



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



In the matter of: )

----- )

Applicant for Security Clearance )

) ISCR Case No. 11-07753  
)  
)  
)

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

01/18/2013

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists four debts, totaling \$156,172. He did not provide correspondence to or from SOR creditors or credit reporting companies, disputing any debts or showing any payments. His personal financial statement (PFS) shows an \$842 negative financial remainder. He failed to make sufficient progress in resolving his 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 February 22, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (Item 5). On July 13, 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). (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.

Applicant provided an undated 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 October 22, 2012, was provided to him on October 26, 2012. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.<sup>1</sup> Applicant did not provide a response to the FORM. The case was assigned to me on January 14, 2013.

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

In Applicant's response to the SOR, he admitted all of the debts in the SOR, and he provided some extenuating information. (Item 4) His admissions are accepted as factual findings.

Applicant is a 28-year-old technician, who has been employed by a government contractor since July 2010.<sup>3</sup> He attended a technical college from 2002 to 2004 and received a degree in communications technology. He lives with a woman in a marriage-like or common-law marriage relationship, and he has two children, who are one and five years old. He has never served in the military. Applicant was unemployed from August 2002 to May 2005, April 2008 to May 2009, and October 2009 to February 2010.

### **Financial Considerations**

Applicant's credit reports, his Office of Personnel Management (OPM) personal subject interviews (PSIs), and his SOR response establish four delinquent debts, totaling \$156,172. Applicant explained his actions on each debt as follows:

1.a is a \$367 debt—unresolved. Applicant did not describe any actions to resolve this telecommunications debt, which is held by a collection company.

1.b is a medical debt for \$2,367—unresolved. Applicant injured his hand and obtained treatment at an emergency room. (Item 6) According to a credit report, the

---

<sup>1</sup>The DOHA transmittal letter is dated October 22, 2012, and Applicant's receipt is dated October 26, 2012. 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 or his March 15, 2011 and May 2, 2011 Office of Personnel Management (OPM) personal subject interviews. (Item 5, 6)

debt was incurred in August 2009. (Item 6) On February 28, 2012, the creditor advised that the \$2,328 debt included attorney fees, court costs, and post-judgment interest. (Item 6 at 84) Applicant said that he offered “to pay what I could;” however, the creditor “refused.” (Item 4) Applicant did not provide additional details about his offer.

1.c and 1.d are mortgage debts on the same property for \$28,122 and \$125,322—unresolved.<sup>4</sup> Applicant and his father co-signed on a first and second mortgage. According to a credit report, in November 2005, both mortgage accounts were opened. In March 2011, the past due amount on the first mortgage was \$3,024. Applicant and his father were employed by the same company and lived in the same house. The property is in a state where Applicant does not currently live. Applicant’s father is unemployed and not making the required payments. A May 4, 2012 letter from the creditor indicates Applicant met the requirements for a home mortgage modification; however, he did not provide any evidence that he accepted the creditor’s offer, otherwise modified the mortgage debt, or made any payments on either of the mortgages in the last 12 months. (Item 6 at 85)

Applicant’s PFS shows a negative net remainder of \$842. (Item 6) It does not include any payments to address his SOR debts. There is no evidence of financial counseling. A May 25, 2012 letter from his student loan creditor indicates Applicant is current on his student loans, and now owes about \$17,000. (Item 6 at 111)

The FORM provides a good discussion of the rationale for the security concerns at issue. The FORM advised Applicant of his right to submit “objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.” (FORM at 8) An October 22, 2012 letter from the DOHA Director encouraged Applicant to submit material on his behalf to DOHA; however, Applicant did not submit any response to the FORM.

## **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

---

<sup>4</sup>Unless stated otherwise, the information in this paragraph is from Applicant’s March 15, 2011 and May 2, 2011 OPM PSIs or SOR response. (Item 4, 6)

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 PSIs, and his SOR response. Applicant's SOR lists four delinquent debts, totaling \$156,172. Some of his SOR debts have been delinquent for more than one year. 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>5</sup> He did not describe receipt of any financial counseling. He showed some good faith when he admitted responsibility for his SOR debts. Applicant's financial situation was damaged by his father's and his own unemployment. However, Applicant's financial circumstances have been relatively stable since July 2010 when he obtained his current employment, and he has not provided sufficient information about variations in his income and his expenses over the most recent 30 months 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 disputed debts.

Applicant did not establish that he acted responsibly under the circumstances. His PFS indicates an \$842 negative financial remainder, and it appears he will be unable to address his delinquent debts without reducing his expenses or increasing his income. He did not provide a credible plan for such reductions or otherwise resolving his delinquent SOR debts. He did not provide proof that he continuously maintained contact with all of his creditors.<sup>6</sup> There are no receipts or account statements from creditors, establishing any payments that he made to his SOR creditors. There is insufficient evidence that his financial problems are being resolved and are under control. The file lacks evidence that he has acted responsibly on any of his four SOR debts.

### **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):

---

<sup>5</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>6</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) 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 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 approval of his access to classified information. He is a 28-year-old technician, who has been employed by a government contractor since July 2010. He attended a technical college from 2002 to 2004 and received a degree in communication technology. He lives with a woman in a marriage-like or common-law marriage relationship, and he has two children, who are one and five years old. His finances were damaged by his and his father's unemployment. His student loans are current. He was unemployed from August 2002 to May 2005, April 2008 to May 2009, and October 2009 to February 2010. 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. There is every indication that he is loyal to the United States and his employer. I give Applicant substantial credit for admitting his failure to address his delinquent SOR debts. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial at this time. Applicant's SOR lists four delinquent debts, totaling \$156,172. Some of his SOR debts have been delinquent for more than one year. He has been continuously employed since July 2010 by his current employer. There is no documentary evidence of sufficient variations in his income to cause him not to make any progress resolving his delinquent debt. He did not provide his pay statements or his income tax returns. He did not provide proof that he disputed any debts, or proof that he negotiated any settlements. His PFS indicates an \$842 negative financial remainder. From his PFS, it appears he will be unable to address his delinquent debts without reducing his expenses or increasing his income. He did not provide any correspondence to or from creditors showing establishment of any payment plans or of any payments to SOR creditors. Applicant has failed to make sufficient progress resolving his delinquent SOR debts 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 to 1.d:               Against 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.

---

MARK HARVEY  
Administrative Judge