



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



In the matter of: )  
)  
) ISCR Case No. 14-03984  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Douglas Velvel, Esq., Department Counsel  
For Applicant: *Pro se*

09/09/2016

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**Decision**

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TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On January 15, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On October 21, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or denied.

On November 6, 2014, Applicant responded to the SOR. On January 4, 2016, Department Counsel was ready to proceed. On March 4, 2016, the case was initially assigned to another administrative judge, however, on April 15, 2016, it was reassigned to me. On May 19, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice setting the hearing for June 8, 2016. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant testified, did not call any witnesses, and offered Applicant Exhibit (AE) A, which was received into evidence without objection. On June 16, 2016, DOHA received the hearing transcript (Tr.).

I held the record open until July 8, 2016, to afford the Applicant an opportunity to offer additional evidence. Applicant timely submitted AE B through AE O, which were received into evidence without objection.

### **Findings of Fact**

In his SOR answer, Applicant admitted SOR ¶¶ 1.a, 1.c, and 1.e; and denied SOR ¶¶ 1.b, 1.d, and 1.f. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 58-year-old metrology operations program manager employed by a defense contractor since November 1978. He seeks to retain his secret security clearance. Applicant has successfully held a security clearance at some level since he began working for his company. (Tr. 12-16; GE 1; AE J)

Applicant graduated from high school in June 1976. He attended college for approximately three semesters after graduating from high school, but did not graduate. Applicant has completed "numerous" job-related courses since he began working for his company. (Tr. 17-19; GE 1)

Applicant married his first wife in July 1981 and divorced her in April 1998. He has three adult sons from that marriage. He remarried his second wife in December 2001 and divorced her in March 2012. He has no children from his second marriage. Applicant did not serve in the U.S. armed forces. (Tr. 19-22; GE 1)

### **Financial Considerations**

Applicant's SOR lists six debts totaling \$38,948. (SOR ¶¶ 1.a – 1f) Applicant's financial difficulties began following the divorce from his first wife. She was a habitual alcoholic who used household money to sustain her drinking habit. Applicant kept the

house, however, to keep the house he refinanced it to pay his wife \$50,000 in their divorce settlement. (Tr. 22-23)

After his sons were emancipated, Applicant needed to downsize and sold the family home, which was in need of costly repairs. The only way he was able to sell the house in 2013 was through short sale as a result of a depressed housing market. After selling his house through short sale, he was left with a \$23,120 second mortgage. (SOR answer; Tr. 24-25)

In addition to Applicant's home sale problems, his oldest son had developed an addiction to prescription painkillers following a skateboard accident. In order to finance his habit, he stole Applicant's identity to open up at least five credit accounts. Applicant is pleased to report that his oldest son has been drug-free for over two years. (SOR answer; Tr. 26-27; AE A)

Applicant has paid, settled, resolved, or successfully disputed his six debts. His first debt is a charged-off second mortgage for \$23,120 that has been settled in full as of November 27, 2013. **Account resolved.** (SOR ¶ 1.a; SOR answer; Tr. 27-28) Applicant denied his second debt which was a collection account for \$13,894 claiming he had no knowledge of this creditor. The creditor has since closed the account and ceased further collection efforts as of June 10, 2016. **Account resolved.** (SOR ¶ 1.b; Tr. 28-30; GE 2; AE B) The third debt is a charged-off utility account for \$598. This account was paid and closed as of July 17, 2013. **Account resolved.** (SOR ¶ 1.c; Tr. 30-32; AE C)

Applicant denied this fourth debt, which is a charged-off department store debt for \$268. This account was opened by Applicant's son. Applicant provided documentation in which the creditor acknowledged this is not Applicant's account. This account does not appear on Applicant's latest credit report. **Account resolved.** (SOR ¶ 1.d; Tr. 32-33; AE A, AE D) Applicant's fifth debt is a collection account for \$868 for a cell phone. Applicant submitted a letter from the creditor dated June 10, 2016, advising that this was not Applicant's account and that the creditor was removing this entry from Applicant's credit report. **Account resolved.** (SOR ¶ 1.e; Tr. 33-34; AE E) Applicant's last debt is a collection account for \$200. This account was opened by his son. Applicant submitted a letter from the creditor dated June 10, 2016, advising this account was paid in full. **Account resolved.** (SOR ¶ 1.f; Tr. 34-35; AE F)

Applicant's annual salary is approximately \$100,700. He is sharing a house with his girlfriend and they split expenses. (Tr. 35-37) His post-hearing budget shows a net monthly remainder of \$3,221. Applicant's budget further reflects that he is leading a modest lifestyle and living within his means. (AE G; Tr. 42)

## Character Evidence

Applicant submitted four work-related reference letters that were written by individuals who are at the management level within the company. These letters

collectively describe Applicant as hard working, having a positive attitude, loyal, trustworthy, and someone who is making a contribution to the national defense. (AE H – AE K) Applicant also submitted his performance evaluations for the years 2013 through 2015. These evaluations document Applicant's above average performance and clearly reflect that he is an individual who is an asset to his company. (AE L – AE N; Tr. 42-44)

## **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.

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 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**

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 financial considerations 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." Applicant's history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

Five financial considerations 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 does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

Application of AG ¶ 20(b) is warranted. Applicant's divorce and post-divorce fallout could not have been anticipated. Nor could he have foreseen that the housing market would have declined to the extent that it did when he sold his house in 2013. To exacerbate matters even more, Applicant's oldest son stole his identify to support a prescription painkiller addiction that contributed to Applicant's credit problems.

AG ¶¶ 20(c), 20(d), 20(e) are fully applicable. Although Applicant did not participate in financial counseling, there are clear indications that his financial problems are resolved and under control. Applicant has settled, paid, or successfully disputed all six of his SOR debts. Having heard Applicant's testimony, it is clear that this process has made a substantial impression on him. He clearly realizes the importance of maintaining financial responsibility.

### **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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's 37 years of employment in the defense industry and having successfully held a security clearance during those years weighs heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been resolved. Due to circumstances beyond his control, his debts became delinquent. Despite his financial setback, it is clear from Applicant's actions that he had regained financial responsibility. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's years of financial responsibility before falling into debt, the circumstances that led to his financial difficulties, his financial recovery, the steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, his reference letters, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **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.f:                      For Applicant

### **Conclu sion**

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

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Robert J. Tuidor  
Administrative Judge