



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04260

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

10/26/2018

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant mitigated security concerns arising under Guideline F (financial considerations). His statement of reasons (SOR) lists three delinquent debts. He paid or settled two debts, and the remaining debt is being paid, despite the unconventional method of repayment. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 15, 2016, Applicant submitted a security clearance application (SCA). On December 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On February 8, 2018, Applicant responded to the SOR, and requested a hearing. On May 10, 2018, the case was assigned to me. On May 31, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 15, 2018. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits, Government Exhibit (GE) 1-5, and Applicant offered five exhibits, Applicant Exhibit (AE) A-E. There were no objections, and all proffered exhibits were admitted into evidence. On June 26, 2018, DOHA received the hearing transcript.

### **Findings of Fact**

In Applicant's SOR response, he admitted that he owed the debts in SOR ¶¶ 1.a and 1.b, but denied owing the debt alleged in ¶ 1.c. He also provided mitigating information showing that the debts alleged in SOR ¶¶ 1.b and 1.c were resolved. Applicant's admissions are accepted as findings of fact.

Applicant is a 29-year-old mechanical engineer, and a government contractor has employed him since November 2016. He does not possess a DOD security clearance. In 2012, he earned a bachelor's degree in 2012. Applicant was unemployed from November 2012 to January 2013, from May 2013 to July 2013, from September 2013 to December 2013, and from March 2015 to March 2016. (Tr. 8-9, 26-27; GE 1)

### **Financial Considerations**

The SOR alleges three delinquent debts totaling \$21,203, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off account for \$20,450. This debt resulted from a Reserve Officers' Training Corps (ROTC) four-year scholarship Applicant received upon high school graduation. The scholarship was essentially a contract with the U.S. Air Force (USAF), on which Applicant agreed to the terms and signed. He used the scholarship to pay for his college tuition, room, board, books and he also received a stipend. Applicant used the money from the scholarship to pay for his first year of college, and for the first semester of his second year. After his third semester, Applicant decided that he no longer wished to proceed with his USAF enlistment. It was his intention to become a pilot, but Applicant had an eye exam which showed he would most likely be ineligible for a pilot position. (Tr. 29-31)

Applicant received a notice from the U.S. government in June 2010 indicating that he was responsible for repaying the scholarship money. At the time, Applicant was currently attending college and did not have the financial means to repay the government. In May 2012, Applicant made a small payment to a collection agency. About two months after he made the payment, Applicant discovered that the government account had been charged-off. Applicant was given bad advice from a friend who informed him that he should wait seven years to allow the charged-off account to fall off of his credit report, and then Applicant would no longer be responsible for paying back the debt. Applicant had other student loans in good standing that he was repaying, and he admitted it was his intention at the time to not pay back the loan he owed to the government. (Tr. 32-38, AE A; SOR Response)

Applicant attached documentation with his SOR Response that showed he was not eligible for a payment plan for this government debt, but if at any time he wanted to make payments, he could do so directly through Pay.Gov. Applicant stated he was unable to make payments as he was using all of his income to pay other expenses and his student loans, one of which is almost paid in full. He testified that once the loan is paid this year, he will then apply his monthly payment to his government debt. Applicant also stated that if he receives an increase in pay, he would also apply that extra income towards his government debt. Applicant and his fiancée recently purchased a house and made a down payment of \$7,500. His monthly net income is approximately \$2,800 and his fiancée's monthly net income is about \$1,000. Based on the advice of a financial counselor, they are currently using any leftover funds to build up their savings account in the event of an emergency. (Tr. 38- 49; AE A, C; SOR Response)

Applicant provided documentation to show that his tax refunds for tax years 2012 and 2016 were intercepted by the Federal Government to pay off his government debt. After his 2017 tax refund was intercepted in the amount of \$3,515, the debt balance is now approximately \$19,000. Applicant testified that he intentionally maintained his tax withholding the last four years and anticipates that a tax refund of approximately \$5,000 will be intercepted for tax year 2018, which would significantly reduce his debt to the government. He stated that although his payments do not look like voluntary, good-faith payments, Applicant believes this method pays more toward the debt overall than making minimal monthly payments. Applicant stated the debt is being paid, and this method is a practical solution for his financial dilemma. (Tr. 54-58; AE A, B; SOR Response)

SOR ¶ 1.b alleges a collection account owed to an apartment rental office for \$708. Applicant has resolved this debt through settlement. (Tr. 28; AE F, G; SOR Response)

SOR ¶ 1.c alleges a collection account owed to a creditor for \$48. Applicant has paid this account in full. (Tr. 29; AE A, B; SOR Response)

In 2017, Applicant contacted a credit wellness advisor for financial advice. He continued paying for her financial counseling services until about May 2018. Applicant said he stopped at that time because he is current on all of his accounts except for the debt he owes to the government. (Tr. 59-60; SOR Response)

## **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.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,<sup>1</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; 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 SOR alleges three delinquent debts totaling \$21,203. Applicant's debts resulted from several periods of unemployment, and his and his fiancée's lack of income. This is a circumstance largely beyond his control.

Applicant paid or settled the two SOR debts in ¶¶ 1.b, and 1.c. The only remaining SOR debt alleged in ¶ 1.a is currently being paid by Applicant by having his tax refunds intercepted by the Federal Government. Although this method may not be conventional, it is clear that Applicant maintains his current tax withholdings so that a large amount of money is applied to this government debt. He also anticipates using other money to repay this debt once he finishes paying off a student loan this year. Applicant stated that he is dedicated and he fully intends to repay this account owed to the government.

Applicant made significant progress resolving his delinquent debts. He has numerous paid or current accounts listed in his October 2017 credit report. (GE 3) He received financial counseling, and he has demonstrated his commitment in resolving his delinquent debts. There are clear indications that his financial problem is being resolved, and his finances are under control. Future financial problems are unlikely to occur. AG ¶¶ 20(b) and 20(c) are established, and financial considerations security concerns are mitigated.

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<sup>1</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)).

## 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's SOR alleges three delinquent debts totaling \$21,203. Applicant paid or settled two of the three alleged SOR debts. His biggest debt of approximately \$19,000 is being systematically paid by intercepted tax refunds, which is the most practical option for repayment available for Applicant. This year he paid over \$3,300, and next year he anticipates approximately \$5,000 will be applied to this government debt. 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. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

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

Applicant's actions show financial responsibility and he has established his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. 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
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Subparagraphs 1.a through 1.c:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson  
Administrative Judge