



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



In the matter of: )  
)  
) ISCR Case No. 11-06667  
)  
Applicant for Security Clearance )

**Appearances**

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

03/20/2012

**Decision**

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DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 1, 2010. On November 30, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On December 20, 2011, Applicant answered

the SOR and requested a hearing. The case was assigned to me on January 23, 2012. DOHA issued the Notice of Hearing on January 26, 2012. The hearing was held as scheduled on February 16, 2012. Department Counsel offered exhibits (GE) 1 through 5 that were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through F that were admitted without objection. The record was left open until March 1, 2012, for Applicant to submit additional matters. No additional matters were received. The transcript (Tr.) of the hearing was received on March 6, 2011.

### **Findings of Fact**

Applicant is a 63-year-old electronics technician who works for a defense contractor. He has worked for his current employer since March 2008. He graduated from high school in 1966. He served 24 years in the U.S. Air Force and retired in the grade of master sergeant (E-7) in 1994. He has been married and divorced twice. His first marriage was from 1970 to 2000 and his second marriage was from 2000 to 2009. He has two children, ages 37 and 39. In the past, he held a security clearance without incident. While in the Air Force, he was awarded the Meritorious Service Medal and two Air Force Commendation Medals. In 1984, he was designated the noncommission officer of the year at a major Air Force command.<sup>1</sup>

The SOR lists 17 delinquent debts totaling \$25,485. In his Answer to the SOR, Applicant admitted 14 of the delinquent debts totaling \$22,929 and denied 3 delinquent debts totaling \$2,556. Applicant's admissions are incorporated as findings of fact. Credit reports admitted into evidence provide substantial evidence of the denied debts.<sup>2</sup>

Applicant's delinquent debts include a personal loan, a payday loan, loans for a motorcycle and repossessed car, credit cards, utility bills, and medical bills. The date of last activity on these debts ranges from April 2004 to December 2010. He attributed his financial problems to his separation and divorce from his second wife. He separated from her in May 2007. Following their separation, he moved to a new residence and had to acquire furniture and other belongings. Due to these added expenses, he was unable to meet his financial obligations. At that time, he was also unemployed from May to September 2007 and, as discussed below, he also fell behind on alimony payments to his first wife. He also stated that he was self-employed from September 2007 to March 2008, but earned little money. He indicated that, once the delinquencies started, he was unable to get back on track because of fees and penalties arising from the past-due debts.<sup>3</sup>

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<sup>1</sup> Tr. 5-6, 19, 21-25, 48-49; GE 1.

<sup>2</sup> Applicant's Answer to the SOR; GE 4, 5.

<sup>3</sup> Tr. 19-25, 48; GE 1, 2, 4, 5; AE C, D. During Applicant's period of unemployment, he received unemployment compensation of about \$300 per week.

Applicant was required to pay \$818 per month in alimony to his first wife. In about May 2007, he began falling behind on those payments. On September 4, 2008, a court issued an Amended Order directing that he pay \$818 per month in alimony and \$300 per month towards the arrearages. After issuance of the Amended Order, he continued to fail to make the required payments. The alimony arrearages grew to \$4,800. On February 2, 2009, a court issued a garnishment order directing that \$1,118 of his income be withheld for those payments. The garnishment was instituted in August 2009 and substantially reduced his monthly disposable income. His alimony arrearages are not listed as a delinquent debt in the SOR. Additionally, he indicated that he was delinquent on a credit card from a military exchange that also was not alleged in the SOR. He stated he is paying \$315 per month towards the exchange debt and his federal income tax refund for last year (\$2,062) was intercepted and paid to that account.<sup>4</sup>

Applicant denied the debts in SOR ¶¶ 1.a (cellular telephone bill of \$123), 1.o (security alarm bill of \$305), and 1.q (credit card bill of \$2,128). As for ¶ 1.a, he claimed that he never had an account with that cellular telephone provider. He denied ¶ 1.o because the security alarm was at his ex-wife's house and believed she should be responsible for that debt. His name was on the account for the security alarm. He provided no documents supporting his denials of the debts in ¶¶ 1.a and 1.o. He denied ¶ 1.q because he claimed he was making payments on that debt. He provided two documents showing he made payments of \$93 to a collection agency for this debt on September 2, 2011, and January 3, 2012. From September 2011 to January 2012, the balance of this debt was reduced from \$2,118 to \$1,788, confirming that he had been making monthly payments.<sup>5</sup>

Applicant is currently making payments towards two delinquent debts, i.e., the debt in SOR ¶ 1.q and the exchange credit card debt. He provided no proof of payments towards the other delinquent debts. He has not yet contacted a number of the other creditors about their delinquent debts. He indicated that he intends to resolve the delinquent debts. He stated that, once he pays off the exchange credit card debt, he will apply that extra money to the other delinquent debts.<sup>6</sup>

During his Office of Personnel Management interview, Applicant stated that he is capable of meeting his current living expenses. At the hearing, however, he submitted a personal budget that showed his monthly income was \$2,962 and his monthly fixed and variable expenses were \$3,032, leaving him a negative net monthly remainder (-\$70). The budget included payments towards the debts in SOR 1.q and the military exchange

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<sup>4</sup> Tr. 16-17, 23-25, 32-33, 41; GE. 2; AE C, D, F. Debts not alleged in the SOR will not be considered in applying the disqualifying conditions, but may be used in assessing Applicant's overall financial situation, in applying the mitigating conditions, and in analyzing the "whole-person" concept.

<sup>5</sup> Tr. 16-17, 19-21, 25-26, 39; GE 2, 3; AE E.

<sup>6</sup> Tr. 19-21, 26-41; GE 2; AE E.

credit card. In May and June 2009, he traveled to Australia for a vacation. This was a 10-day trip that cost him \$2,200 for the travel and lodging. He described this trip as a lifelong dream. In September 2010, he received financial counseling. He indicated the financial counseling consisted of going through his credit report and advising him on how to pay the debts.<sup>7</sup>

## Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant

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<sup>7</sup> Tr. 16-18, 36, 41-48, 50; GE 2; AE B.

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts that he was unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations 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 has multiple delinquent debts that remain unresolved. His financial problems are significant and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

From May to September 2007, Applicant was unemployed. From September 2007 to March 2008, he was self-employed, but earned little money. During this period, he fell behind on his alimony payments to his first wife. He separated from his second wife in May 2007. He incurred additional expenses as a result to that separation. While his unemployment, underemployment, and marital separation were conditions beyond his control, he failed to establish that he acted responsibly under the circumstances. Since March 2008, he has been employed, but has shown little progress towards resolving his debts. In May 2009, he traveled to Australia on a vacation when he had delinquent debts. He has yet to contact a number of the creditors in an effort to resolve their debts. AG ¶ 20(b) partially applies, but does not mitigate the security concerns arising from his financial problems.

Applicant received financial counseling in September 2010. Since September 2011, he has been making monthly payments of \$93 on the debt in SOR ¶ 1.q. He has also been making monthly payments towards a non-alleged debt. He provided no other proof of payments on the other alleged delinquent debts. AG ¶ 20(d) applies to SOR ¶ 1.q, but not to the other alleged delinquent debts. In general, he failed to establish that his debts are being resolved or are under control. AG ¶ 20(c) marginally applies.

Applicant denied the debts in SOR 1.a and 1.o, but presented no documentation to show he had a legitimate basis for disputing them. Specifically, he presented no evidence that he has disputed them on his credit reports. AG ¶ 20(e) is not applicable.

### **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 relevant 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).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. I have considered Applicant's service in the Air Force. Nonetheless, his financial problems are ongoing and significant. While he has stated that he intends to resolve his delinquent debt, he has failed to show that he has taken meaningful steps to resolve them. At this juncture, it would be mere speculation to conclude his delinquent debts will be resolved in the future. His delinquent debts remain a security concern.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under the guideline for Financial Considerations.

### **Formal Findings**

Formal findings 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 – 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

## **Decision**

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

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James F. Duffy  
Administrative Judge