



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-06333  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

03/14/2013

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges six delinquent debts, totaling \$127,382. He mitigated four SOR debts; however, two mortgage-related SOR debts totaling about \$125,000 are not resolved. He did not provide correspondence to or from the two SOR creditors disputing the two debts, showing any payments, or attempting to establish any payment plans. He failed to make sufficient progress in resolving the two SOR debts, and financial considerations concerns are not mitigated at this time. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 8, 2010, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86). (Item 5) On April 25, 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. (Item 1)

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD 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 Applicant's clearance should be granted, continued, denied, or revoked.

On July 12, 2012, Applicant provided a response to the SOR allegations and requested a decision without a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated January 14, 2013, was provided to Applicant. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.<sup>1</sup> Applicant did not respond to the FORM. The case was assigned to me on March 12, 2013.

### **Findings of Fact<sup>2</sup>**

In Applicant's response to the SOR, he denied all of the debts alleged in the SOR. (Item 4) He provided an April 20, 2012 letter from a credit repair service (CRS) that is disputing the information on his credit report. (Item 4) Applicant has opened new lines of credit based on CRS' advice that it would improve his credit scores. (Item 4) He did not make any admissions concerning his financial responsibilities in his SOR response.

Applicant is a 33-year-old contracts administrator and procurement financial analyst, who has been employed by a large government contractor since 2006.<sup>3</sup> He was awarded a bachelor's degree in 2002 and a master's degree in 2004. He has never served in the U.S. military. He married in December 2000, and his six children were born in 2001, 2003, 2004, 2005, 2007, and 2009. He did not have any reportable incidents involving drug or alcohol abuse, arrests or convictions.

### **Financial Considerations**

Applicant's SOR lists six delinquent debts, totaling \$127,382 as follows:

SOR ¶ 1.a is a sewage debt on Applicant's rental property for \$756—PAID. Applicant's November 16, 2010 credit report shows that this debt was paid in January 2009. (Item 8 at 3; Item 10 at 1)

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<sup>1</sup>The DOHA transmittal letter is dated January 16, 2013, and Applicant's receipt is dated January 28, 2013. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup>Unless stated otherwise, the information in this paragraph is from Applicant's SF 86. (Item 5)

SOR ¶ 1.b is a university debt for \$86 on high credit of \$1,928. (Item 8 at 4)—RESOLVED. Applicant's April 11, 2012 credit report shows this debt is unpaid. (Item 9 at 1) In response to DOHA interrogatories, Applicant said he was unable to contact the creditor, and he believed the debt was paid. (Item 7 at 2)

SOR ¶ 1.c is a mortgage debt with delinquent interest of \$2,833 on a loan balance of \$54,122—UNRESOLVED. Applicant's November 16, 2010 credit report shows: balance owed of \$54,122; high credit amount of \$54,900; zero past due; "foreclosure redeemed;" "180 days past due;" and "credit grantor reclaimed collateral." (Item 8 at 3) His April 11, 2012 credit report shows: the same high credit; past due amount; and balance; the monthly payment is \$405; and the debt resulted from a conventional real estate mortgage. (Item 9 at 2) His January 4, 2013 credit report shows the same high credit; however, the past due amount and balance are indicated as zero. His January 4, 2013 credit report indicates, "consumer disputes this account information," and "foreclosure." (Item 10 at 2) In response to a DOHA interrogatory he said, "This property is no longer my responsibility since it was a foreclosure." (Item 7 at 2)

SOR ¶ 1.d is a mortgage debt for \$71,572—UNRESOLVED. Applicant's November 16, 2010 credit report shows: balance owed of \$71,572; high credit amount of \$68,836; past due amount of \$5,092; "real estate mortgage without other collateral;" and "charged off account." (Item 8 at 7) His April 11, 2012 credit report shows the same high credit, past due amount, and balance as his November 16, 2010 credit report. His April 11, 2012 credit report indicates: the monthly payment is \$703; the account is charged off; and the debt results from a real estate mortgage. (Item 9 at 2) His January 4, 2013 credit report shows high credit as \$70,000; however, the past due amount and balance are indicated as zero. His January 4, 2013 credit report indicates, "account transferred or sold," and "charged off account." (Item 10 at 2) In response to a DOHA interrogatory he said, "This property balance was charged off as a bad debt." (Item 7 at 3)

SOR ¶¶ 1.e and 1.f are collection debts owed to the same creditor for \$646 and \$200—RESOLVED. Applicant's November 16, 2010 credit report shows the two debts are owed to the city and in collection status. (Item 8 at 10) In response to a DOHA interrogatory he said, "Since this property is no longer my responsibility, I am trying to have this debt removed from my credit report." (Item 7 at 5) His April 11, 2012 and January 4, 2013 credit reports do not include the two debts. (Item 9)

On his November 8, 2010 SF 86, Applicant disclosed the debts in SOR ¶¶ 1.a to 1.d as follows: on January 2009, the judgment in SOR ¶ 1.a, which resulted from a rental property bill, was satisfied (Item 5 at 72); the creditor in SOR ¶ 1.b was paid in December 2008 (Item 5 at 73); in March 2008, the creditor in SOR ¶ 1.c reclaimed an investment property that went into foreclosure when the market crashed (Item 5 at 74); and in October 2007, the creditor in SOR ¶ 1.d charged off the debt as a "bad debt." (Item 5 at 75) The debts in SOR ¶¶ 1.e and 1.f were not listed on his November 8, 2010 SF 86. (Item 5)

On February 8, 2011, an Office of Personnel Management (OPM) investigator interviewed Applicant about his delinquent debts. Applicant explained that in about 2005, he purchased a duplex and borrowed from the creditor in SOR ¶ 1.d \$71,572 to finance the purchase. His annual income was about \$55,000, and he had a spouse and three children to support. In September 2007, he stopped making payments, and in 2008, the creditor foreclosed on the property. He said the creditor for the debt in SOR ¶ 1.c, shown on his 2010 and 2012 credit reports as having delinquent interest of \$2,833 on a loan balance of \$54,122, was a duplicate of the debt in SOR ¶ 1.d. He claimed that the creditors did not seek a deficiency from him.

In September 2011, Applicant provided a personal financial statement (PFS), which showed gross monthly income of \$5,246 and net monthly remainder of \$2,684. (Item 7 at 6) He showed debt payments to a student loan creditor and a credit card creditor. His PFS did not show any payments to the creditors in SOR ¶¶ 1.c or 1.d. (Item 7 at 6) He provided a 2008 Internal Revenue Service (IRS) Form 1099-A, which showed a balance of principal outstanding of \$54,122 and a fair market value of the property listed as \$34,500. (Item 7 at 7) Box 5 is checked, which means the debt is a recourse debt. (Item 7 at 7) Applicant did not provide an IRS Form 1099-C, which is used by creditors to indicate the debt has been cancelled. He did not present any evidence that he declared the reduction of liability as income on his federal income tax return.

DOHA interrogatories asked Applicant the address of the property secured by his mortgage, the original amount of the mortgage, and when he stopped making payments on the mortgage. (Item 7 at 5) He wrote, "N/A" in response to these DOHA interrogatories. (Item 7 at 5) Applicant did not provide copies of any correspondence from the creditors in SOR ¶¶ 1.c and 1.d.

### **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**

### **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 credit reports, his OPM PSI, his SF 86, and his SOR response. Applicant’s SOR lists six delinquent debts, totaling \$127,382. He has paid or resolved all of the SOR debts, except the two mortgage debts in SOR ¶¶ 1.c and 1.d, which together total about \$125,000. These two debts have been delinquent for more than four years. 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 limited application of AG ¶¶ 20(b), 20(c), and 20(d).<sup>4</sup> He has received some financial counseling through his involvement with CRS. He showed some good faith when he admitted responsibility for most of his SOR debts on his SF 86 and during his OPM interview. His financial situation was damaged by insufficient income and the decline in the real estate market at the time the two mortgages became delinquent. However, Applicant's financial circumstances have been relatively stable since he obtained his current employment; his PFS shows sufficient funds available to establish payment plans; and he has not provided sufficient information about variations in his income and his expenses over the most recent two years to fully establish any mitigating conditions. AG ¶ 20(e) does not apply because he failed to provide documented proof to substantiate the basis of any disputed debts or evidence of actions to resolve the debts in SOR ¶¶ 1.c and 1.d.

I credited Applicant with mitigation of all of the SOR debts, except for the two mortgage accounts in SOR ¶¶ 1.c and 1.d, which together total about \$125,000. He is not credited with mitigating these two debts because he did contend that he paid them; he did not provide bank statements or cancelled checks establishing any payments to the two SOR creditors; he did not provide proof of any payment plans addressing them; and he did not provide a deed in lieu of foreclosure or short sale documentation showing resolution. He did not provide correspondence from the creditors that established the two debts were duplications of each other.

In sum, Applicant did not establish that he acted responsibly under the circumstances. He did not provide proof that he continuously maintained contact with the two creditors.<sup>5</sup> There are no receipts, account statements, or correspondence from the two creditors. He did not provide a credible plan for resolving the debts in SOR ¶¶

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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.c and 1.d. There is insufficient evidence that his financial problems are being resolved and are under control.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, 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 approval of his access to classified information. Applicant is a 33-year-old contracts administrator and procurement financial analyst, who has been employed by a large government contractor since 2006. He was awarded a bachelor's degree in 2002 and a master's degree in 2004. He married in December 2000, and his six children were born between 2001 and 2009. He did not have any reportable incidents involving drug or alcohol abuse, arrests, or convictions. His finances were damaged by insufficient of income and the decline in the real estate prices in 2006-2008. He is sufficiently mature to understand and comply with his security responsibilities. He deserves some credit for volunteering to support the U.S. Government as an employee of a contractor. I give Applicant substantial credit for admitting most of his delinquent SOR debts on his SF 86 and during his OPM interview. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial at this time. He did not provide any evidence of payments to address two SOR delinquent debts, totaling about \$125,000. These two debts have been delinquent for more than four years. The DOHA interrogatories asked about the two mortgage accounts, and he responded that he was not responsible for them and "N/A." The FORM explained why he needed to provide more information about the two



mortgage accounts, and he did not provide any information. He did not provide correspondence to or from SOR creditors or credit reporting companies, disputing the two debts. He did not adequately explain why he was unable to make any progress resolving the two SOR debts. There is no documentary evidence of sufficient variations in his income to cause him to fail to make more progress resolving his two delinquent mortgage debts. With respect to the two delinquent SOR debts totaling \$125,000, Applicant failed to establish his financial responsibility.

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 not mitigated. 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 and 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	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 grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

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MARK HARVEY  
Administrative Judge