



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



In the matter of:

Applicant for Security Clearance

)  
)  
) ISCR Case No. 17-01852  
)  
)

**Appearances**

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

01/12/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges five delinquent debts totaling \$27,421. Two SOR debts are in established payment plans, and he settled or paid the other three SOR debts. He made sufficient progress towards resolution of his financial issues. Financial considerations security concerns are mitigated, and eligibility for access to classified information is granted.

**Statement of the Case**

On January 6, 2016, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On June 2, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an 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 June 23, 2017, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On August 2, 2017, Department Counsel was ready to proceed. On August 7, 2017, the case was assigned to me. On November 8, 2017, the Defense Office

of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 30, 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. Tr. 17-19; GE 1-5; Applicant Exhibit (AE) A. On December 13, 2017, DOHA received a copy of 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 he was responsible for the debts in SOR ¶¶ 1.a through 1.e. HE 3. He also provided extenuating and mitigating information. HE 3.

Applicant is a 57-year-old cyber-security specialist employed by a government contractor. Tr. 5, 9; GE 1. In 1979, he graduated from high school. Tr. 5. In 2001, he received an associate's degree in electronic communication. Tr. 6. He served in the Air Force from 1981 to 2001. Tr. 6. His Air Force specialty was systems controller. Tr. 6. When he honorably retired from the Air Force, his rank was technical sergeant (E-6). Tr. 7. His highest Air Force award was the Air Force Commendation Medal. Tr. 7. He did not serve in any combat zones. Tr. 7. From 1986 to July 2017, Applicant was married. Tr. 8. His spouse passed away. Tr. 8. His two children are ages 29 and 30. Tr. 8; GE 1. There is no evidence of security violations, abuse of alcohol, arrests, or convictions. GE 1; GE 4.

### **Financial Considerations**

Applicant's spouse was responsible for paying the family bills. GE 4. Applicant has not had any periods of unemployment for the previous ten years. Tr. 9, 21; GE 4. Applicant generated a budget. Tr. 20; AE A at 24. He has about \$50,000 in his 401(k) account, and about \$18,000 in his bank account. Tr. 21. His taxes and mortgage accounts are current. Tr. 22. His credit reports show an overall track record of paying his debts.

The SOR alleges five delinquent debts totaling \$27,421, and the record establishes the status of Applicant's accounts as follows:

---

<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.

SOR ¶¶ 1.a and 1.b allege two education accounts owed to the same creditor and placed for collection for \$9,669 and \$9,668. He co-signed on education loans for his children. Tr. 23. On June 21, 2017, the creditor wrote that the current balance owed was \$22,022. SOR response. From November 2016, to June 2017, Applicant made 15 payments of \$517 for total payments of \$7,755. Tr. 23; AE A at 19-22. In September 2017, he paid \$1,035 to the creditor. AE A at 2. After his student loans were rehabilitated, his monthly payment was reduced to \$250. Tr. 25. The current balance on the two student loans is \$15,678. Tr. 24; AE A at 13. The two student loans are current. Tr. 24.

SOR ¶ 1.c alleges a charged-off bank debt for \$7,850. In June 2017, Applicant paid \$4,710 and resolved this debt. Tr. 23; AE A at 2, 9.

SOR ¶¶ 1.d and 1.e allege two medical debts placed for collection for \$153 and \$81. Applicant was unaware the two debts were delinquent. AE A at 3. In June 2017, Applicant paid the two debts. AE A at 10-12.

### **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 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." 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) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Two 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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).

---

<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)).

AG ¶¶ 20(a) and 20(d) apply. Applicant's finances were harmed by his spouse's death, which is a circumstance beyond his control. He did not provide details about his spouse's death or its effect on his finances. He generated a budget.

Applicant's SOR alleges five delinquent debts totaling \$27,421. His two student loans are in established payment plans, and he settled or paid the other three SOR debts. The Appeal Board explained that resolution of all SOR debts was not required to mitigate financial considerations security concerns stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Although there is limited evidence of record that he established and maintained contact with his creditors,<sup>4</sup> his financial problem is being resolved or is under control. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his debts, establishing some good faith.<sup>5</sup> Based on Applicant's credible and sincere promise to pay his debts and his track record of paying them, future new delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment." Applicant assures he will conscientiously endeavor to maintain his financial responsibility. He has sufficient income to resolve his remaining debts. His efforts mitigate financial considerations security concerns.

---

<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.

<sup>5</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)).

## **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 57-year-old cyber-security specialist employed by a government contractor. In 2001, he received an associate's degree in electronic communication. He served in the Air Force from 1981 to 2001. His Air Force specialty was systems controller. When he honorably retired from the Air Force, his rank was technical sergeant. There is no evidence of security violations, abuse of alcohol, arrests, or convictions.

Applicant's SOR alleges five delinquent debts totaling \$27,421. His SOR debts are either resolved or being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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. . . . 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 and quotation marks omitted). He understands how to establish and maintain his financial responsibility. He took reasonable actions under his particular financial circumstances to address his delinquent debts. Applicant has established a “meaningful track record” of debt repayment, and he assures he will maintain his financial responsibility.

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 considerations security concerns are mitigated.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
---------------------------	---------------

Subparagraphs 1.a through 1.e:	For Applicant
--------------------------------	---------------

### **Conclusion**

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Mark Harvey  
Administrative Judge