



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



In the matter of:

)  
)  
)  
)  
)

ISCR Case No. 16-03378

Applicant for Security Clearance

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

10/26/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence of resolution of his financial issues. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 22, 2015, Applicant completed and signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On December 21, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). Hearing Exhibit (HE) 2. The SOR set forth security concerns arising under the financial considerations guideline.

On January 12, 2017, Applicant responded to the SOR, and he requested a hearing. Transcript (Tr.) 14; HE 3. On February 21, 2017, Department Counsel was ready to proceed. On March 20, 2017, the case was assigned to me. On May 18, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 5, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. Transcript (Tr.) 16-18; GE 1-5; Applicant Exhibit (AE) A. On June 13, 2017, DOHA received the hearing transcript.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *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 on or after June 8, 2017. The new AGs supersede the previous AGs. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, he admitted SOR ¶¶ 1.b, 1.e, 1.g, and 1.h, and he denied the other SOR allegations. HE 3. He also provided extenuating and mitigating information. HE 3. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 65 years old, and a DOD contractor has employed him as a technical analyst since October 2015. Tr. 7, 20. From September 2009 to October 2015, another technology company employed him. Tr. 8. He served on active duty in the Air Force from 1974 to 1981; he left active duty as a staff sergeant (E-5); and he received an honorable discharge. Tr. 7. He was a federal civilian employee for seven years, and he worked for 18 years for a federal contractor. HE 3.

In 1969, Applicant graduated from high school. Tr. 6. He has attended college; however, he has not received a degree. Tr. 7. Applicant was married from 1974 to 1994. Tr. 8. In 2002, he married his current spouse. Tr. 8. His children are ages 32, 37, and 42. Tr. 9.

### **Financial Considerations**

Applicant's annual salary is \$66,000, and starting in June 2017, he received \$2,048 from the Social Security Administration (SSA). Tr. 21. His spouse receives \$822 monthly in SSA payments. Tr. 22. Starting in February 2017, his spouse has been receiving \$11 an hour from her employment. Tr. 22. Applicant was unemployed from April through September 2009. Tr. 24. Applicant had financial problems beginning in 2009 when he was unemployed, and his spouse was unable to work outside their home because of her cancer. Tr. 25. More recently, Applicant had medical problems with his back. His spouse is responsible for handling the family finances. Tr. 29. She described their financial

---

<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

situation in detail, and Applicant concurred with her description of the status of their debts. Tr. 53. The descriptions and actions of Applicant's spouse are attributed to Applicant in this decision.

Applicant's SOR alleges the following delinquent debts:

SOR ¶ 1.a is a charged-off debt for \$10,030. Applicant moved to a different state; however, he was unable to register his vehicle because the creditor did not provide an original title to the Department of Motor Vehicles. HE 3. The vehicle was repossessed in January 2016. Tr. 30. Applicant contacted the creditor in an attempt to pay the arrearage and retrieve the vehicle. Tr. 26, 30. Applicant said the creditor violated state law by failing to assist in the retrieval process. Tr. 30. The creditor sold the vehicle at auction, and Applicant is in negotiation with the creditor to resolve this debt. Tr. 31. Applicant intends to pay this debt. Tr. 32.

SOR ¶ 1.b is a student-loan debt placed for collection for \$8,967. Applicant's forbearance ended, and the debt was transferred to a different collection company. Tr. 32. Applicant was not sure which creditor or collection company was currently seeking payment. Tr. 33. Applicant's February 4, 2017 credit report shows the debt has increased to \$9,068. Tr. 51; GE 4.

SOR ¶ 1.c is a telecommunications debt placed for collection for \$838. Applicant contacted the creditor, and the creditor was unable to locate the debt. Tr. 33. Applicant acknowledged that he might have cosigned for a telephone for one of his children. Tr. 48. Applicant disputed the presence of the debt on his credit report with the credit-reporting company. Tr. 34.

SOR ¶ 1.d is a charged-off debt for \$470. Applicant did not recognize the debt or the name of the creditor. Tr. 34. Applicant disputed the presence of the debt on his credit report with the credit-reporting company. Tr. 35.

SOR ¶¶ 1.e and 1.h are medical debts for \$334 and \$153. Applicant had about \$450,000 in medical debt, and he is making payments to several medical creditors. Tr. 36-37. He had boxes of medical debts. Tr. 45. Transfer of medical debts between the original creditor and collection companies made it difficult to determine the legitimacy of medical debts. Tr. 36-37. Insurance companies may be responsible for some of his medical debts. Tr. 45. Applicant was unsure whether some of the debts were paid or legitimate. Tr. 36.

SOR ¶ 1.f is a charged-off debt for \$153. Applicant acknowledged responsibility for this debt, and he said he has made the first \$30 payment to address it. Tr. 38. He did not provide a checking account statement or other evidence of the \$30 payment.

SOR ¶ 1.g is a federal tax lien made against Applicant in December 2012 for \$7,224. Applicant filed tax returns each year; however, for several years insufficient money was withheld from his check, and he was unable to pay his taxes when due. Tr. 40-42. His federal tax debt was in a hardship or uncollectible status for a time. Tr. 39.

Applicant estimated the lien was for delinquent taxes for tax years 2009 through 2012. Tr. 39. Applicant made some payments and discussed a payment plan with the Internal Revenue Service (IRS). Tr. 40. He completed the income statement and hoped to have a payment plan established soon. Tr. 41. The IRS intercepted his 2016 federal tax refund and state tax refunds and applied his refunds to his federal income tax debt. Tr. 43-44. Applicant did not provide a current statement from the IRS showing the amount owed to the federal government.

SOR ¶ 1.i is a telecommunications debt placed for collection for \$63. The debt resulted when Applicant did not return the telecommunications company's property. Tr. 46. Applicant returned the property; however, the creditor failed to credit him with the return of the property. Tr. 47.

Applicant's February 4, 2017 credit report lists the debts in SOR ¶¶ 1.a (\$10,030), 1.b (\$8,967), 1.c (\$832), 1.d (\$470), and 1.f (\$153). GE 4.

Applicant plans to pay all of his delinquent debts within five years. Tr. 52-53. Applicant has worked for the U.S. Government for 40 years. Tr. 54. He has held a security clearance for many years, and he said he would never compromise classified information. Tr. 54.

One of Applicant's supervisors wrote that Applicant has "impeccable job performance and faithful compliance" with security requirements. AE A. Applicant is honest, dedicated, and trustworthy. AE A.

## **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.

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, Secretary of Defense, and DNI 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. Sept. 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 four 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"; "(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 annual Federal, state, or local income tax as required." The record establishes AG ¶¶ 19(a), 19(b), 19(c), and 19(f).

AG ¶ 20 contains financial considerations mitigating conditions that are potentially applicable in this case:

(a) the behavior happened so long ago,<sup>3</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, 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;<sup>4</sup>

---

<sup>3</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. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

<sup>4</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

(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;

(f) the affluence resulted from a legal source of income; 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 DOHA 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 periods of unemployment and his and his spouse's illnesses were outside his control and adversely affected his finances. He is credited with mitigating the following SOR allegations: ¶ 1.c for \$838 because he contacted the creditor, and the creditor was unable to locate the debt; ¶ 1.d for \$470 because he did not recognize the debt; ¶¶ 1.e and 1.h for \$334 and \$153 because he is paying his medical debts and these two debts do not appear on his most recent credit report; and ¶ 1.i for \$63 because Applicant returned the property to the creditor that was the basis of the debt.

The following SOR debts are not mitigated because Applicant acknowledged responsibility for the debt and provided no documentation that he made any payments to address these debts: ¶ 1.a for \$10,030; ¶ 1.b for \$8,967; ¶ 1.f for \$153; and ¶ 1.g a federal tax lien for \$7,224.

---

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)).

Applicant's credit reports indicate that several of his debts are in charged-off status. Eventually the charged-off debts will be dropped from his credit report. "[T]hat 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)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.<sup>5</sup> Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off. Applicant's failure to provide more evidence of debt resolution may preclude mitigation of the charged-off debts on his credit report.

Applicant did not provide documentation relating to the debts in SOR ¶¶ 1.a. 1.b, 1.f, and 1.g, such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact;<sup>6</sup> (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve this debt; or (5) other evidence of progress or resolution.

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving his SOR debts. There is insufficient assurance that his financial problem is being resolved and will not recur in the future. Under all the circumstances, he failed to establish mitigation of 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(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

---

<sup>5</sup>Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

<sup>6</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 or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.



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), “[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 65 years old, and a DOD contractor has employed him as a technical analyst since October 2015. From September 2009 to October 2015, another technology company employed him. He served on active duty in the Air Force from 1974 to 1981; he left active service as a staff sergeant; and he received an honorable discharge. He was a federal civilian employee for seven years, and he worked for 18 years for a federal contractor. In 1969, Applicant graduated from high school. He has attended college; however, he has not received a degree. Applicant and his spouse's unemployment and their illnesses were circumstances beyond Applicant's control that harmed his finances.

Applicant plans to pay all of his delinquent debts within five years. He has worked for the U.S. Government for 40 years. He has held security clearances for many years, and he said he would never compromise classified information. One of Applicant's supervisors wrote that Applicant has “impeccable job performance and faithful compliance” with security requirements. Applicant is honest, dedicated, and trustworthy.

The evidence against grant of a security clearance is more substantial. Applicant failed to mitigate four SOR debts totaling \$26,374. He did not provide sufficient evidence of changes in his income to show he was unable to make any payments to any of these four SOR creditors. He provided insufficient corroborating or substantiating documentary evidence of payments and an established payment plan or other mitigating information relating to these four SOR debts. His actions show lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented information about inability to pay debts, financial history, or financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. 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 more effort towards documented resolution of his past-due

debts, and 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. Financial considerations security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant 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 and 1.b:	Against Applicant
Subparagraphs 1.c, 1.d, and 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Subparagraphs 1.h and 1.i:	For Applicant

### **Conclusion**

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

---

Mark Harvey  
Administrative Judge