



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 11-05988  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2013

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 15 delinquent debts, totaling \$31,897. In addition, he has about \$35,000 in delinquent tax debt. He did not make sufficient progress resolving his delinquent debts. Financial considerations are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 11, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On April 2, 2012, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD 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). The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance,

and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On April 13, 2012, Applicant responded to the SOR and requested a hearing. On May 17, 2012, Department Counsel was ready to proceed on Applicant's case. On July 18, 2012, Applicant's case was assigned to another administrative judge. On August 1, 2012, his case was transferred to another administrative judge, and on August 11, 2012, Applicant's case was assigned to me. On November 29, 2012, the Defense Office of Hearings and Appeals issued a hearing notice, setting the hearing for December 19, 2012. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered seven exhibits, and Applicant offered two exhibits. (Tr. 15-18; GE 1-5; AE A, B) There were no objections, and I admitted GE 1-7 and AE A and B. (Tr. 15-16, 18) On January 3, 2013, I received the transcript of the hearing. After the hearing, Department Counsel forwarded three exhibits submitted by Applicant, which were admitted without objection. (AE C-E) On January 11, 2013, I closed the record.

### **Procedural Issue**

Applicant requested a six-month delay in his case because he had temporary duties at three locations away from his home from January to November 2012. (Tr. 9-12; AE A) He said he would use the additional time to hire a credit repair company and pay all of his bills. (Tr. 12) Department Counsel opposed the request for delay, citing Applicant's two previous continuances. (Tr. 9) I denied the request for continuance; however, I authorized him to submit documentation after his hearing until January 11, 2013. (Tr. 10, 13, 51-52, 56) Applicant said he would be on leave for two weeks after his hearing, and he would "be able to fix" his financial problems by January 11, 2013. (Tr. 12, 56) On January 11, 2013, Applicant submitted an Internal Revenue Service (IRS) release of levy, dated January 13, 2013, and debt consolidation plan account statement showing payment of \$206 on January 11, 2013. (AE C, D, E)

### **Findings of Fact**

In his Answer to the SOR, Applicant accepted responsibility for the debts in SOR ¶¶ 1.a to 1.o. He also provided some mitigating information. His admissions are accepted as findings of fact.

Applicant is a 49-year-old instructor for soldiers, who has been working for a large government contractor since October 2004. (Tr. 17-18; GE 1) In 1982, he graduated from high school. (Tr. 19) He earned 11 college credits. (Tr. 20) In 1982, he joined the Army and served in the infantry on active duty for 22 years, and in October 2004, he honorably retired from the Army as a first sergeant (E-8). (Tr. 20-21) He has been married three times. (Tr. 22) In December 2005, he married his current spouse. (Tr. 22) He has four children, who are ages 1, 6, 13, and 17 years old. (Tr. 22-23) His security clearance from his active duty service was carried over to his employment as a civilian employee of a government contractor. (Tr. 17) There are no allegations of security violations.

## Financial Considerations

Applicant's SF 86, credit reports, SOR response, and hearing discuss 15 delinquent debts, totaling \$31,897 as follows: 1.a (\$246), 1.b (\$130), 1.c (\$608), 1.d (\$621), 1.e (\$1,083), 1.f (\$1,145), 1.g (\$777), 1.h (\$13,048), 1.i (\$290), 1.j \$3,645), 1.k (\$991), 1.l (\$147), 1.m (\$290), 1.n (\$1,910), and 1.o (\$6,966). None of the debts in the SOR are paid. (Tr. 41)

Applicant's financial problems began in 2004, when he was divorced from the mother of two of his children. (Tr. 46) The court ordered him to pay monthly support of \$2,200, and his monthly income at that time was \$4,500. (Tr. 47-48) The divorce caused him to generate about \$50,000 in debt. (Tr. 48) He was unable to locate his children, and he decided to stop paying support to their mother. (Tr. 48-49) He also suffered from depression. (Tr. 49)

Applicant is paying \$1,500 monthly child support for his three older children to two different mothers. (Tr. 23-25, 31) He is also paying about \$1,100 monthly to address his back child support debt of about \$8,000. (Tr. 31) His child support is current for two of his children. (Tr. 33)

Applicant's February 2012 personal financial statement (PFS) indicates his gross monthly salary is approximately \$6,500; his monthly deductions are \$5,400; his remainder before expenses is \$1,165; his monthly expenses are \$1,650; and his monthly net remainder is negative \$500. (Tr. 26, 37; GE 3) He did not include his spouse's salary in his PFS, and he is not aware of the amount of her salary. (Tr. 34) After deducting her share of the monthly expenses, his share of monthly expenses is \$1,650. (Tr. 27, 34-37) She separately filed her tax returns. (Tr. 40)

Applicant's pay is being garnished \$400 every two weeks to pay a state tax debt for years 2005 to 2011. (Tr. 28, 30) He did not file his state and federal tax returns for 2005 to 2011. (Tr. 29-30) He did not file his federal income tax returns because he was, "simply depressed [and] couldn't afford it," and he is "a procrastinator." (Tr. 29, 39, 41, 51) He is planning on filing his federal tax returns for 2005 to 2011 soon, most likely in four to six months. (Tr. 28, 50) He has not provided the W-2 and other tax documents to his federal tax preparer; however, he has hired the federal tax return preparer and provided a power of attorney to the federal tax preparer. (Tr. 44) He estimated his delinquent federal and state taxes totaled \$30,000 or \$40,000. (Tr. 30, 43) On January 11, 2013, Applicant submitted an IRS release of levy, dated January 13, 2013. (AE C, D) The IRS levy was not signed by an IRS employee, and Applicant indicated the tax levy will be removed. (AE C, D) The amount of the IRS levy is unknown.

Applicant's SF 86 lists six debts. (GE 1) He said his two child support debts owed to the mother of two of his children were "paid up and in good standing."<sup>1</sup> He did not know the status of one \$3,500 debt. He described a debt resulting from a vehicle

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<sup>1</sup>Unless stated otherwise, the source for the information in this paragraph is Applicant's SF 86. (GE 1)

repossession as having an unknown status; one debt was being paid; and one debt was in the process of being paid off.

Section 25.1.c of his SF 86 asks, “Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?” (GE 1) Section 25.1.p of his SF 86 asks, “Are you currently delinquent on any Federal debt?” Applicant indicated, “No” to both questions and failed to disclose that he failed to file his state and federal taxes from 2005 to 2011, and he owed thousands of dollars of delinquent state and federal taxes. (Tr. 41-43; GE 1)<sup>2</sup>

Applicant does not have any savings; however, he does have \$2,500 in a 401(k) account. (Tr. 38) In 2010, he borrowed \$2,500 from his 401(k) account; and he was unsure how much remained to be repaid on this loan. (Tr. 38) He received financial counseling in 2009. (Tr. 45-46) In his April 13, 2012 SOR response, Applicant said, “I am in the process of clearing all of my debts.”

Applicant did not stay in touch with his creditors. (Tr. 50) He believes he can establish a debt consolidation plan and eventually pay his delinquent debts. (Tr. 50-51) He met with a debt consolidation plan company representative a few days after his hearing, and he provided a debt consolidation plan account statement showing payment of \$206 on January 11, 2013. (Tr. 51; AE C, E)

### **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

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<sup>2</sup>Applicant’s SOR does not allege that he failed to disclose his failure to file his federal and state income tax returns from 2005 to 2011 on his SF 86, and that he owes federal and state tax debts of about \$30,000 for tax years 2005 to 2011. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Consideration of the non-SOR allegations outlined in this decision is strictly limited to these five circumstances.

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

### Financial Considerations (Guideline F)

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

Applicant's SOR and credit reports allege 15 delinquent debts, totaling \$31,897. 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.

None of the mitigating conditions fully apply to all of Applicant's SOR debts. Applicant said his delinquent debts were caused by his 2004 divorce, depression, and child support obligations. He was issued an SOR on April 2, 2012, and his progress was very limited. On January 11, 2013, Applicant submitted an IRS release of levy, dated January 13, 2013, and debt consolidation plan account statement showing payment of \$206 on January 11, 2013. The IRS levy was not signed by an IRS employee, and Applicant indicated the tax levy will be removed. At the time of his hearing, Applicant had not contacted 14 of his SOR creditors. He did not provide proof that made any payments to any of the SOR creditors, except his pay was being garnished to pay his child support debt in SOR ¶ 1.o (\$6,966).<sup>3</sup> I credited Applicant with mitigating the debt in SOR ¶ 1.o because he is making some payments on this debt.

Applicant is not given full credit for the financial counseling he received about three years ago because his progress has been so limited, and he has not provided a credible budget showing how he will pay his SOR and tax debts. Applicant is living paycheck to paycheck; he is unsure about his federal income tax liability; and he was not able to explain why he has not reduced his expenses so that he will have the resources to make greater progress paying his debts.

Applicant attributes his financial problems to his 2004 divorce, depression, and child support obligations. These were circumstances largely beyond Applicant's control; however, he did not establish that he acted responsibly under the circumstances. He did not provide enough details to establish the link between the unanticipated circumstances and his inability to make greater progress paying his SOR debts over the last three years.

Applicant did not establish that he acted in good faith to resolve his delinquent SOR debts.<sup>4</sup> He did not describe any substantial decreases in his income over the last

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<sup>3</sup>See *Generally* ISCR Case No. 08-06059 at 6 (App. Bd. Sept. 21, 2009) (indicating involuntary payment of debts through garnishment is not necessarily mitigating).

<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

three years. He had the means to make more progress resolving his delinquent SOR debts. He did not prove that he maintained contact with 14 of his SOR creditors,<sup>5</sup> and he did not prove that he made sufficient attempts to timely establish payment plans. He did not establish “there are clear indications that the problem is being resolved or is under control.”

AG ¶ 20(e) is not applicable. Applicant did not provide documented proof to substantiate the basis of the dispute or of evidence of actions to resolve any debts.

In sum, Applicant has not provided enough evidence to establish that additional delinquent debt is unlikely to recur. I have credited Applicant with mitigating his child support debt in SOR ¶ 1.o (\$6,966) because he is making sufficient progress to satisfy the court that is garnishing his pay. His track record of financial responsibility shows insufficient effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations concerns. Applicant has 15 SOR debts totaling \$31,897 and about \$35,000 in state and federal tax debts to resolve, and it is likely that financial problems will continue.

### **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.

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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.



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.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support reinstatement of his access to classified information. Applicant is a 49-year-old instructor for soldiers, who has been working for a large government contractor since October 2004. He is sufficiently mature to understand and comply with his security responsibilities. He is a high school graduate with 11 college credits. He honorably served in the infantry on active duty for 22 years. In October 2004, he retired from the Army as a first sergeant. In December 2005, he married his spouse. He has four children, who are ages 1, 6, 13, and 17 years old. His security clearance from his active duty service was carried over to his employment as a civilian employee of a government contractor, and there are no allegations of security violations. Applicant attributes his financial problems to three circumstances largely beyond his control: (1) his 2004 divorce; (2) his depression; and (3) his child support obligations. Applicant submitted a January 13, 2013 IRS release of levy, and a debt consolidation plan account statement showing payment of \$206 on January 11, 2013. His pay was being garnished to pay his child support debt in SOR ¶ 1.o (\$6,966), and he is credited with making the payments the court desires to address that debt. He receives some credit for the financial counseling he received about three years ago. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a defense contractor and for his 22 years of active duty Army service. There is every indication that he is loyal to the United States and his employer. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial. Applicant is a retired first sergeant and Army trainer. He is an intelligent person, and his failure to pay or start payment plans on more of his 15 SOR debts was irresponsible. The SOR debts in ¶¶ 1.a, 1.b, 1.i, 1.l, and 1.m are less than \$300 each; nevertheless, they were not paid or resolved. Applicant failed to provide a detailed explanation of how circumstances beyond his control caused him not to make greater progress paying more of his SOR debts. He had the ability and resources to make greater progress resolving his debts, if he would have reduced his expenses. His PFS shows he is living paycheck to paycheck and unable or unwilling to make significant payments to 14 of his 15 SOR creditors. He failed to timely file his state and federal tax returns for 2005 to 2011, and he estimated he may owe about \$35,000 in taxes. His federal tax returns for those years are not filed and are not expected to be filed for several months. He did not provide specific details concerning any payment plans to address 14 SOR debts. It is not clear that Applicant will make the sacrifices necessary to reduce his expenses, freeing up funds to pay his delinquent debts. There are not "clear indications that the problem is being resolved or is under control." He did not prove that he had a sufficient track record of debt payment, or that he acted

responsibly with respect to his debts under all of the circumstances. Financial considerations security concerns are not fully mitigated at this time.

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. Financial considerations concerns are not fully mitigated, and eligibility for access to classified information is denied.

### **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 1.a to 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

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Robert J. Tuider  
Administrative Judge