



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



In the matter of: )  
)  
) ISCR Case No. 14-05360  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq.

02/21/2017

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems resulted from his divorce and periods of unemployment. He paid or resolved most of his delinquent debts and his credit report shows no new delinquent debt. He established he is in control of his financial situation. Financial considerations security concerns are mitigated. Access to classified information is granted.

**History of the Case**

Applicant submitted a security clearance application (SCA) on November 23, 2011. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on November 27, 2015, issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on December 18, 2015 (Answer), and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

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<sup>1</sup> The DOD acted under Executive Order (EO) 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 April 13, 2016. DOHA issued a notice of hearing on May 4, 2016, scheduling the hearing for June 6, 2016. The hearing was held as scheduled. Government exhibits (GE) 1 through 5, and Applicant's exhibit (AE) 1 (comprised of Tabs A through L) were admitted into evidence without objection. On June 14, 2016, DOHA received the transcript of the hearing.

### **Findings of Fact**

In Applicant's response, he admitted all the SOR allegations. He also provided extenuating and mitigating information, and disputed the total debt owed on some of his delinquent accounts. Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact.

Applicant is 50 years old. He has a high school diploma and completed some college courses, but did not earn a degree. He enlisted in the Navy in 1987, where he served on active duty six years and then completed two additional years in the Reserve. He achieved the rank of E-4 and received an honorable discharge.

Applicant's employment history shows he was employed from June 2001 to November 2002; unemployed from November 2002 to January 2003; employed from January 2003 to June 2007; unemployed from May 2007 to February 2008; employed during most of 2008; unemployed from December 2008 to March 2009; employed from March 2009 to July 2009; unemployed from July 2009 to December 2009; and he has been employed from December 2009 to present.

Applicant started working for federal contractors in 2004. He was hired by his current employer, a federal contractor, in 2011. He has possessed a secret clearance on-and-off since 2007, and requires a clearance to retain his job. Applicant has been deployed to the Middle East in support of U.S. personnel since 2011. He was injured during a rocket attack in 2012, and carries a piece of shrapnel in his chest. His hourly-rate is \$23 plus uplift, hazardous duty pay, and overtime.

Applicant married in 2010 and divorced in 2012. He married his wife in July 2012. He has two grown stepchildren who are attending college.

Applicant submitted his most recent SCA in 2011. In response to Section 26 (Financial Record) of the SCA, Applicant disclosed that during the last seven years he had financial problems, including a foreclosed mortgage and other delinquent accounts.

Applicant's security investigation addressed his financial problems and revealed the six SOR debts. Applicant's history of delinquent debt is documented in his credit reports, his SOR response, his testimony, and the record evidence. The status of his SOR debts is as follows:

SOR ¶ 1.a alleges Applicant's foreclosed mortgage. Applicant explained that in 2009, he was fired from his job because of excessive absences. His car engine blew up and he could not repair the car in a timely fashion. He claimed he had no other means of

transportation to get to work. After he was fired, he exhausted his retirement funds to pay his mortgage and living expenses. The mortgage went into foreclosure, but Applicant continued communications with the lender.

After he was hired in December 2009, Applicant attempted to establish a payment plan. His job required him to deploy overseas and the lender told him to make no payments on the mortgage until he was notified to do so. Applicant averred the lender foreclosed the mortgage illegally; that he received no notice of the foreclosure. Ultimately, the lender paid him \$6,000 to settle any possible claims related to the foreclosure. Applicant averred he does not owe any money resulting from this foreclosure. Applicant's credit report (AE I) shows the mortgage in an "OK" status, with a "0" balance.

SOR ¶ 1.b alleges Applicant's delinquent phone service account. He paid the debt in July 2015. (AE D)

SOR ¶ 1.c alleges a delinquent account in collection. Applicant's documentary evidence shows he paid the debt on an unspecified date. (AE E)

SOR ¶ 1.d alleges Applicant owes a credit card debt of \$9,741. Applicant explained that he worked for a federal contractor that issued him a travel credit card. The travel card contained inaccurate charges. A supervisor told him and other employees not to make any payments until the questionable charges were resolved with the credit card company. Applicant was let go from his job when the contract ended, and he was never asked to make any payments. Applicant further claimed he attempted to contact his prior employer concerning the debt without success. Applicant believes his prior employer paid the debt because it is no longer reflected in his credit report.

SOR ¶ 1.e alleges a delinquent natural gas debt. Applicant claimed he paid this debt. He submitted a letter from the gas company indicating the debt "was removed from credit agency reporting" in March 2016.

SOR ¶ 1.f alleges a delinquent debt for telephone services. Applicant's former girlfriend made 50% of the charges. She agreed to pay the debt and failed to do so. Applicant also claimed that when he had the opportunity to pay the debt, his credit report no longer listed the debt. He never made any payments on this debt.

Applicant explained that his periods of unemployment adversely affected his financial situation. Although he received unemployment benefits during some of his unemployment periods, his income was insufficient to cover his living expenses and outstanding debts. At his hearing, Applicant expressed remorse for his financial problems. He testified that his financial situation is now stable and that he is motivated to resolve his financial problems. He obtained financial counseling twice. (AE G, H)

Applicant believes he has been making improvements resolving his financial problems. He testified he had other debts not alleged in the SOR that he has resolved in the process of becoming financially stable. He noted that many of his delinquent debts

were paid or have been resolved and are no longer in his credit report. He needs his clearance and current job to continue paying his debts.

Applicant does not consider himself a security risk. He served on active duty and continues to serve U.S. interests overseas while risking his life. He believes his financial situation is stable. He testified he has approximately \$80,000 in savings that he intends to use to buy a home. He does not want to go through a home foreclosure ever again and intends to pay cash for his home. Applicant understands that he is required to maintain his financial responsibility to be eligible for a clearance.

### **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

### 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.

Applicant's history of financial problems is documented in his credit reports, his SOR response, his testimony, and the record evidence. 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." The record 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>2</sup> and

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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, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than

(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 presented some important positive financial information. His employment history indicates repeated periods of unemployment for extended periods. Between 2002 and 2009, he was unemployed four times. Because of his unemployment, he lacked sufficient income to make payments and keep some debts current. Additionally, he divorced his first wife in 2012. His financial problems were caused or exacerbated by his divorce and the periods of unemployment – circumstances beyond his control.

Applicant acknowledged his delinquent debts, and he has been making payments to some creditors. I have credited Applicant with mitigating all the accounts alleged in the SOR except for SOR ¶ 1.d (\$9,741 credit card debt). He participated in financial counseling twice. Additionally, the credit reports show that he has not acquired any new delinquent debt.

Considering the evidence as a whole, Applicant's past financial problems do not cast doubt on his current reliability, trustworthiness, or good judgment. I find there are clear indications that his financial problem is being resolved and is under control. Applicant understands that he has to maintain financial responsibility to be eligible for a clearance and retain his job.

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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)).

### **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). I have incorporated my comments under Guideline F in my whole-person analysis, but some warrant additional comment.

Applicant is 50 years old. He served in the Navy for eight years, has worked for federal contractors since 2003 (on-and-off), and he has held a security clearance since 2007. He has been deployed overseas and works in dangerous conditions for his current employer since 2009. There is no evidence of security violations.

Several circumstances beyond his control adversely affected his finances, including his periods of unemployment and his 2012 divorce. He should have been more diligent in taking action to resolve his financial problems. Notwithstanding, he has resolved most of the SOR financial concerns, and he is in control of his financial situation. Under the totality of the circumstance of this case, Applicant's evidence is sufficient to establish his financial responsibility. Financial considerations concerns are mitigated.

### **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.f:	For Applicant

### **Conclusion**

In light of all of 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. Eligibility for access to classified information is granted.

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JUAN J. RIVERA  
Administrative Judge