



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



In the matter of:

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ISCR Case No. 15-02280

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

04/06/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges nine delinquent debts. All SOR debts were paid or resolved except for one charged-off bank debt for \$1,138, which he promised to resolve by the end of March 2017. Applicant has a track record of paying his debts. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 30, 2012, Applicant signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On November 25, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2)

Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

On January 21, 2016, Applicant responded to the SOR and requested a hearing. On July 25, 2016, Department Counsel was ready to proceed. On October 13, 2016, the case was assigned to me. On December 22, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 19, 2017. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered one exhibit; and all proffered exhibits were admitted without objection. (Transcript (Tr.) 15-16; GE 1-4; Applicant Exhibit (AE) A) On January 26, 2017, DOHA received a transcript of the hearing. After the hearing, Applicant provided eight exhibits which were admitted without objection. (AE B-AE I) On March 25, 2017, the record closed. (Tr. 54)

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

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.c and 1.d. He also provided partial admissions for several other SOR allegations, and he provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 65-year-old subcontract administrator, and he has worked for a large DOD contractor for 36 years. (Tr. 6, 17; GE 1) In 1969, he graduated from high school. (Tr. 6) He attended college for two years, and he did not receive a degree. (Tr. 6) From 1971 to 1976, he served in the Army National Guard. (Tr. 7) In 1977, he married, and in 2002, he divorced. (Tr. 7, 19) He has a 40-year-old daughter. (Tr. 7) He has held a security clearance for 36 years, and he has never been investigated for a security violation. (Tr. 14, 48)

### **Financial Considerations**

Applicant's annual salary is \$115,000. (Tr. 9, 51) He lived in Maryland, and in 2007, his company transferred him to state C. (Tr. 21-22) In 2004, he purchased a home in Maryland for \$285,000. (Tr. 27) After he moved to state C, he rented his home in Maryland to a tenant. (Tr. 22) His monthly negative cash flow on the rental property in Maryland was \$1,300. (Tr. 23) He unsuccessfully attempted a short sale of the rental property. (Tr. 24) Once he fell behind on his mortgage in 2009, his mortgage company would not accept partial payments even though he offered \$6,000 in a catch-up payment. (Tr. 25, 29)

Applicant's history of delinquent debt is documented in his credit reports and hearing record. The status of his SOR debts is as follows:

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

SOR ¶ 1.a alleges a charged-off bank debt for \$9,679. Before 2007, Applicant borrowed about \$10,000 for home repairs to his property in Maryland, and he made some payments. (Tr. 20, 28) In December 2013, the creditor issued an Internal Revenue Service (IRS) Form 1099C indicating the fair market value of the property is \$274,000; the amount of debt discharged is \$9,679; and interest included in the \$9,679 is zero. (AE H) He paid federal income taxes on the discharged amount. (Tr. 29)

SOR ¶ 1.b alleges a mortgage that went to foreclosure and resulted in a deficiency balance of \$270,750. Applicant said his rental property in Maryland went to foreclosure in 2009 or 2010. (Tr. 27) The mortgage was \$270,000, and Applicant believed it sold for about \$250,000. (Tr. 30) Applicant's March 22, 2016 credit report shows a mortgage account of \$270,750 with a past due amount of zero, first delinquency in 2009, and foreclosure in 2010. (GE 4) His January 18, 2017 credit report does not include this debt. (AE A) After the foreclosure, he contacted the mortgage company; however, they were unable to locate his account. (Tr. 30) He did not receive any information that the creditor is seeking to collect any deficiency on the mortgage account. Maryland Rule 14-216 governs collection of deficiencies in Maryland, and it reads:

(a) **Distribution of Surplus.** At any time after a sale of property and before final ratification of the auditor's account, any person claiming an interest in the property or in the proceeds of the sale of the property may file an application for the payment of that person's claim from the surplus proceeds of the sale. The court shall order distribution of the surplus equitably among the claimants.

(b) **Deficiency Judgment.** At any time within three years after the final ratification of the auditor's report, a secured party or any appropriate party in interest may file a motion for a deficiency judgment if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest. If the person against whom the judgment is sought is a party to the action, the motion shall be served in accordance with Rule 1-321. Otherwise, the motion shall be served in accordance with Rule 2-121 and shall be accompanied by a notice advising the person that any response to the motion must be filed within 30 days after being served or within any applicable longer time prescribed by Rule 2-321(b) for answering a complaint. A copy of Rule 2-321(b) shall be attached to the notice.

SOR ¶ 1.c alleges a utility debt placed for collection for \$268. On January 31, 2017, he paid the creditor \$269 and resolved this debt. (Tr. 31-32, 34; AE B; AE D)

SOR ¶ 1.d alleges a telecommunications debt placed for collection for \$602. On January 31, 2017, he paid the creditor \$602 and resolved this debt. (Tr. 35; AE B; AE D)

SOR ¶ 1.e alleges a charged-off bank debt for \$1,138. Applicant acknowledged responsibility for this debt, and he said he would pay this debt by the end of March 2017. (Tr. 37; AE B)

SOR ¶ 1.f alleges a bank debt placed for collection for \$1,989. On February 2, 2017, the creditor wrote the debt was paid in full. (Tr. 37-38; AE G)

SOR ¶ 1.g alleges a store debt placed for collection for \$7,850. On February 2, 2017, the creditor wrote a debt owed to the same collection company was paid in full. (AE E) His checking account shows a debit for \$3,131 on January 31, 2017, and he stated \$3,131 is the amount he paid to settle this debt. (Tr. 39-40; AE B; AE D)

SOR ¶ 1.h alleges a bank debt placed for collection for \$2,298. On February 2, 2017, the creditor wrote the debt was paid in full. (Tr. 40-41; AE F)

SOR ¶ 1.i alleges a charged-off store debt for \$2,260. On February 15, 2017, he paid the collection company \$2,260 and resolved this debt. (AE D)

Applicant promised to pay his debts. He did not receive financial counseling. (Tr. 42-43) His annual gross income is about \$115,000, and he has a monthly remainder of about \$500 after he pays all of his debts. (Tr. 45, 51) All of his non-SOR debts are in payment plans or are paid. (AE A) He has never declared bankruptcy or had financial problems prior to the foreclosure in 2010. (Tr. 47)

Applicant's employer issued to him an exceptional performance evaluation in 2015 and several awards over his 36 years of employment. (Tr. 48-50; AE I) He enjoys his work, and he would like to continue to work for his employer. (Tr. 48-49) He describes himself as a trustworthy reliable person. (Tr. 50)

## **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. Thus, nothing in this decision should be construed to suggest that it is based, 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 (4th 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 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 for 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

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 and hearing record. 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,<sup>2</sup> 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,

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<sup>2</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

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>3</sup> 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.

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).

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. Applicant's financial problems occurred when his employer transferred him from Maryland to state C. He attempted to maintain

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<sup>3</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)).

the negative cash flow from his property in Maryland; however, he was unable to afford the required payments. His transfer to state C is a circumstance largely beyond his control that adversely affected his finances. Applicant's SOR alleges nine delinquent debts. All of his SOR debts were paid or resolved except for one charged-off bank debt for \$1,138, which he promised to resolve by the end of March 2017.

Based on Applicant's credible and sincere promise to pay his debts and his track record of paying his debts, future new delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." His payments of his debts showed good faith. He has sufficient income to keep his debts in current status and to continue making progress paying his remaining debts. I am confident that Applicant will conscientiously endeavor to maintain his financial responsibility. His efforts are sufficient to mitigate financial considerations security concerns.

### **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.

Under AG ¶ 2(c), 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. 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 is a 65-year-old subcontract administrator, and he has worked for a large DOD contractor for 36 years. From 1971 to 1976, he served in the Army National Guard. (Tr. 7) His employer issued to him an exceptional performance evaluation in 2015 and several awards over his 36 years of employment. He enjoys his work, and he would like to continue to work for his employer. He has held a security clearance for 36 years, and he has never been investigated for a security violation.

Applicant's SOR alleges nine delinquent debts. All of his SOR debts were paid or resolved except for one charged-off bank debt for \$1,138, which he promised to resolve



by the end of March 2017. He has ample income to address any debts that arise. He assures he intends to pay his debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a "meaningful track record" of debt payment as indicated in his credit reports. He understands what he needs to do to establish and maintain his financial responsibility. He took reasonable actions under his particular financial circumstances to address his delinquent debts. I am confident he will continue his establishment and maintenance of his financial responsibility.<sup>4</sup>

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations security concerns are mitigated.

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<sup>4</sup> Of course, the Government may re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of access to classified information now does not bar the Government from subsequently revoking such access, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this Applicant's security clearance is conditional.

### **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 through 1.i: For Applicant

### **Conclusion**

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

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MARK HARVEY  
Administrative Judge