



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



In the matter of: )  
)  
) ISCR Case No. 11-09499  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn E. Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

09/28/2012

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On January 19, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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 March 22, 2012, Applicant answered the

SOR and requested a hearing. The case was originally assigned to another administrative judge on April 23, 2012, and was reassigned to me on July 18, 2012. DOHA originally issued Notices of Hearing on April 24, 2012, and April 27, 2012. A prior hearing session was held in this case on May 10, 2012; however, Applicant was unable to attend that session because of a death in his family. On August 6, 2012, another Notice of Hearing was issued scheduling the hearing for August 28, 2012. The hearing was held as scheduled. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) 1. Applicant testified, called no witnesses, and offered no exhibits. The record was left open until September 11, 2012, for the Applicant to submit additional matters. Department Counsel's memorandum advising that Applicant did not submit any post-hearing matters was marked as HE 2. The transcript (Tr.) of the hearing was received on September 7, 2012.

### **Findings of Fact**

Applicant is a 44-year-old software test engineer who has worked for his current employer since April 2011. Another employer, a defense contractor, has offered him employment contingent upon him obtaining a security clearance. He served in the U.S. Army from June 1986 to March 1995, attained the grade of sergeant (E-5), and received an honorable discharge. He received a bachelor's degree in computer science management in 2001. He has been married three times. His first two marriages ended in divorce. He married his current wife in December 2010. He has two daughters, ages 16 and 19. He believes he held a security clearance in the Army and stated he had no security violations. He also held a public trust position in the past.<sup>1</sup>

The SOR alleged 15 delinquent debts totaling \$21,714. In his Answer to the SOR, Applicant admitted each of the allegations. His admissions are incorporated as findings as fact.<sup>2</sup>

Applicant testified openly and honestly at the hearing. He attributed his financial problems to his second divorce in 2004. As a result of that divorce, he incurred an IRS debt of about \$15,000 that took him a long time to pay. He further indicated that he struggled to maintain his family while paying child support. In August 2010, he lost his job and was unemployed until about February 2011. He collected unemployment compensation during that period of unemployment. At the hearing, he also acknowledged that he has not lived up to his financial obligations and has not handled his finances properly. He stated that, with the exception of his child support arrearages and student loans, he expected to "get in front of" the other debts within the next six months. Previously, he made similar statements during an Office of Personnel

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<sup>1</sup> Tr. 6-7, 23-24, 26-31, 66-67, 70; GE 1.

<sup>2</sup> Tr. 10; Applicant's Answer to the SOR; GE 4, 5.

Management interview in February 2010. During that interview, he had indicated that he would pay a number of accounts by March or December 2010, but failed to do so. Each SOR allegation is addressed separately below.<sup>3</sup>

SOR ¶ 1.a – collection account for \$1,876. This account was for an apartment that Applicant rented in 2005 and 2006. The date of last activity on this account was August 2008. This debt was placed for collection in October 2011. At the hearing, Applicant stated that he received a settlement offer from the creditor about six months ago, but has not made any payments to the creditor. This debt remains unresolved.<sup>4</sup>

SOR ¶ 1.b – collection account for \$309. This debt was for an overdrawn checking account that Applicant had at a credit union. The date of last activity on this account was December 2008. This debt was placed for collection in October 2011. At the hearing, Applicant indicated that this debt remained unpaid.<sup>5</sup>

SOR ¶ 1.c – collection account for \$99. This debt was for a returned check. The date of last activity on this account was August 2005. This debt was placed for collection in February 2006. At the hearing, Applicant indicated that this debt remained unpaid.<sup>6</sup>

SOR ¶ 1.d – charged-off account for \$1,488. This debt was a loan from a credit union. The date of first delinquency/date of last activity on this account was April 2005. At the hearing, Applicant indicated that this debt remained unpaid.<sup>7</sup>

SOR ¶ 1.e – student loan that was 120-days or more past-due in the amount of \$262. The date of first delinquency/date of last activity on this account was March 2011. At the hearing, Applicant stated that this debt is no longer delinquent. However, he provided no documentation to establish that this debt is current.<sup>8</sup>

SOR ¶ 1.f – collection account for \$1,609. This debt was a credit card with a low credit limit that Applicant opened to rebuild his credit rating. He testified that his debt remained unpaid.<sup>9</sup>

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<sup>3</sup> Tr. 24-25, 34-35, 65-74; GE 2, 3. In GE 3, Applicant indicated that he was unemployed for 14 months. At the hearing, however, he stated that he was unemployed from about August 2010 to February 2011 and had a temporary job from February 2011 to April 2011.

<sup>4</sup> Tr. 35-37, 39, 60; GE 2, 3, 5.

<sup>5</sup> Tr. 51, 59; GE 2, 5.

<sup>6</sup> Tr. 52-53 59; GE 2, 5.

<sup>7</sup> Tr. 53, 59; GE 2, 5.

<sup>8</sup> Tr. 39-40, 53; GE 2, 5.

<sup>9</sup> Tr. 46, 60; GE 2, 3, 5.

SOR ¶ 1.g – collection account for \$1,017. This debt was a credit card account with a low credit limit that Applicant opened to help rebuild his credit rating. He testified that he has arranged a settlement agreement for this account, but that the debt is still outstanding.<sup>10</sup>

SOR ¶ 1.h – collection account for \$85. This debt was a utility account. The date of last activity on this account was August 2008. Applicant testified that this debt was paid in October or November 2011, but provided no proof of payment.<sup>11</sup>

SOR ¶ 1.i and SOR ¶ 1.j – collection accounts for \$335 and \$635, respectively. These debts were payday loans that Applicant obtained in November 2005. The date of last activity on these accounts was April 2007. A collection agency is handling both accounts. Applicant believed there was a settlement agreement for these accounts, but indicated that he has not made any payments.<sup>12</sup>

SOR ¶ 1.k – collection account for \$96. This debt was a utility account. The date of last activity on this account was August 2008. Applicant testified that he paid this account in October or November 2011. However, he provided no documentation establishing that it has been paid.<sup>13</sup>

SOR ¶ 1.l – child support arrearages that were 120-days or more past due in the amount of \$10,924. These child support arrearages are for his youngest daughter. She resides in another state with her mother. He testified that he is currently making monthly child support payments of \$539 and that \$75 of that amount goes towards paying the arrearages. He estimated that the current balance of the arrearages is between \$9,000 and \$10,000. He also testified that he owed about \$7,000 in child support arrearages for his oldest daughter and is making monthly payments of \$700 towards those arrearages. The child support arrearages for his oldest daughter are not alleged in the SOR. His oldest daughter currently lives with him, and he no longer pays monthly child support payments for her. He provided no documentation showing payments towards this alleged debt.<sup>14</sup>

SOR ¶ 1.m – collection account for \$1,477. This debt was for a rental car. The date of last activity on his account was November 2009. Applicant testified that it remained unpaid.<sup>15</sup>

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<sup>10</sup> Tr. 41-43, 60; GE 2, 3, 5.

<sup>11</sup> Tr. 54; GE 2, 4, 5.

<sup>12</sup> Tr. 37-39, 55, 58-59; GE 2, 3, 4. GE 2 indicated that the \$335 debt became delinquent in January 1994.

<sup>13</sup> Tr. 43-45; GE 2, 3, 4.

<sup>14</sup> Tr. 30-32, 47, 60; GE 2, 3, 4.

<sup>15</sup> Tr. 55, 60; GE 2, 4.

SOR ¶ 1.n – collection account for \$1,265. This debt was a bank account that was placed for collection in December 2009. Applicant has received a settlement offer for this account, but did not recall whether he had accepted it. He noted this account remained unresolved.<sup>16</sup>

SOR ¶ 1.o – collection account for \$237. This debt was a utility account. Applicant testified that it remained unpaid.<sup>17</sup>

In September 2011, Applicant submitted a personal financial statement that reflected his net monthly income was \$7,836, that his total monthly expenses were \$3,925, and that his monthly debt payments were \$1,160, which left him a net monthly remainder of \$2,751. At the hearing, he stated that he had about \$500 or \$600 in savings accounts and \$400 in a checking account. He also testified that he had not yet filed his 2011 federal income tax return. He indicated that he received financial counseling in the past, but that was seven to ten years ago.<sup>18</sup>

Applicant indicated that he was awarded two Army Commendation Medals while serving in the Army. He provided no work performance appraisals or letters of reference.<sup>19</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

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<sup>16</sup> Tr. 40-41, 55; GE 3, 4.

<sup>17</sup> Tr. 55, 60; GE 3.

<sup>18</sup> Tr. 55, 62-63, 66-67, 72-73; GE 3.

<sup>19</sup> Tr. 23-24.

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 unfavourable, 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 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 delinquent debts totaling over \$21,000 that he has been unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Four 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. In 2004, he was divorced and saddled with debts, including a large IRS debt. He was unemployed for about seven or eight months between August 2010 and February 2011. His divorce and unemployment were conditions beyond his control. To obtain full credit under AG ¶ 20(b), however, an applicant must show that he or she acted responsibly under the circumstances. In this case, Applicant acknowledged that he has not lived up to his financial obligations and has not handled his finances properly. Many of the alleged debts are quite old and little or no action has been taken to resolve them. He has not presented any documentation showing that he has made any payments towards

the delinquent debts. In short, he has failed to show that these debts are being resolved or are under control. AG ¶¶ 20(b), 20(c), and 20(d) do not apply.

### **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).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served honorably in the military from 1986 to 1995. He testified honestly at the hearing. He appears to be a hardworking, law-abiding citizen. Nevertheless, he has failed to show that he has taken any meaningful steps towards resolving his delinquent debts. His financial situation remains unstable. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns under Guideline F.

### **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.o:	Against 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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James F. Duffy  
Administrative Judge