



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 11-11475
	)	
Applicant for Security Clearance	)	

**Appearances**

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

04/02/2013

**Decision**

Tuider, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges six delinquent debts, totaling \$247,577. The crash of the housing market and her husband’s unemployment were circumstances beyond her control, which caused her to have delinquent debts. She maintained contact with her creditors, established payment plans, and made sufficient progress to mitigate financial consideration concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 24, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On December 4, 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 her case be submitted to an administrative judge for a determination whether her clearance should be continued or revoked.

On December 22, 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 five exhibits, and Applicant offered one exhibit. (Tr. 13; GE 1-5; AE A) There were no objections, and I admitted GE 1-5 and AE A. (Tr. 13) After the hearing, Applicant provided one exhibit, which was admitted without objection. (AE B) On March 14, 2013, DOHA received the transcript of the hearing, and on March 15, 2013, the record was closed. (Tr. 53, 55-56)

### **Findings of Fact**

In her Answer to the SOR, Applicant accepted responsibility for all six of the SOR debts. She denied that the debt in SOR ¶ 1.f was delinquent, as it had been settled and a new payment plan established. She also explained what she had done and was doing to resolve her delinquent debts. (HE 3) Her admissions are accepted as findings of fact.

Applicant is a 54-year-old program manager for a defense contractor. (Tr. 14; GE 1) She has worked continuously for the same defense contractor since October 1989. (Tr. 11, 17) She began as a secretary and worked her way up to financial analyst and then to her current position as a program manager. (Tr. 11, 15) She has intermittently held a security clearance during her 24 years of employment. (Tr. 17) She graduated from high school in 1976. (Tr. 17) She earned an associate's of science degree in finance in 2000. (Tr. 18) She was awarded various certifications and licenses, such as a real estate license. (Tr. 18) She married in 2000. She has one son, who is 33 years old. (Tr. 19) She has never served in the military. (Tr. 19)

### **Financial Considerations**

Applicant's SOR alleges six delinquent debts, totaling \$247,577. Those six delinquent debts are described and discussed in her SF 86, June 7, 2011 Office of Personnel Management (OPM) personal subject interview (PSI), responses to DOHA interrogatories, SOR response, and at her hearing. All the documentation consistently and credibly discusses her finances. (GE 1-5)

Applicant's husband was a very successful self-employed contractor until 2006, when the economy in their state went into recession, and he became unemployed. (Tr. 11, 20) At one point, he had 20 employees in his construction company and had annual income of about \$150,000. (Tr. 46-47) They took out a second mortgage to make a down payment on a residential-rental property. (Tr. 20) They owned two rental properties, and their tenants stopped paying their rent, "and it just basically spiraled from there." (Tr. 20-21) They sold one rental property through a short sale. (Tr. 21) For

the other rental property, their tenant pays the rent, which is sufficient to pay the mortgage, and the mortgage is current. (Tr. 21, 31)

Applicant maintained contact with her creditors. (Tr. 11) She has vacant land zoned residential in an exclusive neighborhood that is for sale, and she intends to use the proceeds from the sale to pay her debts. (Tr. 12, 21, 34, 46) The land was purchased for \$115,000; at one point it was worth \$500,000; and it is now priced to sell at \$158,000. (Tr. 33-34, 46; AE A) This vacant property does not have any liens. (Tr. 21) It has been on the market for two years. (Tr. 33) She has maintained contact with all of her SOR creditors, and she plans to settle and pay all of her SOR debts with the proceeds from the sale of this land. (Tr. 35-38; SOR response)

Applicant's husband's business has started to recover, and he has recently made some money. (Tr. 22; AE A) He provided receipts for February 2013 indicating thousands of dollars of business. (AE A) They have four rental properties and the residence where they live. In August 2010, her husband was injured at work, and he could not work until about February 2011. (Tr. 23-24) He is 61 years old, and he cannot work as hard as when he was younger. (Tr. 47-48) The debts in SOR ¶¶ 1.a to 1.c and 1.f are in established payment plans.

SOR ¶ 1.a alleges a credit card debt for \$15,795. (Tr. 24) The debt became delinquent in 2008. (Tr. 24) The creditor has accepted a \$50 monthly payment, and she has been making her payments for two years. (Tr. 25-27; GE 2, AE B) A February 21, 2013 letter from the creditor states the balance is \$15,596. (AE A)

SOR ¶ 1.b alleges a delinquent credit card debt for \$3,859. Applicant made monthly \$25 payments for three years, and she has reduced the balance from about \$5,000 to \$3,709. (Tr. 28; AE A, B)

SOR ¶ 1.c alleges a delinquent credit card debt for \$3,204. Applicant made monthly \$25 payments. (Tr. 29-30) She has been making her payments for more than one year. (Tr. 29; AE B)

SOR ¶ 1.d alleges a delinquent equity line of credit debt for \$100,000, which was secured by a rental property. (Tr. 30) The \$100,000 was used to purchase a rental property, which was sold. (Tr. 30) On February 2, 2013, the creditor stated the balance owed is \$116,108, and the creditor offered to settle the debt for \$75,470. (Tr. 32; AE A)

SOR ¶ 1.e alleges a delinquent second mortgage on Applicant's residence for \$42,349. (Tr. 35) She took out the second mortgage in 2002, and it became delinquent in 2008. (Tr. 35) The monthly payment on the second mortgage was \$459. (Tr. 35)

SOR ¶ 1.f alleges a delinquent mortgage for \$82,370 on a property valued at about \$300,000. (Tr. 39) The property was waterfront land. (Tr. 29) She took the mortgage out in 2008 to pay other debts. (Tr. 39) She stopped making payments in 2011. (Tr. 39-40) She borrowed from her 401(k) account, and she brought this debt to

current status in the fall of 2012. (Tr. 39-41) She owes \$25,000 to her 401(k) account, and her payments on that account are also current. (Tr. 40; SOR response; AE A)

Applicant's personal financial statement (PFS) contains the following information: gross salary is \$7,227; net salary is \$4,338; monthly expenses are \$3,444; payments to creditors are \$2,421; and positive remainder is \$73. (Tr. 41-44; GE 2) Applicant has about \$85,000 in her 401(k) account. (Tr. 41)

### **Character evidence**

Applicant provided five years of employment reviews and six letters from character witnesses, including her husband. (AE A) Coworkers, friends, and supervisors have known her and worked closely with her for decades. They describe her as honest, generous, responsible, dedicated, trustworthy, sincere, ethical, responsive, mature, professional, and reliable. She is an outstanding program manager, who makes valuable contributions to her company and the U.S. Government. On January 23, 2012, she received a \$5,000 cash award from her company for contributions she made to the success of her company. (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.”

Applicant’s history of delinquent debt is documented in her credit reports, her OPM interview, her SOR response, and her statement at her hearing.

Applicant's debts became delinquent beginning in 2008 and some of them continue to be delinquent. Applicant's SOR alleges six delinquent debts, totaling \$247,577. 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 her debts warrants full application of AG ¶¶ 20(a) and 20(b). The decline in the real estate market in Applicant's state caused Applicant to be saddled with mortgages she could not afford to pay. Some of her properties were worth less than the mortgages encumbering those properties. She made numerous payments on several substantial debts. The construction industry in her state suffered a precipitous decline, and her husband lost his employment. He was also injured and unable to work for six months. Her financial problems were generated by circumstances largely beyond her control. There is no evidence that she acted irresponsibly. She put some land on the real estate market, and reasonably expects to make sufficient funds from the sale to pay all of her SOR debts. She promised to use the proceeds of that sale to pay all of the SOR creditors.<sup>1</sup>

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<sup>1</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

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<sup>2</sup> 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 she 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.*

Application of AG ¶ 20(c) is warranted. Applicant has an associate’s of science degree in finance, and she was employed as a financial analyst. She provided an

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<sup>2</sup> Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

updated budget. Her financial situation was damaged by the decline in the housing market and construction employment. Her husband was unemployed for a substantial period of time. Applicant established that she acted responsibly under the circumstances. She maintained contact with her creditors,<sup>3</sup> and her financial problem is being resolved or is under control. She consistently made payments on several SOR debts before she received the SOR. All of her SOR debts will be settled and paid when her land, which is on the market, is sold.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable and responsible actions to resolve her SOR debts.<sup>4</sup> AG ¶ 20(d) cannot be fully applied until she settles and pays several SOR debts. AG ¶ 20(e) is not applicable. Applicant did not dispute any of her delinquent SOR debts.

In sum, Applicant has placed her land on the market, and upon sale has promised to use the funds received from the sale to pay her SOR debts. It is unlikely that financial problems will recur. Her 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):

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<sup>3</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.

<sup>4</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)).



(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.

Applicant is a 54-year-old program manager for a defense contractor, who has worked continuously for the same defense contractor since October 1989. She began as a secretary and worked her way up to financial analyst and then to her current position as a program manager. She has intermittently held a security clearance during her 24 years of employment, and there are no allegations of security violations. She earned an associate's of science degree in finance in 2000 and generated a budget. She married in 2000. She is sufficiently mature to understand and to continue to comply with her security responsibilities. She deserves substantial credit for supporting the U.S. Government as an employee of a contractor for 24 years. There is every indication that she is loyal to the United States and her employer. The decline in the real estate market caused a significant reduction in the value of their investments. The deterioration in construction employment in their state caused her husband to lose his job, and he was injured and unable to work for six months. These circumstances beyond her control caused her financial woes. She admitted responsibility for her delinquent debts in her SF 86, OPM PSI, responses to DOHA interrogatories, SOR response, and at her hearing. On January 23, 2012, Applicant received a substantial cash award from her employer, and her evaluations and character references strongly support continuation of her access to classified information.

Even though she lacked financial resources because of the financial stress engendered from her husband's unemployment and the decline in the real estate market, Applicant made numerous payments and brought several large SOR debts to current status over the last three years. Her financial actions are appropriate and reasonable. 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 she understands how to budget and what she needs to do to establish and maintain her financial responsibility. There is simply no reason not to trust her. Moreover, there is no evidence that her finances were anything but excellent prior to the decline in the real estate market. She established a "meaningful track record" of debt re-payment. I am confident she will use the proceeds from the sale of her land to settle and pay her SOR debts, and that she will maintain her 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.f:               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