



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



In the matter of: )  
 )  
----- ) ISCR Case No. 12-00433  
 )  
Applicant for Security Clearance )

**Appearances**

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

01/23/2014

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges seven delinquent, collection, or charged-off debts, totaling \$27,525. He failed to provide sufficient documentation of 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 29, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of his security clearance application (SF 86). (Item 4) On June 5, 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 27, 2013, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 3) A complete copy of the file of relevant material (FORM), dated August 26, 2013, was provided to him on September 17, 2013.<sup>1</sup> Applicant did not respond to the FORM. The case was assigned to me on January 16, 2014.

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

In Applicant's SOR response, he admitted the debt in SOR ¶ 1.a and denied the remaining SOR allegations. (Item 3) He explained why he denied the allegations in SOR ¶¶ 1.b to 1.g and why he did not pay the debt in SOR ¶ 1.a. However, he did not provide any documentation from creditors, disputes, or other evidence of payments as part of his SOR response. Applicant's admissions are accepted as findings of fact.

Applicant is 34 years old, and he has worked on power plants for his current employer, a defense contractor, since January 2009.<sup>3</sup> In 2003, he married, and he was divorced in May 2008. He does not have any children. He graduated from high school in 1998. He attended college from September 1998 to December 1999; however, he did not receive a degree.

From January 2000 to July 2006, Applicant worked for the Army National Guard. From January 2002 to July 2003, he worked as an aircraft mechanic for the Army. From July 2005 to December 2008, he worked on power plants for a government contractor. There is no evidence of unemployment or use of illegal drugs or alcohol abuse.

When Applicant completed his August 29, 2011 SF 86, he disclosed his delinquent debts. Applicant said he was not fully aware of his delinquent debts until he checked his credit report before he completed his SF 86. He also described his former spouse's responsibility for several delinquent debts that appeared on his credit report.

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<sup>1</sup>The DOHA transmittal letter is dated August 26, 2013, and Applicant's receipt is dated September 17, 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. Unless stated otherwise, Applicant's August 29, 2011 SF 86 and/or his October 20, 2011 Office of Personnel Management (OPM) personal subject interview (PSI) are the primary sources for the facts in the Statement of Facts. (Items 4, 5)

<sup>3</sup>The facts in this paragraph and the next two paragraphs are from Applicant's August 29, 2011 SF 86. (Item 4)

Applicant's SOR and credit bureau reports, dated September 13, 2011; February 21, 2013; and April 18, 2013, describe seven delinquent, collection, or charged-off debts, totaling \$27,525.

(1) ¶ 1.a is a medical debt (\$2,799)—UNRESOLVED. Applicant said he owed the debt to a hospital. He attempted to set up a payment plan; however, the creditor said Applicant did not qualify for a payment plan. Later, he attempted to pay the debt, and he learned it was transferred to a collection company. Applicant received a "number", however, it "just led him to a dead end." He did not provide the dates for these events. It is unclear whether he has done anything in the most recent 12 months to resolve this debt. (Item 3)

(2) ¶ 1.b is a charged-off bank account (\$1,863)—UNRESOLVED. Applicant said he paid the collection agent handling this debt in February 2008; however, he did not provide any documentation sent to or received from the collection agent. (Item 3)

(3) ¶ 1.c is a charged-off department store account (\$4,508)—UNRESOLVED. Applicant said his former spouse was responsible for this debt as indicated in his divorce papers. She filed for bankruptcy shortly after the divorce. (Item 3)

(4) ¶ 1.d is a military store collection account (\$1,178)—UNRESOLVED. Applicant said he paid this debt in December 2007; however, he did not provide any documentation sent to or received from the creditor. (Item 3)

(5) ¶ 1.e is a charged-off bank account (\$10,591)—UNRESOLVED. Applicant said his former spouse was responsible for the debt as indicated in his divorce papers. She filed for bankruptcy shortly after the divorce. (Item 3)

(6) ¶ 1.f is a bank charged-off account (\$250)—UNRESOLVED. Applicant said his former spouse was responsible for the debt as indicated in his divorce papers. She filed for bankruptcy shortly after the divorce. (Item 3)

(7) ¶ 1.g is a debt owed to the Internal Revenue Service (IRS) for tax year 2008 (\$6,336)—UNRESOLVED. Applicant said he paid this debt in May 2012. (Item 3)

Applicant did not provide a copy of his divorce documentation to corroborate his statement that his wife agreed to accept sole responsibility for paying the debts in SOR ¶¶ 1.c, 1.e, and 1.f. He did not provide any corroborating documentation proving that he made any payments to any of his SOR creditors (such as cancelled checks or bank statements), settled any debts (such as correspondence from or to creditors), or otherwise resolved the SOR debts. Applicant's March 25, 2013 personal financial statement (PFS) indicated: his monthly gross salary is \$5,672; his monthly net salary is \$4,251; his monthly expenses are \$1,930; his monthly debt payments are \$601; and his monthly net remainder is \$1,720. (Item 5)

Applicant's FORM noted the absence of mitigating information and explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary

response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.” (FORM at 5) He did not respond 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 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 [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 personal subject interview (PSI), responses to DOHA interrogatories, and SOR response. Applicant’s file documents seven delinquent, collection, or charged-off debts, totaling \$27,525. Several debts have been delinquent for more than three years. 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.

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).

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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 he 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)).

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 of his SOR debts; however, he provided some mitigating information. Applicant said he was not fully aware of his delinquent debts until he checked his credit report in 2011. His spouse handled their finances. Applicant said his divorce allocated the debts in SOR ¶¶ 1.c, 1.e, and 1.f to his former spouse. Divorce and reliance on his spouse to handle his finances are financial conditions largely beyond his control; however, he did not act responsibly under the circumstances. He failed to provide a copy of the divorce documentation to corroborate his assertion that his spouse accepted responsibility for these three debts. Assuming the debts were allocated to Applicant's spouse, he still has the burden of enforcing those debt allocations in court, unless the creditors concurred with those designations or otherwise released him from responsibility for repayment.

Applicant did not provide sufficient documentation about his finances to establish his inability to pay his creditors. Applicant did not receive financial counseling, and he did not establish that there are clear indications that the problem is being resolved or is under control.

In sum, Applicant did not provide any documentation, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to any of the seven SOR creditors. There is no financial documentation in the record relating to these seven SOR creditors showing: maintenance of contact with creditors;<sup>5</sup> correspondence to or from these seven creditors; credible debt disputes; attempts to negotiate payment plans; or other evidence of progress or resolution of these seven SOR debts. There is insufficient evidence that his financial problems are being resolved, are under control, and will not occur in the future.

### **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

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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.

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 his spouse was handling the family finances and when she failed to abide by the promises she made in their divorce. These two occurrences resulted in negative financial conditions largely beyond his control. There is no evidence that Applicant abused 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 financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Several debts on his SOR became delinquent more than three years ago. He was well aware of his financial problems, as he disclosed them on his August 29, 2011 SF 86 and during his October 13, 2011 OPM PSI. He did not provide correspondence written to or received from the creditors showing that he attempted to settle or make any payments to resolve any of his seven delinquent SOR debts. His PFS shows that he had an ample monthly remainder; nevertheless, he did not prove that he paid any SOR debts, even though one of his SOR debts was only \$250. He failed to mitigate seven delinquent, collection, or charged-off debts, totaling \$27,525. His failure to provide documentation establishing his financial responsibility shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. 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
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Subparagraphs 1.a to 1.g:	Against Applicant
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## **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