



**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. 11-13555

**Appearances**

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

08/27/2013

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists seven delinquent or charged-off debts, totaling \$61,907. A judgment filed in 2005 for an unpaid mortgage accounts for \$34,638 of his delinquent SOR debt. He did not make any payments to address his SOR debts, and he failed to 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 August 4, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) (Item 5). On February 20, 2013, 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 DOD 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)

Applicant provided an undated response to the SOR allegations and waived his right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated June 7, 2013, was provided to him on June 20, 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 August 22, 2013.

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

In Applicant's response to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.f, and he described his recent actions to resolve each debt. (Item 4) He was unsure about his responsibility for the debt in SOR ¶ 1.g for \$954. His admissions are accepted as findings of fact.

Applicant is a 41-year-old systems dispatcher, who has worked for the same defense contractor since 2011.<sup>3</sup> He has worked continuously as a dispatcher since December 2009. He attended colleges for several years and received emergency medical technician and firefighter certificates. (Item 7 at 17) He served as an enlisted soldier in the Army National Guard from October 1991 until March 2003, and he received an honorable discharge. In 1992, he married, and his children were born in 1992 and 1997. There is no evidence of arrests or convictions. There is no evidence of use of illegal drugs or alcohol abuse.

### **Financial considerations**

In Applicant's September 9, 2011 Office of Personnel Management (OPM) personal subject interview (PSI) and his SOR response, Applicant described his financial problems as follows:

The debt in SOR ¶ 1.a for \$298 is delinquent. Applicant said he contacted the creditor to make payment arrangements. (SOR response) The debt remains unpaid.

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<sup>1</sup>The DOHA transmittal letter is dated June 13, 2013, and Applicant's receipt is dated June 20, 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>Unless stated otherwise, Applicant's August 4, 2011 SF 86 is the basis for the facts in this paragraph. (Item 5)

The medical debt in SOR ¶ 1.b for \$426 is delinquent. Applicant said he attempted to contact the creditor to make payment arrangements; however, the debt remains unpaid. (SOR response)

The debt in SOR ¶ 1.c for \$5,244 is unresolved. Applicant said he received a single-payment settlement offer from the creditor, and Applicant replied to this correspondence that he wanted the creditor to make another payment arrangement. (SOR response) He has not received a reply from the creditor, and the debt remains unpaid. (SOR response)

The debt in SOR ¶ 1.d for \$10,057 resulted when Applicant's vehicle was repossessed. Applicant did not recall the date the vehicle was repossessed. Applicant said he contacted the creditor in the last couple of months and was waiting for a settlement offer from the creditor. (Item 7 at I10) He subsequently clarified that he attempted to make contact with the creditor to set up a payment plan without success. (SOR response)

The debt in SOR ¶ 1.e for \$10,290 resulted when Applicant's vehicle was repossessed in 2007. (Item 7 at I9) Applicant never made any payments after his vehicle was repossessed. (Item 7 at I9) Applicant told the OPM investigator that he would contact the creditor "to see if anything can be done." (Item 7 at I9) Applicant subsequently said he received a single-payment settlement offer from the creditor, and he replied to the creditor's correspondence that he wanted the creditor to make another payment arrangement. (SOR response) He has not received a reply from the creditor, and the debt remains unpaid. (SOR response)

The debt in SOR ¶ 1.f for \$34,638 resulted when Applicant's trailer was repossessed in 2005. (Item 7 at I10) The creditor obtained a judgment for \$34,638. Applicant told the OPM investigator that he would contact the creditor about the debt. (Item 7 at I10-I11) Applicant said he received a letter from a law firm indicating there was ongoing litigation against the creditor, and he should not pay the creditor. (SOR response) Applicant was unable to locate the letter from the law firm. (SOR response)

Applicant was unable to locate information about the basis for the debt in SOR ¶ 1.g for \$954. (SOR response) Applicant was attempting to identify the basis of this debt. (SOR response)

Applicant's credit reports, SF 86, OPM interview, and SOR response consistently documented his financial problems. He did not describe situations beyond his control, which caused his financial problems.

The FORM repeatedly emphasized that Applicant had an opportunity to describe or explain what he had done to resolve his delinquent debts and suggested that he provide supporting documentation from his creditors. There is no evidence of financial counseling. There is no documentary 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.

The June 13, 2013 DOHA letter conveying the FORM to Applicant invited him to “submit any material you wish the Administrative Judge to consider or make any objections you may have as to the information in the file.” Applicant did not provide any response to the FORM.

### **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, OPM PSI, and SOR response. The record establishes Applicant has seven delinquent or charged-off debts, totaling \$61,907. 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>4</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. He admitted responsibility for six of the seven delinquent or charged-off debts, totaling \$60,953. He was unable to locate information about the basis for the debt in SOR ¶ 1.g for \$954. He is an honest person who would admit responsibility for the debt in SOR ¶ 1.g if he was satisfied that he is responsible for it. I have credited him with mitigating the debt in SOR ¶ 1.g.

Applicant did not describe any payments to any SOR creditors in the last two years. He did not provide any documentation, such as a checking account statement,

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<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)).

photocopies of checks, or a letter from the creditor proving that he paid or made any payments to any SOR creditors. There is no evidence of financial counseling, payments to SOR creditors, correspondence to or from creditors, or debt disputes. There is no documented 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 attempts to negotiate payment plans with his SOR creditors.<sup>5</sup> There is insufficient evidence that his financial problem is being resolved and is under control.

### **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 has been employed by the same defense contractor since 2011. There is no evidence of criminal conduct or abuse of 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 six of the seven delinquent or charged-off debts, totaling \$60,953. He could have made

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<sup>5</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.

greater progress resolving and documenting resolution of his six delinquent SOR debts. He did not provide documentary proof that he made any payments to any of his 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 classified information. See AG ¶ 15. More documented financial progress is necessary to fully mitigate security concerns.

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. Financial considerations concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information at this time.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge