



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



In the matter of:	)	
	)	
	)	ISCR Case No. 16-01052
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

03/06/2018

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond his control contributed to his financial problems and that he has been acting responsibly under the circumstances. With his and his wife's combined earnings, he should be able to pay for his family's living expenses and current debts. His financial problems are being resolved. Clearance granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 5, 2015, seeking to retain the clearance required for his position. He was interviewed by a government background investigator on January 26, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on July 23, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on August 17, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on June 14, 2017. DOHA issued a notice of hearing on June 26, 2017, setting the hearing for July 14, 2017. At the hearing, the

Government offered seven exhibits (GE 1 through 7). Applicant testified and submitted four exhibits. (AE 1 through 4) AEs 3 and 4 were received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on July 24, 2017.

### **Findings of Fact**

In his Answer, Applicant admitted all of the factual allegations in the SOR (§§ 1.a through 1.n). He later disputed the allegation in SOR § 1.g, which is the same account alleged in SOR § 1.n. His admissions to the SOR and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 55-year-old employee of a federal contractor. He graduated from high school in 1980, and has no additional formal education. He married his wife in 1980, and they have two sons, ages 36 and 32. His younger son is disabled and lives with Applicant.

In 1980, Applicant's current employer, a federal contractor, hired him as a shipbuilder. He has held a secret clearance continuously since 1980. There is no evidence showing his clearance has been suspended in the past, or of any security concerns, except for those in the current SOR. His current salary is about \$69,500 a year. His take-home pay every two weeks is about \$1,660. His wife also works and brings home about \$550 every two weeks. Applicant testified he has about \$3,100 in his checking account; \$119 in savings; \$29,000 in a 401k retirement account; and \$137,000 in a retirement account with his employer.

In his March 2015 SCA, Applicant disclosed that he had failed to file his 2012 income tax return, and that he owed past-due taxes for tax years 2011 and 2012. He also disclosed a delinquent loan and other consumer accounts. The background investigation addressed his financial problems and revealed the debts alleged in the SOR that are established by Applicant's admissions and the record evidence.

In approximately August 1996, Applicant filed for Chapter 13 bankruptcy protection. He explained that he and his wife got into debt and he chose a bankruptcy proceeding where he could pay back the creditors. After about four years paying the creditors under the wage earner plan, the bankruptcy was discharged in about April 2000. A 2003 security clearance investigation revealed Applicant had a federal tax lien for \$18,215. Applicant submitted documentary evidence showing the lien was released, and that he had established a \$250 payment installment agreement with the IRS. His clearance was continued.

Concerning his 2011 debt to the Internal Revenue Service (IRS), Applicant explained that for about five years he took too many deductions when he filed his income tax returns. At the end of the year, he did not have the money to pay his taxes and his tax debt accumulated to about \$30,000. Applicant established a \$256

installment payment agreement with the IRS. Applicant failed to file his 2012 income tax returns. He explained that his wife had been laid off from her job of 28 years, and she was unemployed for two years. Because of the reduced earnings, they were experiencing financial problems and he made the mistake of not filing his income tax return because he did not have the money to pay his taxes.

Applicant filed his 2012 income tax returns in January 2016. His total debt to the IRS for tax years 2011 and 2012 was about \$35,000. He established a \$462 monthly installment agreement with the IRS in February 2016. He submitted evidence that he paid \$462 in March and December 2016, and in January, March, and May 2017. (AE 1)

Applicant testified that he had timely filed all his prior years' income tax returns. He also hired an accounting firm to help him timely file his income tax returns in the future. He stated that his mistake was unlikely to repeat itself because he had learned from his mistake. Also, his wife was currently employed and with their increased earnings, he did not anticipate any future financial problems.

Applicant presented documentary evidence showing that he paid the account alleged in SOR ¶ 1.d in August 2016. (AE 1) He settled and paid the account alleged in SOR ¶ 1.e in July 2017. He contacted the creditor and established a payment plan to pay the account alleged in SOR ¶ 1.f, which was paid in July 2017.

Applicant submitted documentary evidence showing he disputed the account alleged in SOR ¶ 1.g (same as SOR ¶ 1.n) in July 2017. He paid the accounts alleged in SOR ¶¶ 1.h through 1.i in July 2017. (AE 4) He also paid the account alleged in SOR ¶ 1.m in January 2014. (AE 3)

Applicant submitted a 2017 credit report reflecting 19 accounts. Of those, 17 were in good standing, and two were identified as "Needs Attention." One of the accounts needing attention is the account alleged in SOR ¶ 1.g that Applicant disputed. The other account is not alleged in the SOR. Applicant presented documentary evidence showing that he settled the account not alleged in the SOR, and he agreed to make four \$249 payments, starting in July 2017.

Applicant acknowledged that he should have been more responsible filing and paying his taxes. He understands the seriousness of the security concerns raised by his financial problems and is aware that he should have timely filed his income tax returns. He promised to do so in the future. Applicant highlighted his 36 years of employment with a federal contractor while holding a clearance without any issues or concerns, except for his financial problems. Applicant credibly promised to continue paying his legal debts and to resolve his financial problems. Applicant testified that his financial situation is now stable because his wife is working again and they were able to pay all of their delinquent accounts.

## Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Security Executive Agent implemented Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective 8 June 2017, which replaced the 2006 AG. I decided this case under the AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are

merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Applicant's history of financial problems is documented in the record. He developed financial problems around 1996, and filed for a Chapter 13 wage earner repayment plan. He failed to timely file his federal income tax return for tax year 2012, and owed about \$35,000 in federal taxes for tax years 2011 and 2012. He also had 10 other delinquent accounts that he has since resolved. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay . . . income tax as required." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>1</sup>

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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).

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<sup>1</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)).

All of the above financial considerations mitigating conditions are raised by the facts in this case and mitigate the security concerns. Applicant's financial problems are ongoing and recent because he is still paying his back taxes. However, his financial problems could be attributed to, or were aggravated by, circumstances beyond his control - his wife's period of unemployment, the subsequent decrease in family earnings, and his inability to pay his debts and living expenses.

Applicant acknowledged he should have timely filed his 2012 income tax return, and that he should have been more responsible in addressing his tax obligations. He claimed too many deductions and accumulated a tax debt in 2011. Notwithstanding, Applicant established an installment payment agreement in 2012, and modified it to include his 2012 tax debt after he filed his 2012 income tax returns in 2016. He has been making irregular monthly payments on his agreement with the IRS, and applying his tax refunds to his IRS debt.

Applicant's efforts to pay his tax debt are not ideal, but I find he is making a good-faith effort to resolve his tax debt. Applicant had paid or resolved all the other alleged SOR debts, except for the taxes. Even though he presented no evidence to show he has participated in financial counseling, considering the evidence as a whole, I find that there are clear indications that his financial problem is being resolved or under control.

Applicant's documentary evidence shows he settled or paid at least two of the alleged SOR accounts in 2016. He paid or established payment plans with other creditors in 2017. Many of Applicant's payment agreements are recent, but they are evidence of Applicant's responsible efforts to resolve his financial situation.

Applicant's evidence is sufficient to establish that his financial problems were caused or aggravated by circumstances beyond his control. Considering the evidence as a whole, and including his recent actions, Applicant has been responsible under the circumstances. He disclosed his financial problems in his 2015 SCA. His financial situation is improving. With his job and his wife's income, their earnings should be sufficient to pay for his family's living expenses and current debts.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 55-year-old employee of a federal contractor. He has worked for the same federal contractor since 1980. He has held a clearance during most of his employment without any issues or concerns, except for his financial problems. Circumstances beyond his control contributed to or aggravated his recent financial

problems. The record evidence is sufficient to establish that his financial problems are being resolved or are under control.

The AGs do not require an Applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. Applicant has implemented a plan to resolve his financial problems and he has made significant progress implementing his plan.

Considering the evidence as a whole, Applicant demonstrated a track record of paying his financial obligations. The financial issues concerning his failure to file his income tax return were an isolated, aberrational event that is unlikely to recur. Applicant is aware that he has to timely file his income tax returns and to maintain financial responsibility to be eligible for a clearance. The 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 - 1.n:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge