



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



In the matter of:

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ISCR Case No. 15-06557

Applicant for Security Clearance

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

01/10/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleged five delinquent debts totaling \$12,896. Applicant provided one February 19, 2016 credit card receipt showing a payment of \$367 to one SOR creditor. Applicant did not make sufficient documented progress resolving the debts alleged in his SOR. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 20, 2015, Applicant completed and signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On January 20, 2016, 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 February 19, 2016, Applicant responded to the SOR and requested a hearing. On June 29, 2016, Department Counsel was ready to proceed. On August 1, 2016, the case was assigned to me. On August 31, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 22, 2016. (HE 1) Applicant received 15 days of notice of the date, time, and location of his hearing. (Tr. 12) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; and all proffered exhibits were admitted without objection. (Tr. 14-15; Government Exhibits (GE) 1-4) On September 30, 2016, DOHA received a copy of the transcript of the hearing. The record closed on October 25, 2016. (Tr. 50) No post-hearing documents were provided. (HE 4)

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

In Applicant's SOR response, he admitted responsibility for the debt in SOR ¶ 1.b, and he denied the remainder of the SOR allegations. He said the debts in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e were removed from all three of his credit reports.

Applicant is a 33-year-old aircraft apprentice, who has worked for his employer since February 2015. (Tr. 5, 20; GE 1) In 2001, he graduated from high school. (Tr. 5) He has completed two years towards a degree in business. (Tr. 6) In 2003, he married, and in 2010, he divorced. (Tr. 6) In 2010, he married. (Tr. 6) His children are ages 4, 9, and 12. (Tr. 6) He served in the Air Force from 2002 to 2010; his specialty was aircraft mechanic; he left the Air Force as a senior airman (E-4); and he received an honorable discharge in 2010. (Tr. 7)

### **Financial Considerations**

While Applicant was deployed overseas, he provided sufficient financial support for his former spouse to keep their debts in current status. (Tr. 16) Applicant was unemployed from May to December 2014 because he was attending school. (Tr. 19) Applicant hired a debt dispute company (DDC) to challenge the legitimacy of the debts on his credit report. (Tr. 17) Applicant and his spouse's monthly income is about \$9,000. (Tr. 21) Two of his daughters are in private school, and monthly tuition is \$1,500. (Tr. 22) Applicant and his spouse have about \$1,200 remaining each month after all of their bills are paid. (Tr. 23) Applicant received financial counseling when he was in the Air Force, and he uses a budget. (Tr. 23-34)

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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.

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

SOR ¶ 1.a alleges a charged-off vehicle-related debt for \$10,482. In 2007, Applicant and his former spouse purchased a vehicle. (Tr. 25) In February 2008, Applicant deployed overseas. (Tr. 25) When Applicant returned from overseas, he did not see the vehicle. (Tr. 16) In December 2014, he telephoned the collection company and asked for details concerning the repossession, such as when it was repossessed and why the balance owed was over \$10,000. (Tr. 16-17, 27) In his February 20, 2015 SCA Applicant acknowledged responsibility for this debt, and said "Balance [of \$10,482] is still due. Payment arrangements are in motion. I have been unable to make payments before now as I was a full-time student. Payment will begin in the near future." (GE 1) The collection company told him that he owed the debt; however, specific information to support the debt was not provided. (Tr. 29) DDC wrote the creditor seeking validation of the debt. (Tr. 25) After the debt was dropped from his credit report (April 2016), the DDC stopped contacting the collection company. (Tr. 30)

SOR ¶ 1.b alleges an account placed for collection owed to a vehicle repair company for \$1,907. In 2010, Applicant's vehicle was repaired, and in 2011, Applicant stopped paying the creditor. (Tr. 34) Applicant said the debt was being paid from January to April 2016. (Tr. 32-33) In his February 20, 2015 SCA Applicant acknowledged responsibility for this debt. (GE 1) Attached to his SOR response is one February 19, 2016 credit card receipt showing a payment of \$367 to the creditor. (Tr. 42; SOR response)

SOR ¶ 1.c alleges an account placed for collection originating from a telecommunications debt for \$234. In his February 20, 2015 SCA Applicant acknowledged responsibility for this debt. (GE 1) The debt became delinquent in 2010. (Tr. 35) He said the debt was paid in early 2016. (Tr. 35-36)

SOR ¶ 1.d alleges an account placed for collection originating from a utility debt for \$195. In his February 20, 2015 SCA Applicant acknowledged responsibility for this debt. (GE 1) In 2010, the debt became delinquent, and Applicant said he paid the debt in 2015. (Tr. 37)

SOR ¶ 1.e alleges an account placed for collection originating from a gymnasium debt for \$78. In 2012, the debt became delinquent, and Applicant said he paid the debt in 2015. (Tr. 38)

### **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.

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." Applicant's history of delinquent debt is documented in his credit reports, SCA, SOR response, 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, 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

(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 mitigating information. He received financial counseling while he was in the Air Force, and he uses a budget. Several circumstances beyond his control adversely affected his finances. Applicant had some periods of unemployment or underemployment before obtaining his current employment and his income was limited. He was divorced in 2010. His vehicle was repossessed while he was deployed overseas. However, he did not provide enough specifics about how these circumstances adversely affected his finances, and he did not show that he acted responsibly to address his delinquent SOR debts during his current employment.

Applicant ended his efforts to resolve some of his SOR debts when they were dropped from his credit report.<sup>3</sup> The Appeal Board has observed "that some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

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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)).

<sup>3</sup>The Fair Credit Reporting Act, 15 U.S.C. § 1681b as implemented by 16 C.F.R. Section 605(a)(4), requires removal of "[a]ccounts placed for collection or charged to profit and loss which antedate the report by more than seven years."

Applicant is not credited with mitigating the other SOR debts because he did not provide sufficient documentation showing progress paying the debts, a reasonable dispute of any debts, or an inability to make monthly payments on at least one of the larger delinquent debts and/or pay off the smaller debts (three of the five SOR debts were under \$300 each).

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving the SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

### **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 those guidelines, but some warrant additional comment.

Applicant is a 33-year-old aircraft apprentice, who has worked for his employer since February 2015. He has completed two years towards a degree in business. In 2003, he married, and in 2010, he divorced. In 2010, he married. His children are ages 4, 9, and 12. He served in the Air Force from 2002 to 2010; his specialty was aircraft mechanic; he left the Air Force as a senior airman; and he received an honorable discharge.

In 2008, Applicant was deployed overseas. He provided sufficient financial support for his former spouse to keep their debts in current status; however, she permitted several debts to become delinquent. Applicant was unemployed from May to December 2014 because he was attending school. He hired a DDC to challenge the debts on his credit report. Applicant and his spouse's monthly income is about \$9,000. Both of his daughters are in private school, and monthly tuition is \$1,500. Applicant and his spouse have about

\$1,200 remaining each month after all of their bills are paid. Applicant received financial counseling when he was in the Air Force, and he used a budget.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems exceeding five years. He has five delinquent SOR debts totaling \$12,896. He provided one February 19, 2016 credit card receipt showing a payment of \$367 to one SOR creditor. He did not provide enough specifics about how the circumstances beyond his control adversely affected his finances, and he did not show that he acted responsibly to address his delinquent debts. His failure to make greater progress resolving his SOR debts shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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. I conclude that financial consideration security concerns are not mitigated. It is not clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility at this time.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARK HARVEY  
Administrative Judge