



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00265

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

01/12/2018

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**Decision**

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HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence that he was unable to make greater progress resolving the delinquent debts on his statement of reasons (SOR). Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 2, 2016, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On February 27, 2017, 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. Hearing Exhibit (HE) 2. The SOR set forth security concerns arising under the financial considerations guideline. HE 2.

On March 22, 2017, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On May 3, 2017, Department Counsel was ready to proceed. On July 17, 2017, the case was assigned to an administrative judge, and on September 12, 2017,

the case was transferred to me. On August 22, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 18, 2017, using video teleconference. Transcript (Tr.) 10; HE 1. Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. Tr. 10-11. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant offered three exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 16-20; GE 1-5; Applicant Exhibit (AE) A-C. On October 5, 2017, DOHA received a copy of the hearing transcript. After the hearing, Applicant provided 10 exhibits, which were admitted without objection. AE D-M. On January 9, 2018, Applicant provided one exhibit, which was admitted without objection. AE E; AE N.

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, and 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 the debts in SOR ¶¶ 1.a through 1.h. He also provided mitigating information. HE 3.

Applicant is a 34-year-old employee of a government contractor. Tr. 5; GE 1. In 2001, Applicant graduated from high school, and he joined the Air Force that same year. Tr. 6. He served on active duty in the Air Force from 2001 to 2009, and his specialty was aircraft weapon systems and nuclear systems. Tr. 6. When he left the Air Force, he was a staff sergeant (E-5). Tr. 7. He received an honorable discharge. Tr. 25. He held a top secret security clearance when he was in the Air Force. Tr. 6. There is no evidence of any security violations. Applicant has taken some college courses; however, he has not received a degree. Tr. 7-8. Applicant has never married, and he does not have any children. Tr. 7.

### **Financial Considerations**

Applicant was unemployed from May 2009 to September 2010, and in 2013. Tr. 22-23. From April 2016 to July 2017, Applicant worked on a contract for a DOD contractor, and in July 2017, the DOD contractor hired him as an employee. Tr. 21. His current annual salary is \$57,000. Tr. 21. Applicant's fiancée is totally disabled, and she is receiving

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<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.

disability. Tr. 24. Applicant has filed his federal and state tax returns, and he does not owe any delinquent taxes. Tr. 24. Applicant has received financial counseling, and he utilizes a budget. Tr. 25. He does not know how much money remains at the end of each month after he pays his debts. Tr. 25. Applicant has \$300 in his 401(k) account. Tr. 26. He has a total of about \$1,500 in his bank accounts. Tr. 27. Applicant has no personal loans or car payments. Tr. 27. In 2011, Applicant was the victim of identity theft. Tr. 44.

The SOR alleges eight delinquent debts totaling \$17,715, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off debt for \$8,253. In April 2011, Applicant obtained a consolidation loan, and in April 2012, he left his employment to help a relative on a farm. Tr. 28-29. In 2012, he told the creditor that he could not make payments. Tr. 30. He did not communicate with the creditor for several years. Tr. 30. He said he called the creditor in April 2017, and he asked for the status of the debt. Tr. 31-32. At the hearing, Applicant said he would contact the creditor, learn the status of the debt, and arrange a payment plan. Tr. 31-33. On November 27, 2017, the creditor wrote that Applicant agreed to make \$115 monthly payments, and the first payment was due on November 30, 2017. AE I. There was no proof of any payments made to the creditor, such as a cancelled check, checking account statement, or acknowledgement of receipt from the creditor.

SOR ¶ 1.b alleges a debt owed to the Department of Veterans Affairs (VA) for \$4,626. The VA overpaid an education stipend to Applicant. Tr. 34. He arranged a payment plan 30 months ago. Tr. 34. He provided proof of \$65 monthly payments from March 2016 to January 2018. Tr. 34; AE N. On November 22, 2017, the VA wrote that he owed \$4,324, and based on his December 1, 2017 authorization, the collection company would withdraw \$65 from his account. AE L. Applicant is credited with mitigating this debt because he provided proof that he has an established payment plan, and documentary proof he is making the required payments.

SOR ¶¶ 1.c, 1.d, 1.e, and 1.h allege three charged-off debts for \$2,272, \$853, and \$438, and one judgment for \$892 owed to the same bank. The SOR ¶ 1.e debt originated from a store credit card. Applicant said he only had one credit card with the bank, and in early 2017, he paid \$878 to the creditor. Tr. 37, 41-42. He said he had proof of the payment. Tr. 38. On October 23, 2017, the bank-creditor wrote that there were "no signs of fraud" on his account. AE J. I have credited Applicant with mitigating the debt in SOR ¶ 1.d for \$853 because it is probable that the debt duplicates the judgment in SOR ¶ 1.h for \$892. He is not credited with paying the judgment because he failed to provide documentation showing proof of payment or documentation showing release or satisfaction of the judgment.

SOR ¶¶ 1.f and 1.g allege debts placed for collection for \$227 and \$154. Applicant said the two debts related to cable and utility bills for an apartment, and he believed the new tenant was supposed to pay them. Tr. 39-40. Applicant did not contact the creditors. Tr. 40.

Applicant promised to provide documentation showing payment plans and the status of his debt. Tr. 49. I suggested Applicant provide federal income tax information for five years to corroborate his statements about lack of income. Tr. 49-50.

Applicant provided his IRS tax transcripts for his 2013-2015 federal income tax returns. AE F-H. Those three IRS tax transcripts are the sources for the information in this table.

Year	Filing Date	Adjusted Gross Income	Refund or Payment
2013	Apr. 15, 2014	\$33,362	Refund \$1,610 (AE H)
2014	Apr. 15, 2015	\$37,691	Owe \$684 (AE G)
2015	Apr. 15, 2016	\$45,249	Refund \$317 (AE F)

### Character Evidence

Applicant's Air Force performance evaluations and his supervisor lauded his diligence, professionalism, leadership, and contributions to mission accomplishment. SOR response; AE C. Applicant received the following Air Force decorations, medals, badges, citations and campaign ribbons: Outstanding Unit Award with Valor Device; Air Force Good Conduct Medal with one oak leaf cluster; National Defense Service Medal; Global War on Terrorism Service Medal; Korean Defense Service Medal; Air Force Overseas Ribbon Long; Air Force Longevity Service; USAF NCO PME Graduate Ribbon; and Air Force Training Ribbon.

### 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. 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 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." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 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;

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<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)).

(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 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).

Underemployment, unemployment, identity theft, and his fiancée's disability adversely affected Applicant's finances. These are circumstances beyond his control. Applicant receives some mitigating credit under AG ¶ 20(b).

The SOR alleges eight delinquent debts totaling \$17,715. Applicant admitted responsibility for these debts in his SOR response. The only documentary evidence of any payments to address these SOR debts is proof that he was making \$65 monthly payments to address his VA debt. I have credited Applicant with mitigating the debt in SOR ¶ 1.d for \$853 because it is probable that the debt duplicates the judgment in SOR ¶ 1.h for \$892. He is also credited with communicating with his SOR creditors in 2017, and with arranging payment plans for two large debts. He has taken some significant steps towards mitigating his debts.

Applicant provided excellent documentation and established mitigating of the debt in SOR ¶ 1.b. Applicant did not provide enough details and documentation about what he did to address his other SOR debts such as: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; and (2) correspondence to or from the

creditors between 2013 and 2016 to establish maintenance of contact.<sup>4</sup> Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the basis of any debt disputes. His statement that he was the victim of identity theft is not sufficient because he did not establish that any of the SOR debts resulted from identity theft. In his SOR response, he admitted responsibility for all of the SOR debts.

There is insufficient evidence about why Applicant was unable to make greater progress resolving the debts in SOR ¶¶ 1.a, 1.c, and 1.e through 1.h. There is insufficient assurance that these debts are being resolved. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

### **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.

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 34-year-old employee of a government contractor. He served on active duty in the Air Force from 2001 to 2009, and his specialty was aircraft weapon systems and nuclear systems. When he left the Air Force, he was a staff sergeant. He received an honorable discharge. He held a top secret security clearance when he was in the Air Force. Applicant has taken some college courses; however, he has not received a degree. There is no evidence of security violations.

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<sup>4</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.



Applicant's Air Force performance evaluations and his supervisor lauded his diligence, professionalism, leadership, and contributions to mission accomplishment. Applicant received some important Air Force decorations, medals, badges, citations and campaign ribbons.

The SOR alleges eight delinquent debts totaling \$17,715. Applicant provided excellent documentary evidence of his payments to address the VA debt in SOR ¶ 1.b. His finances were adversely affected by circumstances beyond his control including unemployment, underemployment, identity theft, and his fiancée's disability. I have credited Applicant with mitigating the debt in SOR ¶ 1.d for \$853 because it is probable that the debt duplicates the judgment in SOR ¶ 1.h for \$892. He also receives some credited with communicating with his SOR creditors in 2017, and with arranging payment plans for two large debts.

Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for the debts in SOR ¶¶ 1.a, 1.c, and 1.e through 1.h. He did not establish he had insufficient income to make more progress sooner on more of his 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 information about inability to pay debts, financial history, or documented 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 grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations 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. I conclude that financial consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e through 1.h:	Against Applicant

### **Conclusion**

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

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MARK HARVEY  
Administrative Judge