



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



In the matter of: )  
)  
) ISCR Case No. 15-01926  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/17/2017

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**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant's financial problems resulted mostly from circumstances beyond his control. He recently 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 August 4, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on November 5, 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 4, 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 13, 2016. The hearing was held as scheduled. Government exhibits (GE) 1 through 6, and Applicant's exhibits (AE) 1 through 12, were admitted into evidence without objection. AE 9 through 12 were received post-hearing. On June 21, 2016, DOHA received the transcript of the hearing.

### **Findings of Fact**

In Applicant's response, he admitted all of the SOR allegations. He also provided extenuating and mitigating information, and disputed two 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 33 years old. He graduated from high school and enlisted in the U.S. Navy in 2002. He served on active duty until March 2008, when he was separated following non-judicial punishment for assault and fraternization. He received a general discharge (under honorable conditions). Applicant married in 2007 and separated the following year. He lives with a cohabitant and has four children. He provides court-ordered child support for two of the children.

Applicant explained that after his March 2008 discharge, he was unemployed for a period and forced to take a job in another state. He explained that he had a wife, his first child was recently born, he had two car payments, and rent to pay, and he had no job. He took the first job offer that came in. On his way to his new job, he was involved in a car accident that prevented him from working until early 2009. Applicant was hired by his current employer, a federal contractor, in 2009. In addition to his regular job, Applicant took a part-time job during most of 2011 to increase his earnings and pay his debts, but had to quit his part-time job because of conflicting work schedules.

Applicant submitted his most recent SCA in 2014. In response to Section 26 (Financial Record) of the SCA, Applicant did not disclose any debts; however, he stated that he was in the process of seeking a credit counseling service to help him pay his previous debts. At his hearing, Applicant explained that after his discharge, he was unable to find employment, he lived off his small savings, and his debts accumulated. Then his car accident and recovery period prevented him from working until early 2009. Additional debts accumulated because of the medical treatment he received and his living expenses.

Applicant's security investigation addressed his financial problems and revealed the 10 SOR debts, totaling about \$19,000. Applicant's history of delinquent debt is documented in his credit reports, his SOR response, and his testimony. At least half of the SOR debts are medical debts resulting from his 2008 car accident and convalescing period. The remaining debts are credit card delinquent debts that he acquired to pay for his living expenses. The status of his SOR debts is as follows:

SOR ¶¶ 1.a and 1.c through 1.f allege delinquent debts for medical services Applicant received from different providers following his 2008 car accident. At the time, he was unemployed and had no medical insurance. Applicant claimed he contacted the

collecting agency several times and attempted to establish a payment plan. (Tr. 27) He averred the collector refused to establish a payment plan because Applicant lives in a "closed border state" where the collector is not authorized to do business. Applicant claimed the collector intercepted and garnished his tax returns several times.

Applicant submitted documentary evidence showing that he paid SOR ¶¶ 1.c through 1.e on June 10, 2016. He disputed the debt alleged in SOR ¶ 1.f because he did not recognize the creditor and had no information about him, and the debt was removed from his credit report. (Tr. 28, AE 1)

SOR ¶ 1.b allege Applicant's delinquent credit card account. Between 2009 and 2011, Applicant used a credit counseling service (accountant) to help him pay his debts, including SOR ¶ 1.b. (Tr. 42) He developed a conflict with the counseling service accountant and stopped using their services. Applicant presented no evidence of any payments made, or of any additional efforts to resolve this debt until June 2016. A week before his hearing, Applicant settled the debt and entered into a payment agreement scheduled to start after the hearing date. (Tr. 27)

Applicant submitted documentary evidence showing that he paid the accounts alleged in SOR ¶¶ 1.g through 1.i in June 2016, after they were charged off. (SOR ¶ 1.g, see AE 7 and 8; SOR ¶ 1.h, see AE-3; SOR ¶ 1.i, see AE 6)

Concerning SOR ¶ 1.j, Applicant testified that the creditor garnished his pay until the debt was paid. (Tr. 28)

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. He needs his clearance and current job to continue paying his debts and supporting his four children. Taking care of his children seems to be his priority.

Applicant explained that in 2010, he received notice that he was almost \$20,000 in arrears on his child support. Since then, his first priority has been paying his child support and to bring his arrearages current. At his hearing, Applicant testified he believes he is current on his child support obligations. AE 8 shows Applicant has been making child support payments since January 2011, and that occasionally he pays additional child support. He appears to have reduced his support arrearage to around \$11,587.

At his hearing, Applicant expressed remorse for his financial problems. He acknowledged he made a bad mistake when he engaged in criminal misconduct while in the Navy. He believes that his 2008 accident was a circumstance beyond his control that caused most of his delinquent obligations, including his child support arrearage. He testified that his financial situation is now stable and that he is motivated to resolve his financial problems. He obtained financial counseling twice, in 2009 and 2013, from two different companies. Currently, he is keeping his own budget and managing his expenses.

Applicant does not consider himself a security risk. He served on active duty and continues to serve U.S. interests while working for a Government contractor. He believes his financial situation is stable. 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 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)).

(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 separation from the service was followed by a period of unemployment and a car accident that caused an extended period of unemployment, and increased medical and credit debt. Most of the SOR debts relate to the car accident and his following period of unemployment. Because of his unemployment, he lacked sufficient income to make payments and keep some debts current. Additionally, he separated from his first wife in 2008. I find that Applicant's financial problems were caused or exacerbated by his car accident and the following period of unemployment, which were circumstances beyond his control.

Applicant acknowledged his delinquent debts, and he has been making recent payments to some creditors. I have credited Applicant with mitigating all the accounts alleged in the SOR except for SOR ¶ 1.a (\$9,345 medical services debt). He participated in financial counseling twice, and he is currently in control of his own finances. 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. Applicant should have been more diligent addressing his delinquent debts, but I find his efforts sufficient to mitigate the financial considerations security concerns. He has been paying his child support obligation, paid his car note early, and has paid other accounts not alleged in the SOR. 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.

### **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 33 years old. He served in the Navy for five years, and has worked for a federal contractor since 2009. Several circumstances beyond his control adversely affected his finances. 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
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Subparagraphs 1.a - 1.j:	For Applicant
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### **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