



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02016

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

07/19/2016

**Decision**

TUIDER, Robert J., Administrative Judge:

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

**Statement of the Case**

On April 30, 2014, Applicant submitted a Questionnaire for National Security Positions (SF-86). On November 3, 2015, 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 continue 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, revoked, granted, or denied.

On November 16, 2015, Applicant responded to the SOR. On February 29, 2016, Department Counsel was ready to proceed. On March 9, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On April 1, 2016, DOHA issued a hearing notice, setting the hearing for April 21, 2016. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through GE 4, which were received into evidence without objection. Applicant called one witness, testified, and offered Applicant Exhibits (AE) A through AE E, which were received into evidence without objection.

I held the record open until May 20, 2016, to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE F through AE J, which were received into evidence without objection. On April 29, 2016, DOHA received the hearing transcript (Tr.).

### **Findings of Fact<sup>1</sup>**

In his Answer to the SOR, Applicant admitted all of the SOR allegations with explanations. Applicant's admissions are incorporated as findings of fact.

### **Background Information**

Applicant is a 45-year-old senior technician employed by a defense contractor since November 2009. He seeks to retain his secret security clearance, which is a condition of his continued employment. (GE 1; Tr. 12-16)

Applicant graduated from high school in June 1989. He served in the U.S. Army from July 1989 to July 2009 and retired as a sergeant (pay grade E-5) with 20 years of honorable service. Applicant deployed twice during his Army service. The first deployment was to Saudi Arabia and Kuwait from December 1990 to May 1991, and the second deployment was to Iraq from August 2007 to November 2008. (AE D; Tr. 16-17)

Applicant had a previous marriage from September 1993 to February 2002 that ended by divorce. He remarried in October 2013 and his wife is employed part-time as a technical representative for a cable company. Applicant has a 23-year-old daughter and an 18-year-old son from his first marriage. He pays his former spouse \$750 in monthly child support for his son. (GE 1; Tr. 17-19, 38-39)

### **Financial Considerations**

Applicant's SOR contains four allegations consisting of a \$36 past-due medical bill, a \$220 past-due consumer bill, a \$470 cable bill collection account, and an \$18,416 charged-off automobile loan, totaling \$19,142. The four allegations are substantiated by

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

his June 9, 2014 Office of Personnel Management Personal Subject Interview (OPM PSI), May 23, 2014 and October 13, 2015 credit reports, SOR answers, and hearing statements. (SOR ¶¶ 1.a – 1.d, GE 2, GE 3, GE 4.) Applicant attributes his financial problems to his 2002 divorce and subsequent fallout from that divorce. (Tr. 19-22) Below is a summary of Applicant's SOR debts and their current status.

SOR ¶ 1.a – Past-due medical bill in the amount of \$36. Paid in full. **Debt resolved.** (SOR answer; Tr. 22-23; AE F)

SOR ¶ 1.b – Past-due consumer debt in the amount of \$846. Paid in full. **Debt resolved.** (SOR answer; Tr. 23-24; AE G, AE H)

SOR ¶ 1.c – Collection account for cable bill in the amount of \$470. Settled for a lesser amount of \$256. **Debt resolved.** (SOR answer; Tr. 24-26; AE H)

SOR ¶ 1.d – Charged-off automobile loan in the amount of \$18,416. Applicant co-signed on an automobile loan for his former spouse, who was unable to qualify for a loan. He co-signed after their divorce so that his former spouse would have a dependable means of transportation for their minor children, and she failed to make payments as agreed. When the automobile was in jeopardy of being repossessed, Applicant's former spouse apparently began making payments as she still in possession of the automobile. Applicant has successfully disputed this debt, and it has been removed from his credit reports. **Debt resolved.** (SOR answer; Tr. 26-30)

When Applicant became aware of these debts, he retained the services of a credit repair service. This service provided a range of items to include credit repair, budgeting information, and educational services. (Tr. 30; AE A – AE C) Post-hearing, Applicant submitted a comprehensive joint budget that reflects monthly income of \$5,408, with an average net remainder of \$2,483. Applicant's budget reflects that he lives within his means and maintains a modest lifestyle. (Tr. 31-35; AE J)

## **Character Evidence**

Applicant's program manager (PM) and supervisor testified on his behalf. He has known Applicant for six years and maintains daily contact with him. PM stated that Applicant was dependable, knowledgeable, honest, trustworthy, and makes a significant contribution at work. PM recommended that Applicant be granted a security clearance. (Tr. 41-45) In August 2012, Applicant was ordained a deacon in his church. As a deacon, Applicant's duties include performing devotions, taking up collections, visiting the sick and shut-ins, giving communion, and teaching bible study. (Tr. 39-41; AE E)

## **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, his OPM PSI, his SOR answer, and his statement at his hearing. 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; 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 debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant's conduct in resolving his debts warrants partial application of AG ¶ 20(b). Applicant's 2002 divorce adversely affected his income stream; however, too much time has elapsed since his divorce to receive full mitigating credit for this occurrence. His financial problems were generated, in part, by circumstances beyond his control. Applicant acted responsibly by remaining in contact with his creditors; however, he did not have the money to pay them. When he did acquire the money, albeit several years past the due date, he paid or settled all of his accounts.

AG ¶ 20(c) is partially applicable. Applicant consulted with a credit counselor, but did not have the money to pay his creditors. When he did have the money, he was able to follow through with the advice he received from credit counseling. His budget reflects he is living within his means and has regained financial responsibility.

Full mitigation is warranted under AG ¶ 20(d).<sup>2</sup> There are clear indications that his financial problems are resolved. All of Applicant's debts are paid or settled. His largest debt was the charged-off automobile loan that he co-signed for his former

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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)).

spouse has been removed from his credit report. The remaining three accounts have been paid in full or settled for a lesser amount. AG ¶ 20(e) is applicable to SOR ¶ 1.d.

In sum, Applicant has taken reasonable actions to resolve his delinquent debts and maintain his financial responsibility. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

### **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). 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.

Applicant honorably served in the Army for 20 years and has been employed by a defense contractor since 2009. He is sufficiently mature to understand and comply with his security responsibilities. There is every indication that he is loyal to the United States and his employer. Applicant's financial situation was adversely affected by his 2002 divorce and not being more attentive to his financial situation. I give Applicant substantial credit for admitting responsibility for his delinquent debts in his e-QIP, OPM PSI, SOR response, and at his hearing.

Even though Applicant lacked the financial resources to pay his SOR debts when due, he made numerous other payments and maintained his rent, utilities, and taxes in current status. Applicant's witness testimony and off-duty responsibilities as a deacon attest to his good character for trustworthiness, diligence, responsibility, and conscientious, detail-oriented contributions to his employer and community. He is an intelligent person, and he understands how to budget and what he needs to do to maintain his financial responsibility.

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. I conclude financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

### **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.d:           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 Applicant's eligibility for a security clearance. Clearance is granted.

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Robert J. Tuidor  
Administrative Judge