



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



In the matter of: )  
 )  
XXXXXXXXXX, XXXXX ) ISCR Case No. 11-08002  
 )  
Applicant for Security Clearance )

**Appearances**

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

04/01/2013

**Decision**

Tuider, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges eight delinquent debts, totaling \$443,393 and a bankruptcy filing on August 30, 2012. The crash of the housing market was a circumstance beyond his control, which caused him to have delinquent debts. He had insufficient financial resources to pay these debts. On December 7, 2012, his delinquent unsecured, nonpriority debts were discharged under Chapter 7 of the Bankruptcy Code. He has a fresh financial start and no currently delinquent debts. Financial considerations are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 16, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On December 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). The SOR detailed reasons why the DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On January 7, 2013, Applicant responded to the SOR. On January 31, 2013, Department Counsel was ready to proceed on Applicant's case. On February 8, 2013, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On February 15, 2013, DOHA issued a hearing notice, setting the hearing for March 7, 2013. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered seven exhibits, and Applicant offered one exhibit. (Tr. 13, 20; GE 1-7; AE A) There were no objections, and I admitted GE 1-7 and AE A. (Tr. 13-20) On March 10, 2013, Applicant provided six exhibits, which were admitted without objection. (AE B-G) On March 15, 2012, DOHA received the transcript of the hearing and the record was closed that same day. (Tr. 44)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted that he filed bankruptcy (SOR ¶ 1.a), and he accepted responsibility for seven of the eight debts listed in the SOR (SOR ¶¶ 1.b-1.d, 1.f to 1.i). He also explained what he had done and was doing to resolve his delinquent debts. His admissions are accepted as findings of fact.

Applicant is a 52-year-old electronics technician for a defense contractor. (Tr. 14; GE 1) He has worked continuously for the same defense contractor since October 1982. (Tr. 15) He graduated from high school in 1979, and he joined the Navy two weeks later. (Tr. 15, 17) The Navy gave him an honorable medical discharge ten months after he enlisted. (Tr. 16-17) His rate in the Navy was electronics technician. (Tr. 17) In December 1981, he earned an associate's degree in applied science—basic electricity and electronics. (Tr. 18) He never married, and he does not have any dependents. (Tr. 19) He has held a security clearance for about 30 years without security violations. (Tr. 35)

### **Financial Considerations**

Applicant's SOR alleges eight delinquent debts, totaling \$443,393 and a bankruptcy filing on August 30, 2012. Those eight delinquent debts are described and discussed in his August 16, 2010 SF 86, September 15, 2010 Office of Personnel Management (OPM) personal subject interview (PSI), Sept 10, 2012 DOHA interrogatories, SOR response, and at his hearing. All the documentation consistently and credibly discusses his finances. (GE 1-7)

In 2006, Applicant moved out of house B, which was in close proximity to the ocean, because he was worried about hurricanes, and he put house B on the real estate market. (Tr. 21) House B had two mortgages. (SOR response) He financed the construction of his new house D with two mortgages. (SOR response) He was unable to

sell house B for two years, and he kept reducing the sale price of the house. (Tr. 21) He was unable to rent house B, and he could not afford the mortgage payments. (Tr. 21) House D had high mortgage payments, and he unsuccessfully attempted to refinance. (SOR response) He took money out of his 401(k) account, borrowed from his parents, and maximized his credit cards in an unsuccessful attempt to keep the mortgages in current status. (Tr. 21; SOR response) His finances were excellent prior to the decline in the real estate market.

SOR ¶ 1.b alleges a delinquent credit card debt for \$9,773. Applicant made monthly \$300 payments under a settlement agreement. (GE 2 at 6) Applicant settled the debt, and on November 2, 2011, the creditor released Applicant for any liability on this debt as documented with an IRS Form 1099-C. (Tr. 24-25; GE 2 at 13) Applicant listed this debt on Schedule F of his bankruptcy filing. (AE G)

SOR ¶ 1.c alleges a delinquent credit card debt for \$19,737. (GE 2 at 9) Applicant settled the debt, and the creditor released Applicant for any liability on this debt as documented with an IRS Form 1099-C. (Tr. 25) Applicant listed this debt on Schedule F of his bankruptcy filing under the name of the current collection agent. (AE G)

SOR ¶ 1.d alleges a delinquent debt for \$16,333, which was secured by a recreational vehicle. (GE 2 at 9) Applicant surrendered the vehicle to the creditor. (GE 2 at 9, 14) The vehicle was sold at auction on February 5, 2011. (GE 2 at 16) Applicant listed this debt on Schedule F of his bankruptcy filing. (AE G)

SOR ¶¶ 1.e for \$78,552 and 1.f for \$59,641 allege the same delinquent debt. (GE 2 at 9; SOR response) Applicant listed this debt on Schedule F of his bankruptcy filing as a duplicate of the debt in SOR ¶ 1.f. (AE G)

SOR ¶¶ 1.f and 1.g allege two mortgage debts for \$59,641 and \$253,500. In 2006, Applicant purchased house D. (Tr. 22) He financed the purchase by borrowing a first mortgage of about \$255,000 from the creditor in SOR ¶ 1.g and a second mortgage of about \$50,000 from the creditor in SOR ¶ 1.f. (GE 2 at 6; SOR response) He attempted to refinance house D; however, he learned house D was worth half the purchase price. (Tr. 22) He signed over the deed to D to the creditor in SOR ¶ 1.g. (Tr. 23; AE F) The creditor in SOR ¶ 1.g paid Applicant \$1,000 to move and for keeping the residence in good repair. (GE 2 at 6, 18) According to a November 19, 2008 IRS Form 1099-C, his mortgage was \$253,500, and the fair market value was \$166,089. The lender acquired the property on March 11, 2009; and his liability on the debt in SOR ¶ 1.g is released. (SOR response; GE 2 at 17; AE F) The debt in SOR ¶ 1.f was listed on Schedule F of his bankruptcy filing. (AE G)

SOR ¶ 1.h alleges a delinquent credit card debt for \$3,544. On July 31, 2009, the creditor released Applicant for any liability on this debt as documented with an IRS Form 1099-C. (GE 2 at 19; AE B, E)

SOR ¶ 1.i alleges a delinquent debt for \$2,313. On November 19, 2008, the creditor released Applicant for any liability on this debt as documented with an IRS Form 1099-C. (GE 2 at 20)

Applicant's personal financial statement (PFS) contains the following information: gross salary is \$5,154; net salary is \$2,462; monthly expenses are \$1,818; and positive remainder is \$644. (Tr. 32-35; AE B, C) Applicant notes that when he receives overtime, he has a higher remainder. (GE 2 at 8; AE B, C)

On August 30, 2012, Applicant filed bankruptcy under Chapter 7 of the Bankruptcy Code. (Tr. 39; GE 2, 3) On August 9, 2012, in the course of his bankruptcy, he received financial counseling. (Tr. 38; GE 2 at 12) Applicant's Pacer docket showed a meeting of bankruptcy creditors on October 3, 2012, and the most recent entry on October 3, 2012, concluded:

Assets Abandoned (without deducting any secured claims): \$8637.00,  
Assets Exempt: \$62513.31, Claims Scheduled: \$275717.18, Claims  
Asserted: Not Applicable, Claims Scheduled to be discharged without  
payment (without deducting the value of collateral or debts exempt from  
discharge): \$275717.18. (GE 3)

On December 7, 2012, his debts were discharged through bankruptcy. (SOR response; AE A) Applicant does not have any currently delinquent debt. (Tr. 33, 38) He rents and does not have a mortgage. (Tr. 34) His only loan is a vehicle loan. (Tr. 34) He has \$64,000 in his 401(k) account. (Tr. 33) He is repaying a loan from his 401(k) account. (Tr. 34) He provided copies of his tax returns for 2008, 2009, and 2011, and he stated his tax returns are current. (Tr. 34; AE D, E, F) He provided proof of numerous payments on two large non-SOR debts in 2009 and 2010. (AE A) In July 2012, Applicant was nominated for a significant employment-related award. (AE A)

## **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 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**

### **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 interview, his SOR response, his bankruptcy filing, and his statement at his hearing.

Applicant’s debts became delinquent beginning in 2008 and some of them continued to be delinquent until December 7, 2012, when they were discharged under Chapter 7 of the Bankruptcy Code. Applicant’s SOR alleges eight delinquent debts, totaling \$443,393. 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 full application of AG ¶¶ 20(a) and 20(b). The precipitous decline in the real estate market caused Applicant to be saddled with mortgages he could not afford to pay. He made numerous payments on several substantial debts, and several creditors provided releases of liability. On December 7, 2012, his remaining delinquent debts were discharged under Chapter 7 of the Bankruptcy Code. His financial problems were generated by circumstances largely beyond his control. There is no evidence that he acted irresponsibly.

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support to her. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that applicant's debts were unresolved at the time the Administrative Judge's decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Application of AG ¶ 20(c) is warranted. Applicant completed financial counseling. He also generated a PFS or budget as part of his bankruptcy. Applicant's financial situation was damaged by the decline in the housing market. Applicant established that he acted responsibly under the circumstances. Although there is limited evidence of record that he established and maintained contact with his creditors,<sup>1</sup> his financial problem has been resolved and is under control. He resolved several substantial debts before he received the SOR. All of his unsecured, nonpriority debts were discharged under Chapter 7 of the Bankruptcy Code.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts from 2008 to 2011 and

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<sup>1</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.

then through bankruptcy in 2012, showing some good faith.<sup>2</sup> AG ¶ 20(e) is not applicable. Applicant did not dispute any of his delinquent SOR debts.

In sum, Applicant fell behind on his debts primarily because of the decline in the real estate market. He made numerous debt payments and resolved several large debts in 2008 to 2011. On December 7, 2012, bankruptcy resolved all of his remaining delinquent debts. Applicant has a sufficient monthly remainder as shown by his PFS to maintain his financial responsibility. It is unlikely that financial problems will recur. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

### **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 Guideline F, but some warrant additional comment.

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<sup>2</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)).



Applicant is a 52-year-old electronic technician, who has worked continuously for the same defense contractor since October 1982. In December 1981, he earned an associate's degree in applied science, emphasizing basic electricity and electronics. He has held a security clearance for about 30 years without security violations. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for supporting the U.S. Government as an employee of a contractor for over 30 years. There is every indication that he is loyal to the United States and his employer. There is no evidence that he abuses alcohol or uses illegal drugs. The decline in the real estate market contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for his delinquent debts in his SF 86, OPM PSI, responses to DOHA interrogatories, SOR response, and at his hearing. In July 2012, Applicant was nominated for an important award.

Even though he lacked financial resources because of the financial stress engendered from the decline in the real estate market, Applicant made numerous payments and resolved several large debts in 2008-2011. He also paid his bankruptcy attorney and fees in 2012. His decision to file for bankruptcy is appropriate and reasonable. The discharge of his debts through bankruptcy provides him a fresh financial start, and this result is consistent with the goals of the Bankruptcy Statute and congressional intent.

Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility. There is simply no reason not to trust him. Moreover, his finances were excellent prior to the decline in the real estate market, and he established a "meaningful track record" of debt re-payment. I am confident he will maintain 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 mitigated, and eligibility for access to classified information is granted.

### **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 to 1.i:               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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

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Robert J. Tuidier  
Administrative Judge