



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



In the matter of: )  
)  
) ISCR Case No. 16-03120  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

10/27/2017

**Decision**

TUIDER, Robert, Administrative Judge:

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

**Statement of the Case**

On December 16, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. On January 13, 2017, Applicant responded to the SOR, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on February 28, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 15, 2017. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information within the

30-day period.<sup>1</sup> On October 1, 2017, the case was assigned to another administrative judge, and on October 16, 2017, the case was reassigned to me. The Government exhibits, Items 1 through 6, included in the FORM are admitted in evidence.

### **Procedural Matters**

Department Counsel moved to amend SOR ¶ 1.a to read: “You are indebted to [creditor] on a mortgage account that is past due in the approximate amount of \$107,254.00, with a total loan balance of \$296,391.00. As of the date of this Statement of Reasons, the mortgage account remains delinquent.” Without objection from the Applicant, I granted Department Counsel’s motion.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a through 1.c, 1.e through 1.h, and 1.j through 1.q, with explanations; and denied SOR ¶¶ 1.d and 1.i, with explanations. His admissions are accepted as findings of fact. Additional findings of fact follow.

### **Background Information<sup>2</sup>**

Applicant is a 40-year-old crew chief employed by a defense contractor since October 2015. He seeks a security clearance in conjunction with his current employment. He held previous security clearances while he was on active duty in the U.S. Air Force, discussed below.

Applicant graduated from high school in June 1995. He took college level courses while stationed overseas from June 2012 to December 2012. Applicant served in the Air Force from December 1995 to December 2015, and was honorably discharged. He married in August 1997 and that marriage ended by divorce in January 2002. He has two adult children from that marriage. Applicant remarried in August 2002, and has three children and two stepchildren.

### **Financial Considerations**

Applicant’s SOR alleges 17 delinquent debts consisting of a mortgage and 16 consumer accounts. (SOR ¶¶ 1.a – 1.q) These allegations are established through Applicant’s admissions, in part, and the Government’s exhibits. (Items 2 – 6)

During his March 16, 2016 Office of Personnel Management (OPM) Personal Subject Interview (PSI), Applicant stated that he experienced financial issues “over the past several years.” He explained that his wife lost an \$80,000 a year job after he received permanent change of station (PCS) orders and because of that income

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<sup>1</sup> Applicant’s post-FORM submission was marked as Item 7, and admitted in evidence.

<sup>2</sup> The limited background information regarding Applicant was derived from the FORM and was the most current information available.

shortfall, they were unable to remain current on their bills. (Items 2, 6) As noted, Applicant denied all but two of his SOR debts stating that they were paid or otherwise resolved. (Item 2) In his SOR answer, Applicant claimed that he had resolved 15 of his debts, was attempting to resolve one of his debts, and was disputing one of his debts. He stated that he was able pay these debts after receiving a loan from his mother. However, he only provided documentation shoring resolution for two of his SOR debts. (Item 2)

In her FORM, Department Counsel discussed the documentation shortcomings of Applicant's SOR answer noting that he had provided documentation for only two of his SOR debts. Upon receipt of Department Counsel's FORM, Applicant provided documentation that addressed or clarified these shortcomings for all but one debt. (Item 7) That debt is Applicant's past-due mortgage account for \$107,254 with a total loan balance of \$296,391. (SOR ¶ 1.a)

The mortgage account debt arose when Applicant received PCS orders and was required to vacate the home he and his wife lived in from May 2008 to March 2012. (Items 3, 6) Applicant purchased the home for \$310,000 on a 30-year mortgage with monthly payments of \$2,600. He made timely payments until 2012 or 2013, exact date not recalled, following his PCS transfer. Applicant unsuccessfully tried to refinance his mortgage and to sell his house by short sale. The housing crisis no doubt contributed to Applicant's unsuccessful attempts in this regard. (Item 6) He is currently consulting with an attorney "to find out what can be done with this debt." (Item 2)

Applicant recognizes the adverse effects financial irresponsibility can have on maintaining his clearance and sustaining his employment. He stated, "I know that my debt does not look good at all. I served 20 years faithfully in the Air Force and was blessed to retire. I was blessed to receive the current job I hold after I retired. I ask to please take into consideration that although my debt looks bad, I am working to get it fixed." (Item 2) In his spare time, Applicant enjoys outdoor activities such as fishing and camping and going to the movies and playing video games. (Item 6)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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. 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; “(b) unwillingness to satisfy debts regardless of the ability to do so”; and “(c) a history of not meeting financial obligations.” The Government established disqualifying conditions AG ¶¶ 19(a), 19(b), and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five potential mitigating conditions:

(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.

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’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 credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgement.

Partial application of AG ¶ 20(b) is warranted. A byproduct of military service is PCS transfers and relocating. Although Applicant surely was aware of this, he could not have anticipated the difficulties he would encounter when trying to refinance and short sell his home on the heels of the housing crisis. AG ¶¶ 20(c) is partially applicable and 20(d) is fully applicable. Although Applicant did not receive financial counseling, all but one of his 17 debts are paid or resolved, and there are clear indications that his mortgage is being resolved.<sup>3</sup> AG ¶ 20(e) is not relevant.

### **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>3</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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's Air Force service and employment with a defense contractor weighs in his favor. He is a law-abiding citizen and a productive member of society. He recognizes the importance of maintaining financial responsibility and to that end has made a substantial effort to see to it that his SOR debts are resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that 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 omitted).

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident he will resolve his remaining mortgage debt and maintain his financial responsibility.<sup>4</sup>

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<sup>4</sup> Failure to comply with payment plans or other delinquent debt will raise a security concern. The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, 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

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **Formal Findings**

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.q:	For Applicant

### **Conclusion**

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT TUIDER  
Administrative Judge

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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 decision to grant Applicant’s security clearance is conditional.