



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



In the matter of: )  
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----- ) ISCR Case No. 11-13724  
 )  
Applicant for Security Clearance )

**Appearances**

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

11/15/2013

**Decision**

HARVEY, Mark, Administrative Judge:

In May 2003, Applicant’s non-priority, unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. Eighteen delinquent or charged-off debts, totaling \$21,638, were subsequently listed on his statement of reasons (SOR). He made some progress; however, he failed to mitigate five delinquent SOR debts, totaling \$18,223. 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 July 26, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 4) On May 8, 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)

On June 17, 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 July 16, 2013, was provided to him on August 8, 2013. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.<sup>1</sup> Applicant responded to the FORM and provided 24 pages of documents, which were admitted into evidence without objection (pg. 1-24). The case was assigned to me on October 31, 2013.

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

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c to 1.p, 1.r, and 1.s. He denied the allegations in SOR ¶¶ 1.b and 1.q. He also provided an explanation for his delinquent debts, and provided mitigating information. He did not provide any corroborating documentation from creditors. Applicant's admissions are accepted as findings of fact.

Applicant is 38 years old, and he has been employed as a project manager since July 2011.<sup>3</sup> In 2001, he married, and he has two children, who were born in 2004 and 2007. (Office of Personnel Management (OPM) personal subject interview (PSI) at 3) He graduated from high school in 1992, and he received a bachelor's degree in 2001. He has never served in the military. There is no evidence of criminal arrests or convictions. There is no evidence of use of illegal drugs or alcohol abuse.

In 1999, Applicant and his daughter were in a car accident.<sup>4</sup> Applicant's daughter was killed, and Applicant was seriously injured. Applicant was unable to work for a substantial period after the accident, and his debts became delinquent. In May 2003, Applicant's unsecured, non-priority debts were discharged under Chapter 7 of the Bankruptcy Code.

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<sup>1</sup>The DOHA transmittal letter is dated July 16, 2013, and Applicant's receipt is dated August 8, 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 July 26, 2011 SF 86 is the basis for the facts in this paragraph. (Item 5)

<sup>4</sup>Unless stated otherwise, Applicant's SOR response is the source for the facts in this paragraph and the next six paragraphs. (Item 4 at 4-6)

Applicant's SOR ¶ 1.b telecommunications debt is for \$1,557. He denied responsibility for this debt, as he has service with the same company. He called the telecommunications company. A company representative said the entry was erroneous, and the company will correct their records. Applicant's FORM response includes a printout from the internet indicating a credit reporting company acknowledged receipt of a copy of Applicant's dispute of this debt. (pg. 16)

Applicant mitigated the 11 medical debts in SOR ¶ 1.c (\$64), ¶ 1.d (\$337), ¶ 1.e (\$100), ¶ 1.f (\$155), ¶ 1.g (\$106), ¶ 1.h (\$100), ¶ 1.k (\$32), ¶ 1.m (\$103), 1.n (\$393), 1.o (\$165), and 1.p (\$108). He paid the debts in SOR ¶ 1.c (\$64) (pg. 8-9), ¶ 1.k (\$32), (pg. 10) He initiated a payment plan to address five medical debts: 1.d (\$337); 1.e (\$100); 1.f (\$155); 1.g (\$106), and 1.h (\$100). (pg. 11-13) He stated he intends to pay \$100 monthly starting on October 25, 2013, to address these five debts. (pg. 11-13) On October 22, 2013, he provided \$100 in post-dated checks to the creditor for the five debts. (pg. 18-19) On October 23, 2013, the creditor in SOR ¶ 1.m (\$103), ¶ 1.n (\$393), ¶ 1.o (\$165), and 1.p (\$108) agreed to request removal of the four debts from Applicant's credit reports. (pg. 14, 20-24)

Applicant's debt in SOR ¶ 1.i (\$4,800) is from a credit card Applicant "used to survive and keep [his] family out of foreclosure" during a period of unemployment. In his October 4, 2011, OPM PSI Applicant said he would contact the creditor and make arrangements to pay the debt. (OPM PSI at 6) In his SOR response, he said he made payment arrangements to repay this debt. In his response to the FORM, the creditor in SOR ¶ 1.i (\$4,800) wrote Applicant and acknowledged receipt of a copy of his dispute of the debt. (pg. 15)

Applicant's debt in SOR ¶ 1.j (\$8,169) resulted from a corporate credit card. Applicant's OPM PSI indicates he "is currently making payments to eliminate this debt." (OPM PSI at 4) In his SOR response, Applicant said he is supposed to provide "expenditure receipts to release this debt. The receipts are currently being compiled." Applicant's FORM response did not clarify the status of this debt.

Applicant's debts in SOR ¶ 1.l (\$224), ¶ 1.r (\$2,030), and ¶ 1.s (\$3,000) are owed to department stores. In Applicant's October 4, 2011, OPM PSI Applicant said that he agreed to pay half of the amount to settle the debt in SOR ¶ 1.r, and he is in the process of completing this transaction. (OPM PSI at 5) He also said he contacted the creditor in SOR ¶ 1.s and is in the process of negotiating a settlement of this debt. (OPM PSI at 5) On June 17, 2013, Applicant said the debt in SOR ¶ 1.l would be paid in 30 days. Applicant said the debts in SOR ¶¶ 1.r and 1.s were generated during periods of unemployment, and "[p]ayment arrangements have been made" to repay these two debts. Applicant's FORM response did not clarify the status of these three debts.

Applicant's debt in SOR ¶ 1.q (\$195) is owed to a municipality for a traffic violation. Applicant said his spouse was driving the car registered in his name, and the debt was transferred to her. In response to the FORM, Applicant provided a letter from Applicant's spouse indicating that she took responsibility for the traffic violation fine of \$195 in SOR ¶ 1.q. (pg. 17)

On October 13, 2011, an OPM investigator interviewed Applicant about his finances and discussed numerous delinquent debts with him. (Item 6) Applicant was unemployed from September 2005 to December 2005, January 2009 to May 2009, and April to July 2011. (OPM PSI at 1, 2) Some of his debts also became delinquent due to medical problems, and insufficient income. He took his family on a seven-day cruise outside the United States in February 2008. (OPM PSI at 3) There is no evidence of financial counseling.

In Applicant's October 4, 2011 OPM PSI, he admitted responsibility for the SOR debts. (Item 6) In his March 12, 2013, response to DOHA interrogatories, Applicant said he was disputing his responsibility for the account balances on his credit report because Applicant's father and Applicant have the same name (Applicant is a "Junior" and his father is a "Senior"). (Item 6) He provided letters to the credit reporting companies disputing his responsibility for 19 debts, including most of the SOR debts. (Item 6) He did not dispute his responsibility for the debt in SOR ¶ 1.j for \$8,169.

Applicant's personal financial statement (PFS) shows his monthly gross salary is \$6,731; his monthly net salary is \$5,020; and his monthly net remainder after subtracting expenses is \$735.<sup>5</sup> The only debt payment shown on his PFS is a \$1,435 monthly payment to his mortgage account with a balance of \$136,000. (Item 6 at 8)

### **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

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<sup>5</sup>Applicant's personal financial statement is the source for the facts in this paragraph. (Item 6 at 8)

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 [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**

### **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, responses to DOHA interrogatories, SOR response, and FORM response. His non-priority, unsecured debts were discharged in 2003 under Chapter 7 of the Bankruptcy Code; however, Applicant subsequently generated 18 delinquent or charged-off SOR debts, totaling \$21,638. 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>6</sup> and

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<sup>6</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].

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all SOR debts; however, he provided some mitigating information. Applicant's unemployment, underemployment, low income, and medical problems are all financial conditions largely beyond his control; however, he did not act responsibly under the circumstances. He did not describe any unemployment or changes in his income after July 2011, when he received his current employment. He paid the debts in SOR ¶¶ 1.c (\$64) and 1.k (\$32). He paid \$100 to initiate a payment plan to address five medical debts: 1.d (\$337); 1.e (\$100); 1.f (\$155); 1.g (\$106), and 1.h (\$100).

Applicant successfully disputed the debts in SOR ¶ 1.m (\$103), ¶ 1.n (\$393), ¶ 1.o (\$165), and 1.p (\$108). I have also credited Applicant with mitigating the debt in SOR ¶ 1.q (\$195) because his spouse has taken financial responsibility for paying this traffic ticket, and the debt in SOR ¶ 1.b (\$1,557) because he has a current account with the same telecommunications company.

Applicant's PFS shows a positive monthly remainder of \$735; however, he only established \$196 in payments to his SOR creditors over the previous two years. He did not establish that over the previous two years he could not have settled and paid more of his SOR debts.

Applicant did not provide any documentation, such as a checking account statement, photocopies of checks, or a letter from the creditor proving that he paid or

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(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)).

made any payments to the five creditors in SOR ¶¶ 1.i (\$4,800), 1.j (\$8,169), 1.l (\$224), 1.r (\$2,030) and 1.s (\$3,000). There is no documentation showing financial counseling, correspondence to or from these five creditors, credible debt disputes in light of his previous acceptance of responsibility for these five debts, attempts to negotiate payment plans, or other evidence of progress resolving these five SOR debts. He did not provide documentation proving that he maintained contact with these five SOR creditors.<sup>7</sup> There is insufficient evidence that his financial problems are being resolved and are 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's finances were adversely affected when he became unemployed, he was under employed, and he had medical problems. These were circumstances beyond his control. He paid two debts, successfully disputed four debts, reasonably disputed two debts, and initiated payment plans on five debts. He has been employed by the same defense contractor since July 2011, and for the last two years he had stable employment. 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.

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<sup>7</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.



The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. He received a fresh start in May 2003 when his non-priority, unsecured debts were discharged under Chapter 7 of the Bankruptcy Code; however, he subsequently generated additional delinquent debt. His PFS indicated he has a remainder of \$735, and his FORM response described total payments to SOR creditors of only \$196. He could have made greater progress resolving and documenting resolution of his delinquent SOR debts. He failed to mitigate five delinquent SOR debts, totaling \$18,223. He did not provide documentary proof that he made any payments to these five SOR creditors or that he attempted to settle these five delinquent debts despite claiming efforts to resolve these debts in his 2011 OPM PSI. 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 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.h:	For Applicant
Subparagraphs 1.i and 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m to 1.q:	For Applicant
Subparagraphs 1.r and 1.s:	Against 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