



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-12277

**Appearances**

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

06/14/2013

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists seven delinquent or charged-off debts, totaling \$22,875. He did not make sufficient progress resolving his financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 10, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 5) On December 19, 2012, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national

interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On January 8, 2013, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated April 11, 2013, was provided to him on April 22, 2013. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.<sup>1</sup> Applicant did not respond to the FORM. The case was assigned to me on June 10, 2013.

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

In Applicant's response to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.g.<sup>3</sup> His admissions are accepted as findings of fact.

Applicant is a 40-year-old assembler for a defense contractor.<sup>4</sup> He graduated from high school in 1991. He served in the Navy from October 1991 to June 1995. He received an honorable discharge. He married in 1998, and he has one child, who is seven years old. There is no evidence of arrests, convictions, use of illegal drugs, or alcohol abuse.

Applicant was employed from August 2008 to present with his current employer. He was a truck driver from July 2007 to August 2008. He was unemployed from October 2006 to July 2007. He received unemployment compensation while unemployed. (August 8, 2011 Office of Personnel Management (OPM) personal subject interview (PSI)). (Item 6) He fell behind on his debts during his unemployment. He was employed as a night yard manager at a lumber yard from June 2004 to October 2006.

### **Financial considerations**

Applicant disclosed his delinquent debts on his May 10, 2011 SF 86, and he discussed them in his August 8, 2011 OPM PSI. (Item 5, 6) His SOR lists seven delinquent or charged-off debts, totaling \$22,875. Three SOR debts are for \$200 or less.

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<sup>1</sup>The DOHA transmittal letter is dated April 16, 2013, and Applicant's receipt is dated April 22, 2013. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup>Applicant's SOR response is the basis for the facts in this paragraph. (Item 1)

<sup>4</sup>Applicant's May 10, 2011 SF 86 is the basis for the facts in this paragraph. (Item 5)

Applicant's personal financial statement (PFS) indicates Applicant owns three vehicles and a motorcycle valued at \$18,500. (Item 6) He has \$50 in his bank account, and his monthly net remainder is \$1,283. (Item 6) The only debt payment shown on his PFS is his mortgage payment. (Item 6) There is no evidence of financial counseling. There is no evidence of any payments to SOR creditors, correspondence to or from creditors, or debt disputes. There is no evidence of progress resolving his SOR debts.

### **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 revised 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 his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, SF 86, OPM PSI, and SOR response. The record establishes Applicant has seven delinquent or charged-off debts, totaling \$22,875. Three SOR debts are for \$200 or less. He did not make payments to the SOR creditors as agreed. 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;<sup>5</sup> 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 delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts. He admits responsibility for seven delinquent or charged-off debts, totaling \$22,875. Three SOR debts are for \$200 or less. His PFS shows a monthly net remainder of \$1,283. He has the means to establish payment plans and payoff his delinquent debts. There is no evidence of financial counseling. There is no evidence of any payments to SOR creditors, correspondence to or from creditors, or debt disputes. There is no evidence of progress resolving his SOR debts. He did not provide documentation proving that he maintained contact with his SOR creditors, and he did not provide any documentation showing his

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<sup>5</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

attempts to negotiate payment plans with the seven SOR creditors.<sup>6</sup> There is insufficient evidence that his financial problem is being resolved and is under control. He did not establish his financial responsibility.

### **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.

Under AG ¶ 2(c), 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. 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.

There is some evidence supporting approval of Applicant's clearance. Applicant served his country in the Navy for almost four years and received an honorable discharge. He does not have a criminal record or abuse alcohol or drugs. He contributes to his company and the Department of Defense. There is no evidence of disloyalty or that he would intentionally violate national security.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a long history of financial problems. He failed to mitigate seven SOR delinquent debts, totaling \$22,875. He could have made greater progress resolving and documenting resolution of these seven SOR debts. He did not provide documentary proof that he made any payments to any of his seven SOR creditors. His failure to establish his financial responsibility shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect

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<sup>6</sup>“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

