company and trusts it to resolve the delinquent debts. At the hearing, he was unsure if all the debts alleged in the SOR were included in his debt resolution plan. However, his agreement with the debt resolution company allows him to add additional delinquent debts that he may discover. He was not sure if there were any delinquent debts that he had not yet submitted to the debt resolution company. (Tr. 39-46, 59-61.) The evidence concerning the delinquent debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: Credit card (past due in amount of \$345).** This debt is included in Applicant’s debt resolution plan. (AX E at 18.) In July 2011, Applicant submitted a personal financial statement (PFS) reflecting that he was making monthly \$100 payments on this debt before he included it in his debt resolution plan. (GX 2 at 17.)

**SOR ¶ 1.b: Credit card (past due in amount of \$307).** This debt is reflected as charged off in Applicant’s credit bureau report (CBR) dated July 5, 2012. Applicant sent a letter sent to the creditor in July 2011, asking for a settlement offer, but he has not received a response. This debt is not included in Applicant’s debt resolution plan. It is unresolved. (GX 2 at 13; GX 4 at 2; GX 5 at 2.)

**SOR ¶ 1.c: Credit card (in collection for \$5,708).** This debt was charged off in March 2009 (GX 5 at 2.) Applicant indicated in his answer to the SOR that he was making monthly \$300 payments on this debt by automatic withdrawal from his checking

account. He stopped making payments when the debt was included in his debt resolution plan in July 2012. At some time not reflected in the record, the creditor obtained a judgment and garnished Applicant's pay. (Tr. 49-50.) Applicant's pay voucher for the pay period ending on September 9, 2012, reflects a garnishment for \$414.71. (AX B.) On October 3, 2012, the creditor agreed to release the garnishment in return for Applicant's agreement to resume making monthly \$300 payments beginning on October 30, 2012. (AX G.)

**SOR ¶ 1.d: Credit Card (in collection for \$6,368).** This debt was Included in Applicant's debt resolution plan, and it was settled for \$2,547. (AX C; AX E at 18; AX F.) Applicant does not know whether the debt resolution company will pay the agreed amount in installments or will wait until the entire amount is accumulated from his monthly \$618 payments. (Tr. 59-60.)

**SOR ¶ 1.e: Credit Card (past due in amount of \$481).** This debt appears to be a duplicate of SOR ¶ 1.a, which is included in Applicant's debt resolution plan (AX E at 18.)

**SOR ¶ 1.f: Credit Card (past due in amount of \$410).** Applicant denied this debt. In his answer to the SOR, he stated, "According to my wife, she continues to pay about \$50.00/month." He submitted no documentation of payments. In July 2011, he sent a letter to the creditor asking for a settlement proposal. (GX 2 at 14.) The debt is not included in Applicant's debt resolution plan and not reflected in the two credit reports (GX 4 and GX 5) submitted by Department Counsel. (AX E at 18.) I conclude that this debt is not established by substantial evidence.

**SOR ¶ 1.g: Credit card (in collection for \$1,232).** Applicant admitted this debt, which is reflected in his CBR dated September 26, 2011. (GX 5 at 3.) It is not included in the debt resolution plan. It is unresolved.

**SOR ¶ 1.h: Federal Income Tax (\$22,882).** Internal Revenue Service (IRS) records reflect that Applicant and his wife owed this amount for tax years 2006, 2007, 2008, and 2009. They executed a payment agreement in April 2011, providing for monthly \$200 payments. (GX 2 at 21; GX 3 at 2-8.) In October 2012, Applicant increased his monthly payments to \$300, and they are automatically deducted from his bank account. (Tr. 36-37.) The balance has been reduced to about \$17,000 (Tr. 29.)

**SOR ¶ 1.i: State Income Tax (\$1,436).** State tax records reflect that Applicant and his wife owed this amount for tax years 2006 and 2007. (GX 3 at 10.) The state collected about \$300 per month by garnishing Applicant's pay. The debt was paid in full as of October 31, 2012. (AX A; AX B; AX D.)

Applicant was promoted to a supervisory electrician position in December 2009, with an increase in pay of about \$1,400 per month. (GX 2 at 7-8; Tr. 31.) In his July 2010 PSI, he told an investigator that his net family income was \$4,585, monthly expenses were \$1,787, and debt payments were about \$2,500. He estimated that his

net monthly remainder was \$298. He stated that he had savings of about \$12,000. (GX 2 at 8.)

In Applicant's July 2011 PFS, he reported his net salary of \$2,800, his spouse's net salary of \$1,500, his military retirement income of \$1,100, monthly expenses of \$1,840, monthly debt payments of \$4,798, and a net remainder of \$602. He reported savings of about \$500 and investments of about \$3,000. (GX 1 at 17.)

Applicant's PFS reflected the \$300 per month being deducted from his pay for past-due state taxes. It did not reflect that the state tax debt has been satisfied, and it did not reflect the \$618 he pays monthly to his debt resolution company or the \$300 per month he is paying on his federal tax debt. It reflected monthly \$100 payments on the debt alleged in SOR ¶¶ 1.a and 1.e, which is now included in the debt resolution plan. Finally, it did not reflect that the \$19,000 credit union debt, on which he was paying \$383 per month, is now included in his debt resolution plan. (GX 2 at 17.)

Applicant has not updated the information in his PFS to reflect the changes in his financial status. Consequently the record does not accurately reflect his current net monthly remainder, although it probably is less than the \$602 he reported in July 2011. At the hearing, he testified that he is "in kind of a bind right now," and "still struggling." (Tr. 32, 39.)

Applicant owns his home, worth about \$410,000, and his mortgage loan payments are current. His payments on his first and second mortgages were listed on his PFS. He no longer uses his credit cards. He owns three cars worth a total of about \$22,000. His car loans, which were included among the debt payments in his PFS, are paid off. (GX 2 at 8, 17; Tr. 30-32.)

## **Policies**

"[N]o 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 applicants 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 AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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. Thus, a decision to deny a security clearance 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 (4th 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[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**

The SOR alleges nine delinquent debts, including a federal income tax debt of about \$22,882 for tax years 2006 through 2009 and a state income tax debt of about \$1,436 for tax years 2006 and 2007. The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money. It encompasses concerns about an applicant's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his CBRs establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same") is not established. Applicant filed his returns as required and, although it appears that the returns were fraudulent, Applicant was unaware of the fraud until he was notified that his returns were being audited.

Security concerns based on financial considerations may be mitigated by any of the following conditions:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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; or

AG ¶ 20(f): the affluence resulted from a legal source of income.

AG ¶ 20(a) is not established, because Applicant's delinquent debts are ongoing, numerous, and did not occur under circumstances making them unlikely to recur. To the contrary, Applicant's continued inattention to his financial situation makes recurrence likely.

AG ¶ 20(b) is partially established. Applicant's reduction in income in 2007 was a circumstance beyond his control, but the delinquent federal and state tax debts were due to his negligence, not circumstances beyond his control. Furthermore, he has not acted responsibly. His July 2010 PSI reflected that he was totally unaware of his financial situation. He now relies on a debt resolution company to manage his credit card debts, but he is unaware of the status of his delinquent debts and exercises virtually no oversight. At the hearing, he was able to link the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.e to two debts in his debt resolution plan, but he did not know if all the debts in the SOR were included in the plan.

AG ¶ 20(c) is partially established. Applicant has obtained legal advice and debt management advice. He was making payments in July 2011 on the credit card debt alleged in SOR ¶ 1.a and duplicated in SOR ¶ 1.e, and the debt is now included in his debt resolution plan. The credit card debt alleged in SOR ¶ 1.c has been settled, the federal tax debt alleged in SOR ¶ 1.h is under control, and the state tax debt alleged in SOR ¶ 1.i has been resolved. However, there is no indication that the credit card debts alleged in SOR ¶¶ 1.b and 1.g, which are not included in the debt resolution plan, are being resolved. I conclude that AG ¶ 20(c) is established for the debts alleged in SOR ¶¶ 1.a, 1.c, 1.e, 1.h, and 1.i, but not for the debts alleged in the SOR ¶¶ 1.b and 1.g.

AG ¶ 20(d) is partially established. The key element of this mitigating condition is a "good-faith effort." Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant's enrollment in the debt resolution plan after he received the SOR does not show good faith, because it appears to have been motivated by his desire to protect his security clearance rather than a sense of obligation to his creditors.

The debt alleged in SOR ¶ 1.a and duplicated in SOR ¶ 1.e is included in Applicant's debt resolution plan, and his PFS indicates that he was making payments on



this debt before it was included in his plan. There is no evidence of any payments on the debts alleged in SOR ¶¶ 1.b and 1.g, which are not included in the debt resolution plan. The credit card debt alleged in SOR ¶ 1.d has been settled, although it is not clear when or how the agreed amount will be paid. The state tax debt alleged in SOR ¶ 1.i was collected by involuntary garnishment, which does not constitute “good faith” within the meaning of AG ¶ 20(d). However, the record reflects that Applicant has made a “good-faith effort” to resolve his federal tax debt through a monthly payment plan. I conclude that AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.h, but not for the debts alleged in SOR¶¶ 1.b, 1.g, and 1.i.

AG ¶ 20(e) is not applicable because Applicant has not presented documentary evidence that he has disputed any of the debts alleged in the SOR. AG ¶ 20(f) is not relevant because there is no evidence of unexplained affluence.

### **Whole-Person Concept**

Under AG ¶ 2(c), 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. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. An 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.

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.

A security clearance adjudication is aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). On the other hand, evidence that debts alleged in the SOR have been paid or otherwise resolved does not

necessarily resolve the question whether an applicant has demonstrated the judgment, reliability, and trustworthiness required of persons holding a security clearance.

Applicant's debt resolution program encompasses some of the debts alleged in the SOR, and he has taken significant steps to carry out his plan. However, his financial plan does not encompass all the debts alleged in the SOR, and it includes three debts totaling almost \$24,000 that were not alleged in the SOR. Applicant is living on a tight budget, and he will not maintain financial stability without more attention devoted to his financial situation than he has demonstrated in the past. He knew virtually nothing about the status of his delinquent debts when he was interviewed by an investigator in July 2010. At the hearing, he was generally familiar with the status of the two tax debts, but his testimony demonstrated that he still does not have a good grasp of his overall financial situation. He does not appear to have learned from his disastrous experience with his federal and state tax returns, because he continues to rely on others to resolve his financial problems, with minimal oversight on his part. I am not convinced that recurrence of his financial problems is unlikely.

Applicant served honorably in the U.S. Navy for more than 20 years, and he has worked for a defense contractor and held a security clearance for more than 13 years. However, he did not provide any evidence of the quality of his duty performance or his reputation for honesty, trustworthiness, reliability, and good judgment.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge