



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



In the matter of: )  
)  
) ISCR Case No. 11-06512  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: James S. DelSordo, Esq.

01/15/2013

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems are the result of circumstances beyond his control. He presented evidence of recent efforts to resolve his delinquent debts and is establishing control of his financial situation. Applicant expressed sincere remorse for all of his criminal behavior, and has taken significant steps to rehabilitate himself, including the passage of time without recurrence of criminal activity. Clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 23, 2009. On February 27, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct).<sup>1</sup> Applicant answered the SOR on May 3, 2012, and requested a hearing before an administrative judge.

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<sup>1</sup> The DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DoD on September 1, 2006.

The case was assigned to other administrative judges before it was assigned to me on October 24, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 2, 2012, scheduling a hearing for September 11, 2012. Applicant requested a continuance on August 22, 2012, which was granted. The notice of hearing was reissued on September 27, 2012 convening a hearing for October 24, 2012. At the hearing, the Government offered exhibits (GE) 1 through 9. Applicant testified and submitted exhibits (AE) 1 through 16. AE 16 was received post-hearing. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on November 2, 2012.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.f, and 2.a through 2.d, with explanations. He denied SOR ¶¶ 1.g, 1.h, and 2.e. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 57-year-old information technology network engineer employed with a government contractor. In September 1984, he enlisted in the U.S. Navy (Active Reserve), attended boot camp and "A" school, and served in the Active Reserve. In February 1986, he was transferred to the Inactive Reserve. He again served in the Active Reserve from November 2001 until June 2002. He has served in the Inactive Reserve since then. He is currently a First Class Petty Officer (E-6), with approximately 23 years of service.

Applicant married in October 1985, and divorced in October 1990. He married his second spouse in July 1992, and divorced in October 2007. He has a 20-year-old daughter from this marriage. He attended college from September 1999 until December 2005. He was awarded a bachelor's degree in telecommunications in 2005. (GE 1)

Applicant has worked for numerous government contractors from June 2002 to present. He has worked in the same position, albeit for two different government contractors, since 2007. Applicant was issued a secret security clearance in 2000, which was upgraded to a top secret clearance in 2003. He has had access to sensitive compartmented information (SCI) since April 2005. There is no evidence to show that Applicant has compromised or caused others to compromise classified information. Outside of the security concerns alleged in the current SOR, there is no evidence that Applicant had any other security issues of concern.

Applicant disclosed in his March 2009 SCA (Section 22-Police Record) that he was charged with public intoxication and obstruction of justice in September 2008; domestic assault in March 2005; and possession of marijuana in May 1977. He also disclosed in his answers to Section 26 (Financial Record), that during the prior seven years, he had debts turned over to collection agencies and was delinquent in court-imposed alimony and child support obligations.

The subsequent background investigation revealed the six delinquent debts alleged in the SOR, totaling over \$70,000, and two contempt of court incidents for his failure to pay alimony and child support as required by court order. Applicant admitted the six delinquent debts. He denied SOR ¶¶ 1.g and 1.h because he believes he was not arrested. He admitted, however, that both in 2008 and 2010, he failed to pay the court-mandated alimony and child support. In 2008 and 2010, he was found in contempt of court and was incarcerated for three to four weeks until he paid a \$25,000 purge bond in 2008, and an \$11,000 purge bond in 2010. Applicant sold some of his investment stocks to pay the \$25,000 purge bond, and sold part of his inheritance to pay the \$11,000 purge bond.

Applicant explained that his financial problems were the result of a contentious divorce in 2007, and his periods of unemployment and underemployment. He was forced to leave the marital residence and to establish his own residence. At about the same time as his divorce became final, he lost a job where he was making around \$80,000. Applicant was unemployed while in between jobs during two months both in 2000 and 2007. He supported himself in 2007 with unemployment benefits and \$500 monthly income from a rental property. During his unemployment, Applicant had financial problems, and fell behind in his child and spousal support obligations. In December 2010, Applicant was ordered to pay his ex-wife's legal fees (around \$20,000). Additionally, he was paying his own legal fees, mortgage payments, his day-to-day living expenses, and his child support obligation. Applicant was paying \$3,150 a month in alimony and \$629 a month in child support. His take home pay was \$3,600, plus \$500 from his rental property income.

Applicant explained that he was alternating payments on all of his financial obligations because his income was insufficient to pay all of his monthly financial obligations. He also was making partial payments on some of his debts, including his alimony and child support.

As of his hearing, Applicant was current on his alimony obligation. His daughter became an adult, and he was no longer required to pay child support. Applicant's September 2011 personal financial statement indicated he had a monthly deficiency of approximately \$1,800. At his hearing, he submitted a personal financial statement showing a monthly deficiency of approximately \$2,300. He testified that he continues to alternate payments on some of his debts, or pays less than what he is required to pay on his debts, because he does not have sufficient income to pay his debts and his day-to-day living expenses.

During his March 2011 interview, Applicant stated his intent to go back to court to reduce his child support and alimony obligations, but he did not have the money to file the appeal. Applicant admitted he used his credit cards to supplement his income and to pay for his day-to-day living expenses. As of March 2011, he was approximately \$20,000 delinquent on his credit cards, and he had not contacted any of his creditors concerning his delinquent debts. He was researching credit counseling and

consolidation companies, but as of the interview he was not participating in financial counseling.

In his September 2011 response to DoD interrogatories, Applicant stated that he was scheduled to appear in court in November 2011 to request a reduction of his child support and alimony obligations. He also was seeking the sale of a jointly owned home (with his ex-wife) and the sale of inherited property to pay off some of his debts. Applicant also retained the services of a debt reduction and consolidation company to help him dispute some of the "over inflated" delinquent debts.

As of the closing of the record (November 16, 2012), the status of Applicant's delinquent debts is as follows:

SOR 1.a – Applicant paid off this debt (\$18,000) on October 23, 2012. (AE 9 and 10) He had been making payments on the debt since September 2011. He used the proceeds of the sale of an inherited property to pay off this debt.

SOR 1.b – Applicant initially disputed the debt in December 2011 through one of the credit bureaus, and he was told to resolve the debt with the creditor. Applicant again disputed the validity of this debt on April 18, 2012. At the hearing, he admitted, however, that he is indebted to another bank for an unpaid credit card account, and that it is possible the creditor he does not recognize may be collecting that debt. He promised to pay the debt if it is determined to be his debt.

SOR 1.c – Applicant received a settlement offer for \$4,700 (less than the \$6,643 owed) in August 5, 2011. He presented documentary evidence that he made the following payments: \$100 in December 2011; \$125 in February 2012; and \$125 in April 2012. (AE 16)

SOR 1.d – Applicant started to make payments on this debt in 2009, but he was unable to make the agreed payments. In November 2011, he made a settlement offer and started to make payments. On July 16, 2012, Applicant made another settlement offer promising to start making payments by the end of July 2012. He presented documentary evidence showing he made the following payments: \$100 in December 2011; \$120 in February 2012; and \$120 in April 2012. (AE 16)

SOR 1.e – Applicant settled the debt for \$2,776 (less than the owed balance of \$10,794).

SOR 1.f – Applicant disputed the validity of this debt on April 18, 2012. He claimed that he had cancelled the wireless service and disputes the \$105 debt. The dispute and the debt are unresolved.

Concerning the criminal misconduct allegations, Applicant explained that in June 1978, he was detained for a traffic violation. After a search of his car, the police officer found marijuana. Applicant was arrested and charged with possession of marijuana with

intent to distribute, possession of a controlled drug, inappropriate left turn, and driving down wrong way street. He claimed that the marijuana was not his, and that he was not aware there was marijuana in his car. Applicant testified the charges were later dismissed by a judge.

In April 1985, Applicant shoplifted from a military exchange store. He was punished under Article 15 of the Uniform Code of Military Justice.

In early 2005, Applicant's wife filed for divorce. In March 2005, Applicant and his wife were involved in an argument. His wife hit herself with a door and filed an assault complaint against Applicant. He was arrested and charged with domestic assault. Applicant took an exculpatory polygraph examination, and all charges were dismissed by the court.

In September 2008, Applicant was charged with public intoxication. The charge was later amended to trespassing. He explained that while at a concert, he tried to sell two extra concert tickets. A police officer warned Applicant that he was not allowed to sell the tickets while in the concert grounds. Applicant tried to give away the tickets and his actions were misconstrued. The police officer believed Applicant was trying to sell the tickets after the warning. He was arrested and charged with public intoxication. In December 2008, Applicant pled guilty to trespassing. He paid a \$75 fine, served two years of probation, and performed 50 hours of community service. After complying with the court conditions, the charges were dismissed.

Applicant has learned his lesson and promised never to engage in any further criminal misconduct. He now understands the importance of having a clean criminal record to be eligible for a security clearance. He believes that he has matured since his last criminal incident in 2008. He has not been involved in any criminal misconduct or questionable incidents with law enforcement officers since 2010.

Applicant takes his job and his obligations to the Government seriously. He admits responsibility for his mistakes. He acknowledged that he has had financial problems because of his divorce, but believes that his financial problems were caused by circumstances beyond his control. Applicant acknowledged that he needs to be more proactive taking care of his delinquent debts. He would like to resolve his debts, but it will take some time for him to sell the marital property and the property he inherited along with his siblings. He will consider filing for bankruptcy protection if he cannot sell both properties. He needs to sell both properties to raise money to pay his delinquent debts.

Applicant considers himself to be honest, trustworthy, and a dedicated employee. He believes he demonstrated his loyalty to the United States through his years of military service. He would like to continue his service to his country and to resolve his delinquent financial obligations. He needs his security clearance to retain his job and to have the ability to pay all of his delinquent debts.

## Policies

Eligibility for access to classified information may be granted “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. 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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)

Applicant has a history of financial problems that date back to the period from 2005-2007. His financial problems continue to the present as evidenced by the six delinquent debts alleged in the SOR, totaling about \$70,000. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial problems are ongoing and he has extensive delinquent debt. However, Applicant's divorce and his periods of unemployment and underemployment are circumstances beyond his control that contributed to his financial problems. Applicant's acrimonious divorce started in 2005 when his wife filed for divorce. He was forced to leave the marital residence and to establish his own residence. At about the same time as his divorce became final, he lost a job where he was making around \$80,000. He was unemployed during two months in 2007, and he remained underemployed for an extended period.

While separated from his wife, Applicant was required to pay monthly alimony (\$3,100) and child support (\$629). His take home pay (\$3,600), plus additional rental

income (\$500), only provided him with approximately \$4,100 a month. He had limited income to comply with the court-mandated alimony and child support obligations, to pay for his day-to-day living expenses, and to pay his delinquent debts. Additionally, Applicant was ordered to pay for his ex-wife's divorce legal fees. (SOR 1.a) AG ¶ 20(b) applies

Applicant received financial counseling and contracted the services of a debt reduction and consolidation company to help him dispute some of the delinquent debts. As a result of the security clearance process, he is now fully aware that he is required to maintain financial responsibility to be eligible for a security clearance. Applicant sold a property he inherited and used the proceeds of the sale (\$18,000) to pay off the debt in SOR 1.a. He also settled and paid the debt in SOR 1.e. Additionally, he presented documentary evidence of payments made toward the debts alleged in SOR 1.c and SOR 1.d in December 2011, February 2012, and April 2012.

Applicant disputed the debts alleged in SOR 1.b and SOR 1.f. He requested from the credit bureaus information about the creditor holding the debt alleged in SOR 1.b. He promised to pay the debt if it is determined that it is his debt. Applicant disputed SOR 1.f, because he claims he timely cancelled the service. AG ¶ 20(c) applies because Applicant participated in financial counseling, and there are indications that his financial problems are being resolved or under control.

Applicant demonstrated lack of judgment when he paid less alimony and child support than that ordered by the family court. He was alternating debt payments and paying less than what was required because he did not have the income to pay his financial obligations and his day-to-day living expenses. Since 2010, he has been current in his alimony obligation. He is no longer required to pay child support because his daughter became an adult. Applicant has learned his lesson as a result of the contempt of court proceedings. He also understands the security clearance consequences of not maintaining financial responsibility.

I considered Applicant's difficult current financial situation, and that he has limited ability to resolve his delinquent debts. I also considered that there is no evidence of financial irresponsibility or delinquent debts prior to the divorce and the loss of his job. Applicant's debts are the result of circumstances beyond his control. He has been making efforts to resolve his financial problems, and he has a viable plan to resolve his financial problems. On balance, I find the evidence is sufficient to establish that Applicant has started to establish a track record of financial responsibility, and that he is gaining control of his financial situation. AG ¶¶ 20(d) and 20(e) apply. The remaining mitigating condition (AG ¶ 20(f)) is not applicable to the facts of this case.

### **Guideline J, Criminal Conduct**

Under Guideline J, the Government's concern is that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it



calls into question a person's ability or willingness to comply with laws, rules and regulations. AG ¶ 30.

The SOR alleged six criminal misconduct incidents. The 1978 possession of marijuana and the 2005 domestic assault charges were both dismissed by the courts. He received non-judicial punishment for shoplifting in 1985, and pleaded guilty to trespassing after forbidden in 2008. Additionally, he was found guilty of contempt of court in 2008 and 2010 for his failure to pay the required alimony and child support. Applicant's behavior raises security concerns under AG ¶ 31(a) "a single serious crime or multiple lesser offenses," and AG ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶ 32 lists four conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Considering the evidence as a whole, I find that several of the Guideline J mitigating conditions apply. Applicant's 1978 possession of marijuana and the 2005 domestic assault charges are serious offenses that normally would disqualify an applicant for eligibility for a security clearance. In this case, however, there are extenuating circumstances. Applicant charges were dismissed by the courts. Applicant's 2008 trespassing charge was dismissed after he complied with the terms of his sentence and probation. The dismissal of the charge provides an indication that the court either did not consider his behavior as a serious offence, or that he has been rehabilitated.

Applicant expressed sincere remorse for his criminal behavior, and has taken significant steps to rehabilitate himself, including the passage of time without recurrence of criminal activity. He appears to be doing well in his job and is taking steps to reestablish his credit. He has not been involved in any alcohol-related offenses since

2008. Considering Applicant's overall behavior, I find that the criminal incidents are not likely to recur and they do not cast doubt on Applicant's current reliability, trustworthiness, judgment, and on his ability to follow the law. AG ¶¶ 32(a), 32(c), and 32(d) apply. Applicant demonstrated maturity and a strong desire to continue working and retain his eligibility for a security clearance. I believe Applicant has learned his lesson. He now understands what is required of him to retain his eligibility for a security clearance.

Concerning the two contempt of court incidents, Applicant was pressured by his financial situation to pay less than what was required in an attempt to stay afloat with his other financial obligations. His actions showed a lack of maturity and understanding of the legal system. Considering his demeanor and testimony, I believe that as a result of the two contempt of court incidents, and the security clearance process, Applicant is now aware of what is required of him to retain his eligibility for a security clearance. I do not believe it is likely that he will engage again in similar behavior. The remaining mitigating condition is not applicable.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant is 57 years old. He has honorably served 23 years in the Naval Reserve. He has significant experience working for government contractors while possessing a security clearance with access to SCI. Except for the current security concerns, there is no evidence of any problems or concerns while he possessed a security clearance.

Applicant's financial problems were largely the result of circumstances beyond his control. Because of his limited income he has been slow addressing his delinquent debts. He settled and paid two of the SOR debts with the proceeds of the sale of a property he inherited. He intends to sell other properties to satisfy the remaining delinquent debts.

Applicant more fully understands the importance of maintaining financial responsibility and about the importance of having a clean record. He was honest and truthful in his answers to the SCA questions. Considering the record as a whole, Applicant has a viable plan to resolve his delinquent debt, and he is taking control of his financial situation. Applicant expressed sincere remorse for all of his criminal behavior, and has taken significant steps to rehabilitate himself, including the passage of time without recurrence of criminal activity.

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge