



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 11-10627
	)	
Applicant for Security Clearance	)	

**Appearances**

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

04/05/2013

**Decision**

Tuider, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 10 delinquent debts, totaling \$125,009. Applicant had unexpected medical expenses and insufficient income to support his large family. He had insufficient financial resources to pay his mortgage and student loans. All of his SOR debts are in established payment plans and he is current on his monthly expenses. Financial considerations are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 8, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On September 24, 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 October 19, 2012, 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 6, 2013. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered six exhibits, and Applicant offered three exhibits. (Tr. 11-13; GE 1-6; AE A-C) Applicant objected to admissibility of two credit reports because his financial information had changed, and they were not current. (Tr. 11; GE 2, 6) Applicant's objections go to the weight to be accorded to the credit reports and not their admissibility. There were no other objections, and I admitted GE 1-6 and AE A-C. (Tr. 12-13) On March 14, 2013, DOHA received the transcript of the hearing and the record was closed on March 15, 2013. (Tr. 32-34, 37)

### **Findings of Fact**

In his Answer to the SOR, Applicant accepted responsibility for the debts listed in the SOR. He also explained what he had done and was doing to resolve his delinquent debts. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 47-year-old customer service technician for a defense contractor. (Tr. 14; GE 1) He has worked continuously for the same defense contractor since February 2000. (Tr. 14) He graduated from high school in 1983, and he was awarded an associate's degree in general studies in 1986. (Tr. 16) In June 2009, he received a bachelor's of science degree in human resources management. (Tr. 17) He married in 1990, and he has six children. (Tr. 17) Their ages are 10, 12, 14, 17, 18, and 20, and they all live at home. (Tr. 18) His spouse is not employed outside the home. (Tr. 19) He has never served in the military. (GE 1) He has never held a security clearance. (Tr. 14)

### **Financial Considerations**

Four years ago, Applicant's oldest son had problems with prescription drug abuse. Rehabilitation and treatment were very expensive. (Tr. 19-22) Applicant was also underemployed and having difficulty supporting a large family on an annual income of \$35,000. (Tr. 20-21)

Applicant's SOR alleges 10 delinquent debts, totaling \$125,009. Those 10 delinquent debts are described and discussed in his SF 86, December 9, 2010 Office of Personnel Management (OPM) personal subject interview (PSI), responses to DOHA interrogatories, SOR response, and at his hearing. All the documentation consistently and credibly discusses his finances. (GE 1-6) Those 10 SOR debts are described as follows:

SOR ¶ 1.a alleges a delinquent mortgage account with an approximate balance of \$92,891. Applicant purchased his residence in 1996. (Tr. 31) He stopped making payments on his mortgage in 2009. (Tr. 23) He recently obtained a loan modification, and his monthly payment is now \$1,412. (Tr. 23) He made his first payment under the new agreement on February 25, 2013. (Tr. 23; AE M) He intends to continue making his modified mortgage payments using a direct debit from his bank account. (Tr. 24-25, 28)

SOR ¶¶ 1.b to 1.j allege nine delinquent student loan debts totaling \$32,118. Applicant made seven payments in 2011, 13 payments in 2012, and five payments in 2013. (Tr. 26; AE A, R) He is paying \$451 monthly to address his student loans. (AE L, N) The current total balance owed on the nine student loans is \$36,160. (AE O, P, Q) He intends to pay his student loan debts. (Tr. 26)

Applicant did not describe any credit counseling; however, he did provide a personal financial statement (PFS) and a post-hearing budget. (Tr. 27; GE 5, AE L) Applicant's current annual income is \$56,474, and his income will increase to \$61,556 in April 2013. (Tr. 21, 24; AE H) His net monthly income is \$4,000, and his net monthly remainder is \$357. (Tr. 24; AE L) He believes he can maintain all of his accounts in a current status. He has \$15,000 in his 401(k) account. (Tr. 27)

### **Character evidence**

Applicant's employee performance evaluations describe excellent accomplishment of goals, well-prepared plans to accomplish goals, and good relationships with other employees. (AE D-G) He showed professionalism and provided great leadership. (AE D-G) Applicant's senior manager writes that Applicant is intelligent, friendly, thoughtful, mature, "professional, motivated, trustworthy and hard working." (AE I)

### **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.”

Applicant’s history of delinquent debt is documented in his credit reports, his OPM interview, his SOR response, and his statement at his hearing. His debts became delinquent in 2009 and some of them continued to be delinquent until February 2013. Applicant’s SOR alleges 10 delinquent debts, totaling \$125,009. 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). Unexpected medical bills and insufficient income to support a large family caused Applicant to have debts he could not afford to pay. His financial problems were affected by circumstances largely beyond his control. He made numerous payments on his student loan debts over the last three years. He recently obtained a modified mortgage agreement, and his mortgage is now current.

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.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant, who had been sporadically unemployed and lacked the ability to pay her creditors, noting that “it will be a long time at best before he has paid” all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

Partial application of AG ¶ 20(c) is warranted. Applicant did not complete financial counseling, and he cannot be credited with full application of AG ¶ 20(c). However, he generated a PFS and budget. Applicant’s financial situation was damaged by underemployment and medical expenses. Although there is limited evidence of record that he established and maintained contact with his creditors,<sup>1</sup> his financial

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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

problem is being resolved and is under control. He established payment plans on his student loans over the last three years, and in February 2013, he established a modified payment plan on his mortgage debt.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing 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 insufficient income and to a lesser extent because of medical debts. He made numerous debt payments and has established payment plans on all of his SOR debts. Applicant has a sufficient monthly remainder as shown by his PFS and budget 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

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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.

<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)).

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.

Applicant is a 47-year-old customer service technician for a defense contractor, who has worked continuously for the same defense contractor since February 2000. In June 2009, he was awarded a bachelor's of science degree in human resources management. Applicant's decision to spend funds to improve his educational credentials was a prudent investment of his time and money. He married in 1990, and he has six children, who are ages 10, 12, 14, 17, 18, and 20. All six children still live at home, and his spouse is not employed outside the home. 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. There is every indication that he is loyal to the United States and his employer. Medical expenses and underemployment 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. He received a strong endorsement from a supervisor and has excellent performance evaluations. He recently received a substantial increase in his income, and he now has additional financial resources to ensure he can pay his debts.

Even though he lacked financial resources because of the large size of his family and medical debts, Applicant made numerous payments to address his student loans over the last three years. In February 2013, he established a modified payment plan and made his first payment to address his mortgage debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination). There is no requirement that a plan provide for payments



on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

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, he established a “meaningful track record” of debt repayment. 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.j:               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. Tuidor  
Administrative Judge