



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-02545
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2013

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems are the result of circumstances beyond his control. He paid one SOR debt, established a payment plan on a second SOR debt, and intends to pay the remaining SOR debt in turn. He presented evidence of efforts to resolve his delinquent debts and is establishing control of his financial situation. Clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 2, 2010. On October 11, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations).<sup>1</sup> Applicant answered the SOR on November 6, 2012, and requested a hearing before an administrative judge.

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<sup>1</sup> The DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DoD on September 1, 2006.

The case was assigned to me on November 29, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 5, 2012, scheduling a hearing for January 7, 2013. At the hearing, the Government offered exhibits (GE) 1 through 4. Applicant testified and submitted three exhibits (AE) 1 through 3. AE 2 and 3 were received post-hearing. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on January 15, 2013.

### **Findings of Fact**

Applicant admitted the three factual allegations in SOR, with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 31-year-old information systems security analyst employed with a government contractor. He has never been married, and he has no children. In June 1999, he enlisted in the U.S. Marine Corps (Marines), and served on active duty until December 2003. He achieved the grade of lance corporal (E-3), and was administratively discharged because he failed to meet height and weight standards. His service was characterized as honorable.

After his discharge, Applicant was unemployed for approximately 10 months. He worked for a government contractor from October 2004 until December 2005. Applicant stopped working for that government contractor to attend college from January 2006 until 2009. He did not complete his bachelor's degree because he did not have the money to continue with his education. He requires 45 additional credits to complete his bachelor's degree. He paid for his three years of college using his GI Bill benefits and by using student loans.

While in college, Applicant worked occasional part-time jobs, but for the most part he was unemployed. From May 2009 until August 2009, Applicant was employed full-time with a government contractor. From September 2009 until August 2010, Applicant was mostly unemployed with some periods of part-time employment as a substitute teacher and waiter. He was employed full-time from August 2010 until June 2011, working for two government contractors. He was unemployed from June 2011 until April 2012. He was hired in April 2012 by a government contractor, and he has worked for his current employer, a government contractor, from June 2012 to present.

Applicant possessed access to classified information at the secret and top secret levels from 2000 to present as a result of his work for government contractors. His access to classified information was suspended while he was in college or unemployed, but his security clearance has been reinstated whenever he has been rehired by government contractors. There is no evidence to show that Applicant compromised or caused others to compromise classified information. Outside of the security concerns

alleged in the current SOR, there is no evidence that Applicant had any other security issues of concern.

Applicant disclosed in his November 2010 SCA (Section 26 - Financial Record), that during the prior seven years, he had defaulted on student loans and that these were turned over to collection agencies. The subsequent background investigation revealed the three delinquent student loans alleged in the SOR, totaling over \$41,000. Applicant explained that these were his student loans which became delinquent because of his unemployment and underemployment situation. He was not earning sufficient money to pay for his day-to-day living expenses and his student loans.

Applicant considers himself to be honest, trustworthy, and a dedicated employee. He believes he demonstrated his loyalty to the United States through his years of military service. He credibly testified that he would never do anything to harm the United States. He noted that he has held access to classified information for 12 years without any security incidents. He believes he is a valuable employee with good performance. Now that he is employed full-time, Applicant is trying to bring his delinquent loans current.

Applicant presented documentary evidence to establish that he settled and then paid the debt alleged in SOR ¶ 1.a (\$10,412) around October 2010. (AE 1 and 2) He also established a payment plan with the creditor for the debt alleged in SOR ¶ 1.b (\$14,866) in January 2011. He made 12 monthly consecutive payments and was current on his payment plan as of his hearing. This student loan is now in rehabilitation status. Applicant promised to pay \$500 a month until the debt is paid.

Concerning the debt alleged in SOR ¶ 1.c (\$16,184), Applicant testified that he has been making payments on this delinquent debt (two consolidated student loans) since 2009. (Tr. 36-39). Applicant's bank records from December 2009 to December 2012 show that he made some payments to the Department of Education. They also confirm that Applicant made numerous payments by check, which Applicant averred were made to the creditor in SOR ¶ 1.c. The bank records do not show the payee of those checks. Notwithstanding, considering the record as a whole and Applicant's demeanor while testifying, I find his testimony credible.

### **Policies**

Eligibility for access to classified information may be granted "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. 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).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that 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 ¶ 18)

Applicant paid for three years of college education using his credit and student loans. He did not have the financial means to finish his last year of college. After leaving college, he has been unemployed or underemployed during extensive periods of time. Applicant's student loans became due in 2010. Because of his employment situation he was unable to address his student loans and they became delinquent. His financial problems continue to the present as evidenced by the three delinquent debts alleged in the SOR, totaling about \$41,000. Two of the financial considerations disqualifying

conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's periods of unemployment and underemployment are circumstances beyond his control that contributed to his financial problems. He presented documentary evidence showing that in late 2012 he paid the debt alleged in SOR ¶ 1.a. He also established that he made consecutive payments toward the debt alleged in SOR ¶ 1.b from January 2011 to present. That student loan is now rehabilitated and Applicant has a payment plan in place. Applicant made some payments on the delinquent debt alleged in SOR ¶ 1.c. He promised to be more aggressive paying this debt in the future.

Considering the record as a whole, I find that Applicant should have been more aggressive and timely in addressing all of his delinquent debts. Notwithstanding, I find that Applicant established a viable plan to resolve his financial problems, and he has taken significant actions to implement his plan. Although Applicant's financial problems are ongoing, he has established that he is in control of his financial situation and that his financial problem is being resolved. Applicant is fully aware that he is required to maintain financial responsibility to be eligible for a security clearance.

AG ¶ 20(a) applies, in part, because Applicant's financial problems occurred under such circumstances that it is unlikely to recur, and it does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶¶ 20(b) and 20(d) apply to this case because Applicant made good-faith efforts to pay his creditors, and there are indications that his financial problems are being resolved or under control. AG ¶¶ 20(c), 20(e), and 20(f) are not applicable to the facts of this case.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant is 31 years old. He honorably served four years in the Marine Corps. He has experience working for government contractors while possessing a security clearance. Except for the current security concern, there is no evidence of any problems or concerns while he possessed a security clearance.

Applicant's financial problems were largely the result of circumstances beyond his control. Because of his limited income he has been slow addressing his delinquent debts. Currently, Applicant more fully understands the importance of maintaining financial responsibility. He was honest and truthful in his answers to the SCA questions. Considering the record as a whole, Applicant has a viable plan to resolve his delinquent debt, and he is taking control of his financial situation.

### **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-1.c:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge