



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-13809  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

06/25/2013

**Decision**

Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists seven delinquent or charged-off debts totaling \$11,935. Delinquent federal income taxes account for \$9,321 of this total. His tax debt and three other SOR debts are paid, reducing his unresolved delinquent debt total to less than \$1,000. Financial concerns are mitigated, and eligibility for access to classified information is granted.

**Statement of the Case**

On September 6, 2011, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1) On February 6, 2013, 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) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge

for a determination on whether his clearance should be granted, continued, denied, or revoked.

On March 13, 2013, DOHA received Applicant's undated response to the SOR. (HE 3) On April 26, 2013, Department Counsel indicated he was ready to proceed on Applicant's case. On May 2, 2013, DOHA assigned Applicant's case to me. On May 21, 2013, Applicant agreed by email with his hearing date of June 10, 2013. On May 24, 2013, DOHA issued a formal notice of hearing and scheduled his hearing for June 10, 2013. Applicant's hearing was held as scheduled, using video teleconference. Department Counsel offered four exhibits, and Applicant offered one exhibit. (GE 1-4; AE A) (Tr. 20-22) There were no objections, and I admitted GE 1-4 and AE A. (Tr. 20-22) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On June 19, 2013, I received the transcript.

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted responsibility for the debts in ¶¶ 1.a, 1.d, and 1.g, and he denied the remaining SOR allegations. Applicant's admissions are accepted as findings of fact.

Applicant is a 32-year-old employee of a defense contractor. (Tr. 5; GE 1) He worked as a full-time firefighter until April 2013, when he lost this position and went to part-time employment because his security clearance was not approved. (Tr. 38-40) His annual salary before moving to part-time status was \$57,500. (Tr. 40) He has two part-time jobs. (Tr. 41) Because of the loss of his full-time employment as a firefighter, he currently has a negative monthly income. (Tr. 42)

Applicant graduated from high school in 2000, and he expects to receive a bachelor's degree in 2013 with a major in business administration. (Tr. 7) He is a certified paramedic. (Tr. 7) He married in 2000, and he was divorced in 2011. (Tr. 6) His children from his first marriage are 6, 10, and 12 years old. (Tr. 6) He married his current spouse in 2012. He has not held a security clearance. (Tr. 10)

Applicant joined the Army in 2001, and he served for three years in an air assault division as an infantry soldier. (Tr. 8-9) He deployed to Iraq from March 8, 2003 to February 1, 2004, and from May 2, 2008 to February 14, 2009. (Tr. 8; GE 4 at I24-I25) He is currently a sergeant (E-5) in his Army Reserve unit, and his military occupational specialty (MOS) is combat medic. (Tr. 8) He received two Army Commendation Medals; however, none of them were with "V Device." (Tr. 9)

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## Financial Considerations

In 2009, Applicant separated from his spouse. (Tr. 23) In April 2010, he discovered several thousand dollars in unpaid debts that his wife had hidden from him. (Tr. 23, 25) He has worked diligently to repair his finances over the last three years.

Applicant's SOR lists seven delinquent or charged-off debts totaling \$11,935. His delinquent federal income taxes constitute \$9,321 of the \$11,935 total. His delinquent debts are discussed in his SF 86, credit reports, Office of Personnel Management (OPM) personal subject interview (PSI), responses to DOHA interrogatories, SOR response, and at his hearing. His seven SOR debts are described as follows:

SOR ¶ 1.a is a medical collection debt for \$38. Applicant diligently sought, but was unable to locate the creditor and account information. (Tr. 24, 27-28)

SOR ¶ 1.b is a medical debt for \$130. Applicant said the office for the creditor was closed. (Tr. 24, 31)

SOR ¶ 1.c is a collection debt for \$628. He did not provide any evidence showing resolution of this debt.

SOR ¶ 1.d is a collection debt for \$284. On May 23, 2013, Applicant paid this debt. (Tr. 22; AE A)

SOR ¶ 1.e is a collection debt for \$651. Applicant said he paid this debt; however, there is no documentation proving the debt is resolved. (Tr. 29) He is credited with resolving this debt.

SOR ¶ 1.f is a collection debt for \$883. Applicant's credit report showed the debt was paid. (GE 3 at 1)

SOR ¶ 1.g is a debt owed to the IRS for \$9,321. In 2009, Applicant's spouse under reported their income to the IRS, and Applicant was unaware of what she had done until their divorce was initiated. (Tr. 24) He made several payments to the IRS under a payment plan; the IRS withheld his spouse's \$3,800 tax refund, reducing the debt to \$6,600; and the IRS advised Applicant that his tax refund was being withheld. (Tr. 25, 33-35) His tax refund is scheduled to be \$9,523, which will completely resolve his delinquent tax debt. (AE B) He should still receive a refund of several thousand dollars from the IRS.

Applicant provided proof that he paid several delinquent debts. (GE 4) They may have been the same debts as alleged in the SOR because sometimes paid debts are erroneously transferred to new collection companies. He paid his state income taxes, except for \$369. (Tr. 37) He intends to pay his remaining state income tax debt, using his federal income tax refund. (Tr. 37) Applicant did not present any evidence that he received financial counseling.

## 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 that, “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 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). 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 consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Nothing in this decision should be construed to suggest that I based this decision, in whole or in part, on any express or implied determination as to 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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” “(c) a history of not meeting financial obligations;” and “(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.” 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 SF 86, credit reports, OPM interview, responses to DOHA interrogatories, SOR response, and statement at his hearing.

Some of Applicant’s debts became delinquent when he became estranged from his spouse, and she concealed some debts from him. Applicant’s SOR alleges seven delinquent or charged-off debts totaling \$11,935. His delinquent federal income taxes from 2009 constituted \$9,321 of this total. AG ¶ 19(g) does not apply because the evidence does not establish his 2009 tax return was filed late, or that Applicant knew his tax return intentionally understated his income. 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). Divorce and his spouse's misconduct caused Applicant to have debts he could not afford to pay for a time. His financial problems were affected by circumstances largely beyond his control. He and his former spouse paid their delinquent federal income taxes. He provided proof that he paid two other debts, reducing the SOR debt total to \$1,447. I accept his statement that he paid one additional debt as credible, further reducing the delinquent SOR debt total to \$819. I am satisfied that if any creditors contact him seeking payment, he will act in good faith to timely resolve the debt.

Application of AG ¶ 20(c) is not warranted. Applicant did not describe receipt of financial counseling. 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 to any debts because he did not provide documentary proof that he disputed any debts.

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<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,

In sum, Applicant fell behind on his debts primarily because of his former spouse's failure to pay their debts and her misrepresentation of their income on their 2009 federal income tax return. He and his former spouse paid their delinquent tax debt, and he paid three other SOR debts. Once Applicant returns to full-time employment, he will be able to maintain his financial responsibility. It is unlikely that financial problems will recur. His efforts are sufficient to fully mitigate financial considerations security concerns.

### **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. My comments under Guideline F are incorporated into 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 denial of Applicant's access to classified information. Applicant's credit reports and SOR allege seven delinquent or charged-off debts totaling \$11,935. His delinquent federal income taxes from 2009 constituted \$9,321 of this total.

The evidence supporting approval of Applicant's clearance is more substantial than the evidence supporting denial. Applicant is a 32-year-old employee of a defense contractor, who has been working as a firefighter and paramedic. There is no evidence at his current employment of any disciplinary problems. He served in the active Army and the Army Reserve from 2001 to present. He served in Iraq for more than a year (two tours). He has never held a security clearance. There is no evidence of disloyalty

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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)).

or that he would intentionally violate national security. He has not had any alcohol-related problems. He and his former spouse paid their delinquent federal income tax debt. He paid three other SOR debts. He has less than \$1,000 of unresolved delinquent debt. His track record of delinquent debt resolution shows Appellant's current reliability, trustworthiness, and good judgment.

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 approval of Applicant's access to classified information is clearly consistent with national security.

### **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.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to approve Applicant's security clearance. Eligibility for access to classified information is approved.

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MARK HARVEY  
Administrative Judge