



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02582

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

02/08/2018

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond his control contributed to his financial problems and that he was financially responsible under the circumstances. His financial problems are being resolved and are under control. Clearance granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 11, 2015. He was interviewed by a government investigator on June 2 and 9, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on August 17, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on September 11, 2017, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence prompting the security concerns, was provided to Applicant by letter dated September 25, 2017. Applicant received the FORM on September 29, 2017. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the FORM. The case

was assigned to me on January 17, 2018. I admitted and considered all the FORM's proffered evidence.

### **Findings of Fact**

Applicant admitted SOR allegations ¶¶ 1.a and 1.b, with explanations. He denied SOR allegation ¶ 1.c. His admissions to the SOR are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 43-year-old employee of a federal contractor. He graduated from high school and enlisted in the U.S. Navy in 1992. He served on active duty between September 1992 and May 2013, when he was honorably retired after 21 years of service. While in the service, Applicant held a secret clearance. There is no evidence of any security issues or financial considerations concerns while in the service. Applicant married in 1993 and divorced in 2002. He married his second wife in 2003 and divorced in 2008. He has two adult children of his first marriage, ages 22 and 21.

After his retirement, Applicant only found part-time work as a laborer between May 2013 and September 2015. His current employer, a federal contractor, hired him for a full-time position in September 2015. Applicant has been working for the same employer since.

Applicant disclosed in his August 2015 SCA that his residence was foreclosed in 2015. He and his wife purchased a home in 2004. His 2008 divorce agreement required him to continue making the mortgage payments until the home sold. When he was transferred to another state, he did not have the financial means to continue making the mortgage payments and pay his living expenses and debts. His ex-wife refused to assist him paying the mortgage and she did not help on his efforts to sell the house. In early 2010, Applicant contacted the mortgage holder seeking to work out a solution, to no avail. After talking to an employee of the bank, he stopped making the mortgage payments in December 2010 seeking the foreclosure of the property. The foreclosure took place in August 2014. (FORM Item 3) There is no past-due balance or a balance on the foreclosed mortgage. (FORM Items 4 and 5)

Applicant owes about \$18,000 for a repossessed vehicle. (SOR ¶ 1.b) Applicant volunteered to the investigator that he purchased the vehicle in February 2013 while he was still serving on active duty and receiving full pay, allowances, and benefits. After he retired in May 2013, Applicant could not find full-time employment. He worked part time between May 2013 and September 2015. Applicant could not afford to make the car payments, missed a car payment, and the creditor repossessed the vehicle. When Applicant attempted make up the payment and recover the vehicle, the creditor refused to accept anything except full payment of the account. Applicant did not have the money to pay off the vehicle. Applicant told the investigator that he had not paid off the debt because the creditor would not accept anything except a full payment. He did not have the financial resources to make such a large onetime payment. (FORM, Items 3 and 4)

Applicant discussed the debt alleged in SOR ¶ 1.c with the investigator during the June 2, 2017 interview and told him he had paid the debt. During the June 6, 2017 interview, Applicant presented documentary evidence showing that he had paid the debt in November 2015. (Applicant's SOR answer.)

Applicant explained to the investigator during the 2017 interviews and in his SOR answer, that his financial problems resulted from circumstances beyond his control. The foreclosure of the house was caused by his 2008 divorce, his ex-wife's reluctance to assist paying the mortgage and to help selling the home, his reassignment to another state, which increased his living expenses, and his 2013 retirement. He just could not afford to continue making the mortgage payments.

The repossession of Applicant's vehicle was caused by his Navy retirement with the subsequent reduction of income, allowances, and benefits, and his inability to find a full-time job for almost a year after his retirement. These factors placed a financial hardship on him. He did not have sufficient earnings to pay for his living expenses and debts. Thus, some of his debts became delinquent.

Applicant implied that this was the first time he ever had any financial problems. He stated in his SOR answer: "sometimes life sets up a set of circumstances that you have no control over and they just knock you on your heels. I have been knocked down, taken my lumps for it, and am trying to mend the damage that was done. I have served my country with honor and wish to continue to do so now that my time on active service is done."

During his June 2017 interview, Applicant described his financial situation as stable and noted that he pays all of his current bills on time. He believes that his two unpaid debts were isolated incidents that involved situations beyond his control. He promised to continue to live within his financial means and to pay all his debts in full and on time.

Applicant's 2015 credit report shows he had a total of 21 trade lines (accounts): 18 accounts were noted as "pays account as agreed" and only the three accounts alleged in the SOR were noted as being in collection. His 2017 credit report shows 15 accounts noted as "pays account as agreed," and only the two accounts alleged in SOR ¶¶ 1.a and 1.b were noted as being in collection. There are no other delinquent or collection accounts. He has not incurred any new delinquent debt. (FORM, Items 4 and 5)

## **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive)

(January 2, 1992), as amended; and the *National Security Adjudicative Guidelines* (AG), effective 8 June 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 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.

Applicant's history of financial problems is documented in the record. In 2013 he had a vehicle repossessed, and he defaulted on his mortgage loan and his home was foreclosed in 2014. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

(c) the person has received or is receiving 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 financial problems are ongoing and recent. However, his financial problems could be attributed to, or were aggravated by, circumstances beyond his control – his 2008 divorce and his inability to sell the home, his reassignment to another state that created additional living expenses, the reduction of income resulting from his retirement, and his inability to find full-time employment for one year after his retirement. Considering the evidence as a whole, it shows that his financial problems occurred under circumstances unlikely to recur.

The analysis of whether Applicant acted responsibly under the circumstances is not difficult considering the evidence as a whole. The credit reports in the FORM show that only the two accounts alleged in the SOR were delinquent. The remaining accounts (15-18 accounts total) were noted as "pays account as agreed." Applicant acted responsibly under the circumstances by paying those debts he could afford to pay. There is no evidence of any financial problems or additional delinquent accounts before or after he filed his 2015 SCA.

In sum, Applicant's evidence is sufficient to establish that circumstances beyond his control caused the financial hardship and prevented him from paying two debts. He acted responsibly under the circumstances. His current financial situation is stable and he promised to continue to live within his financial means and to pay all of his debts in full and on time. I find that there are clear indications that his financial problem is being resolved and is under control.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 43-year-old employee of a federal contractor. He retired from the Navy after 21 years of honorable service. During his service, he held a clearance

without any issues or concerns. Circumstances beyond his control contributed to or aggravated his financial problems. The record evidence is sufficient to establish that he was financially responsible under the circumstances and that his financial problems are being resolved or are under control. Because of his 21 years of service in the Navy while holding a clearance, Applicant is aware that he has to maintain financial responsibility to be eligible for a clearance. I believe that Applicant will continue to resolve his financial problems. The 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
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Subparagraphs 1.a - 1.c:	For Applicant
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### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge