



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-02244

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

02/14/2018

**Decision**

TUIDER, Robert, Administrative Judge:

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

**Statement of the Case**

On September 10, 2015, Applicant submitted a Questionnaire for National Security Positions (SF-86). On August 15, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Exec. Or. 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security 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. Specifically, the SOR set forth security concerns arising under Guideline F.

On September 27, 2016, Applicant responded to the SOR. On October 21, 2016, Department Counsel was ready to proceed. On January 31, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On March 2, 2017, DOHA issued a hearing notice, setting the hearing for March 14, 2017. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant testified, did not call any witnesses, and offered Applicant Exhibits (AE) A through D, which were received into evidence without objection. On March 22, 2017, DOHA received the hearing transcript (Tr.). I held the record open until April 14, 2017, to afford Applicant the opportunity to submit additional evidence. Applicant timely submitted AE E through H, which were received into evidence without objection.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs, as required.<sup>1</sup>

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations. After a thorough review of the record, I make the following findings of fact.

### **Background Information**

Applicant is a 42-year-old technical data designer employed by a defense contractor since October 2015. He seeks to retain his secret security clearance. Applicant has successfully held a security clearance since 1995 when he was in the U.S. Air Force, discussed below. (Tr. 12-14; GE 1)

Applicant graduated from high school in 1994. He has been attending on-line college courses since 2013 and estimates that he has about a year and a half left to complete his bachelor of science degree. (Tr. 14-16; GE 1) He served in the Air Force from June 1994 to July 2014, and retired with 20 years of honorable service as a technical sergeant (pay grade E-6). His Air Force Subspecialty Code was 2A672 (aerospace ground equipment mechanic). (Tr. 16-18, GE 1) Applicant married in January 2007, and does not have any children. His wife is not employed outside the home. (Tr. 18-19, 37-38; GE 1)

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<sup>1</sup> The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

## Financial Considerations

Applicant's SOR lists five delinquent debts totaling \$22,595. These debts are substantiated through Applicant's admissions and evidence presented. (SOR answer; GE 1 (SF-86), GE 2 (October 6, 2015 Office of Personnel Management Personal Subject Interview (OPM PSI)), and GE 3 and 4 (September 24, 2015 and October 21, 2016 credit reports)) (SOR ¶¶ 1.a - 1.e)

Applicant traces his financial difficulties to a 2008 permanent change of station (PCS) move from stateside to overseas. He owed a home in his stateside location that he planned to rent out while he was stationed overseas. The home was financed with a VA loan and a private second mortgage. Applicant's wife remained stateside. Shortly after Applicant arrived overseas, his wife sustained a severe head injury. His wife's injury was so severe that it led to her being involuntarily committed to a mental health institution. Because of her ongoing medical condition, Applicant received a humanitarian reassignment stateside to a different state than where his home was located. (Tr. 19-21) Applicant stated that his wife has since recovered. (Tr. 25)

Applicant attempted to maintain his home and in the process made "numerous trips back and forth to [home location] to – to get the property back in a rental condition." (Tr. 21) As a result of his tenants not paying their rent and damaging his home, Applicant was unable to afford maintaining his home and "ended up having to let the property go into foreclosure" in 2013. (Tr. 21)

The following describes the status of Applicant's SOR debts:

1. SOR ¶ 1.a – Charged-off credit card account for \$5,290. Applicant contacted creditor and was advised that debt had been sold and original creditor was unable to tell him to whom debt had been sold. Applicant has been unable to locate or contact the creditor in interest and debt no longer appears on Applicant's April 12, 2017 credit report. (SOR response; Tr. 25-26; GE 3; AE E, AE F) **ATTEMPTING TO RESOLVE.**
2. SOR ¶ 1.b - Consumer collection account for \$205. Paid in full. Debt no longer appears on Applicant's April 12, 2017 credit report. (SOR response; Tr. 24, 27-28, 33-34; AE A, AE B, AE E, AE F) **DEBT RESOLVED.**
3. SOR ¶ 1.c - Consumer collection account for \$354. Applicant's April 12, 2017 credit report stated "Legally paid in full for less than the full balance." (SOR response; Tr. 24, 29-30; GE 3; AE E, AE F) **DEBT RESOLVED.**
4. SOR ¶ 1.d - Charged-off second mortgage \$12,653. Applicant stated this debt was satisfied through funds received during foreclosure proceedings in 2013. Debt no longer appears on Applicant's April 12,

2017 credit report. (SOR response; Tr. 22-23, 30-32; AE C, AE E, AE F)  
**DEBT RESOLVED.**

5. SOR ¶ 1.e - Personal loan collection account for \$4,093. Applicant stated this account was established with Bank B as a “stopgap” until his second mortgage was approved with Bank A (see SOR ¶ 1.d). This loan was to be “subsumed” by the second mortgage when Bank A and Bank B merged. After Bank A refused to remove this debt from Applicant’s credit report, he joined a class action suit against Bank A for “Fake Account” disclosures. (SOR response; Tr. 32) Applicant is continuing to work with credit reporting agencies to have this debt removed from his credit report. (AE E, AE F) **ATTEMPTING TO RESOLVE.**

Post-hearing, Applicant contacted a credit repair agency to review his credit report and assist where possible. The credit repair agency advised him that based on a review of his credit report, they was nothing left for them to do. (AE E) Applicant’s post-hearing budget reflects total monthly income of \$4,395 with a net remainder of \$362. (AE H) Applicant is current on his mortgage, student loan, credit card debt, and all of his household debts. (Tr. 34-37, 38-39)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance

decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue 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 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) 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.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record establishes these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five mitigating conditions potentially applicable here:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial 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; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant merits credit under AG ¶ 20(b) because his wife's injury and resulting long-term treatment coupled with the unanticipated downfall of the housing market. He attempted to work with his creditors and took reasonable steps to resolve his debts.<sup>2</sup> AG ¶ 20(c) is partially applicable even though Applicant did not seek formal financial counseling. He has, however, produced evidence that reflects he is living within his means and has regained financial responsibility. There are clear indications that his financial problems are resolved or are being resolved. Furthermore, there is sufficient information to establish partial if not full mitigation under AG ¶ 20(d).<sup>3</sup> Applicant worked with his lender to resolve his second mortgage. Applicant's first and second mortgages were satisfied as a result of the 2013 foreclosure proceedings. AG ¶ 20(e) is applicable to SOR ¶ 1.e.

### **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(d):

- (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.

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<sup>2</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. 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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

<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)).

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration” of the guidelines and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 42-year-old technical data designer employed by a defense contractor since June 2015. Before becoming a defense contractor employee, he served 20 years of honorable service in the Air Force. He has successfully held a security clearance for 23 years. Maintaining his security clearance will allow him to enhance his position within his company and continue serving as a defense contractor.

Applicant had a series of personal mishaps that began with his wife’s severe head injury shortly after he arrived overseas. Once Applicant returned stateside on his humanitarian transfer, he attempted to rent his home, located in a different state than his reassignment location. He not only incurred costly trips visiting his rental home, but also had the misfortune of having tenants who did not pay their rent on time and damaged his property. Unable to sustain these losses and costs on an E-6’s salary, he was forced to let his home go into foreclosure. Applicant is current on his bills and is in the process of regaining financial responsibility.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, and the new AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration security concerns are mitigated. It is clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

### **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

Subparagraph 1.a – 1.e: 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 Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT TUIDER  
Administrative Judge