



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06672

**Appearances**

For Government: Douglas Velvel, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges two delinquent debts totaling \$23,316. In October 2015, he resolved the two delinquent SOR debts when they were discharged under Chapter 7 of the Bankruptcy Code. He has a track record of paying his debts, and he does not have any currently delinquent debts. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 24, 2014, Applicant signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 2) On February 21, 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. (Item 1) Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

On March 8, 2016, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 1) On April 13, 2016, Department Counsel completed the File of Relevant Material (FORM). Applicant received the FORM and provided an undated response. On July 19, 2016, Applicant provided some documents in response to the FORM. On March 20, 2017, the case was assigned to me. The case file consisted of seven exhibits. (Items 1-6 and Applicant's FORM response) There were no objections to any exhibits.

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

In Applicant's SOR response, he took responsibility for the debts in SOR ¶¶ 1.a and 1.b. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional factual findings follow.

Applicant is a 65-year-old supply lead and facility manager, and he has worked for various DOD contractors for more than 20 years mostly overseas.<sup>2</sup> He served in the Marine Corps from 1969 to 1973, 1977 to 1979, 1983 to 1985, and 1988 to 1989. He served in the Army from 1991 to 1992. He served on active duty in Vietnam (two tours) and Southwest Asia (Desert Storm). As a contractor, he was deployed to Kuwait (12 years), Qatar (4 years), Iraq (3 years), and Afghanistan (6 years). He has been unemployed from May 2014 to present. He lost his employment when his contract ended. He diligently sought employment by sending hundreds of resumes to employers.

Applicant's first two marriages were dissolved with divorce. (Office of Personnel Management (OPM) personal subject interview (PSI)) In 2007, he married. His children were born in 1980, 2003, and 2004. There is no evidence that he violated security rules or used illegal drugs. There is no evidence of employer performance evaluations or military personnel records.

### **Financial Considerations**

Applicant's history of delinquent debt is documented in his credit reports, SCA, OPM PSI, SOR response, bankruptcy schedules, and FORM response. The status of his two delinquent 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.

<sup>2</sup> Unless stated otherwise, the source of the information in this paragraph is Applicant's November 24, 2014 Electronic Questionnaire for National Security Positions (e-QIP) (SF 86) or security clearance application (SCA) and/or SOR response. (Items 1, 2)

SOR ¶ 1.a alleges a charged-off vehicle loan for \$17,457. In June 2013, he purchased a 2013 Lincoln for about \$50,000.<sup>3</sup> His monthly payments were about \$1,000. In May 2014, he became unemployed; he stopped making payments on the vehicle; the creditor repossessed his vehicle; and it was sold at auction. The unpaid balance was about \$18,000. He offered \$3,000 to settle the debt, and the creditor rejected this offer. The creditor filed a lawsuit to collect the debt. Applicant admitted the debt was delinquent up to the time it was discharged. (FORM response)

SOR ¶ 1.b alleges a debt placed for collection for \$5,859. In May 2014, Appellant became unemployed, and he was unable to continue making payments on his credit card debt. He contacted the creditor and indicated he would resume payments when he obtained employment.

In June 2015, Applicant filed for bankruptcy under Chapter 7 of the Bankruptcy Code. In July 2015, he received financial counseling. He listed eight unsecured nonpriority debts totaling \$24,465, including the two SOR debts. (Bankruptcy Schedule F) In October 2015, his nonpriority unsecured debts were discharged. Applicant's monthly income is \$950. (Bankruptcy Schedule I) Applicant's 2014 and 2015 credit reports show debts in paid as agreed status and other positive resolution of debts. (Items 3, 4) He promised to pay his debts and maintain his financial responsibility when he obtains employment.

### **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.

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.

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<sup>3</sup> Unless stated otherwise, the facts in this paragraph and the next two paragraphs are from Appellant's April 30, 2015 Office of Personnel Management personal subject interview and FORM response. (Item 6)

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 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 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." Applicant's history of delinquent debt is documented in his credit reports, OPM PSI, SOR response, and FORM response. 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>4</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, 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>5</sup> and

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<sup>4</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)).

<sup>5</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

(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), and 20(c) apply. Applicant's delinquent SOR debt resulted when Applicant became unemployed in May 2014 when his employment contract ended. This unemployment is a circumstance beyond his control, and he acted responsibly by attempting to seeking employment and negotiating a settlement of his debt.

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his child support payments to her. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the

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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)).

individual's current reliability, trustworthiness, or good judgment)" even though applicant's debts were unresolved at the time the Administrative Judge's decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>6</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant was sporadically unemployed and lacked the ability to pay her creditors. The Appeal Board noted "it will be a long time at best before she has paid" all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took "reasonable actions to effectuate that plan." *Id.* The Appeal Board remanded the Administrative Judge's decision because it did not "articulate a satisfactory explanation for his conclusions," emphasizing the Administrative Judge did "not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not 'responsible' in light of his limited circumstances." *Id.*

Application of AG ¶ 20(c) is warranted. Applicant received financial counseling. His financial situation was damaged by unemployment.<sup>7</sup> He acted responsibly by paying as many debts as possible and establishing payment plans for several debts. Although there is limited evidence of record that he established and maintained contact with his creditors,<sup>8</sup> his financial problem is resolved and his finances are under control.

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<sup>6</sup> Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

<sup>7</sup> Applicant's income is below the federal poverty level of \$16,240 for a family of two and \$24,600 for a family of four, and he is eligible for various federal poverty programs, including Medicaid and Medicare (age 65). See Health and Human Services website, <https://aspe.hhs.gov/poverty-guidelines>.

<sup>8</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App.

AG ¶ 20(d) is partially applicable. Applicant used bankruptcy, a lawful method, to resolve his two delinquent SOR debts. He admitted responsibility for and took reasonable and responsible actions to resolve his debts, establishing some good faith. AG ¶ 20(e) is not applicable. He did not provide documentation establishing a reasonable dispute for any of his SOR debts.

In sum, Applicant's SOR alleges two delinquent debts totaling \$23,316. In October 2015, his nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. Based on Applicant's 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 non-SOR debts showed good faith. 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 supply lead and facility manager, and he has worked for various DOD contractor for more than 20 years mostly overseas. From 1969 to 1989, he served in the Marine Corps for 10 years. He served in the Army from 1991 to 1992. He served in Vietnam (two tours) and Southwest Asia (Desert Storm) when he

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Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.



was in the Marine Corps. As a contractor, he was deployed to Kuwait (12 years), Qatar (4 years), Iraq (3 years), and Afghanistan (6 years). He has been unemployed from May 2014 to present. He lost his employment when his contract ended. There is no evidence that he violated security rules or used illegal drugs.

In October 2015, Applicant's two delinquent SOR debts totaled \$23,316, and his nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. There is no evidence of post-bankruptcy delinquent debts, and 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, OMP PSI, SOR response, and FORM response. 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 to maintain his financial responsibility.

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.

### **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 and 1.b: 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 reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge