



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00275

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

10/29/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient information about his efforts to resolve nine delinquent debts alleged on the statement of reasons (SOR) totaling \$115,946. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 5, 2014, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1). On February 13, 2018, 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 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), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). (HE 2)

On March 5, 2018, Applicant provided a response to the SOR. (HE 3) On April 13, 2018, Department Counsel was ready to proceed. On July 23, 2018, the case was assigned to me. On August 22, 2018, the Defense Office of Hearings and Appeals issued a notice setting Applicant's hearing for September 5, 2018. (HE 1) Applicant's hearing was held as scheduled. Department Counsel provided three exhibits; Applicant did not provide any documents; and all exhibits were admitted without objections. (Tr. 13, 16-17; GE 1-6; AE A-C) On September 12, 2018, I received the transcript of the hearing. No post-hearing documents were received.

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, he admitted the SOR allegations in SOR ¶¶ 1.a through 1.d, 1.h, and 1.i. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 52-year-old maintenance manager, and he has worked for a DOD contractor for the previous six years. (Tr. 9) In 1984, he graduated from high school. (Tr. 6) In 1983, he joined the Army as part of the Delayed Entry Program; in 1984, he went on active duty; and in 1987, he left the military with an honorable discharge. (Tr. 7) In the Army, he was a helicopter mechanic. (Tr. 7) He was married briefly in 1988, and from 1990 to 2003. (Tr. 7-8) In 2011, he married. (Tr. 8) His children are ages 24 and 28. (Tr. 8) He has worked for the government or a government contractor for 35 years. (Tr. 43)

### **Financial Considerations**

Applicant has no periods of unemployment in the previous 10 years. (Tr. 18) His annual salary is \$72,000, and he shares expenses with his spouse. (Tr. 33) His main expenses are \$1,528 for his truck and motorcycles, \$300 monthly for vehicle insurance, and \$1,028 monthly for his mortgage in the residence he shares with his spouse. (Tr. 34-35) He drives a 2016 truck; he cosigned on a vehicle loan for \$49,000 for his spouse; and he borrowed \$27,000 for a motorcycle. (Tr. 36-37)

The SOR alleges nine delinquent debts totaling \$115,946, as follows:

SOR ¶ 1.a is a bank debt placed for collection for \$5,412.

SOR ¶ 1.b is a charged-off bank debt for \$3,037.

SOR ¶ 1.c is a bank debt placed for collection for \$876.

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<sup>1</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

SOR ¶ 1.d is a telecommunications debt placed for collection for \$615.

SOR ¶ 1.e is a department store debt placed for collection for \$356.

SOR ¶ 1.f is a delinquent child support debt for \$41.

SOR ¶ 1.g is a delinquent telecommunications debt for \$97.

SOR ¶ 1.h is a bank debt placed for collection for \$10,750.

SOR ¶ 1.i is a mortgage of \$94,762 past due in the amount of \$12,865.

Applicant said his child support account (SOR ¶ 1.f) is current, and he denied that he owed the telecommunications debt (SOR ¶ 1.g). (Tr. 31) He contacted the creditors in SOR ¶¶ 1.f and 1.g. (Tr. 32-33) The creditors did not indicate to him that the accounts were delinquent. (Tr. 31-33)

Applicant indicated he owed the debts in SOR ¶¶ 1.a through 1.e, 1.h, and 1.i. (Tr. 19) Applicant authorized a woman living with him to handle his finances, and she generated the delinquent debts. (Tr. 21-23) The debts are in Applicant's name. (Tr. 28) Applicant was often away from home, and he was unable to supervise the handling of his finances. (Tr. 23) In 2009, he ended the relationship with the woman. (Tr. 23-24) He learned of the delinquent debts around 2009. (Tr. 24-26) He tried to contact her to obtain her assistance with payment of the debts; however, he did not receive her help and now he cannot locate her. (Tr. 29)

The debt in SOR ¶ 1.i relates to the foreclosure of Applicant's residence, which occurred between 2009 and 2011. (Tr. 41) His 2016 credit report indicates the last reported delinquency was in November 2011; the account was 180 days past due in the amount of \$12,865; and foreclosure proceedings were initiated. (GE 3) He was unsure whether he owed the creditor anything after the foreclosure. (Tr. 41-43) His 2017 credit report did not list the mortgage account in SOR ¶ 1.i. (GE 2)

When he contacted his creditors, he was unable to afford the monthly payments they wanted. (Tr. 29) He did not make any payments to the creditors in SOR ¶¶ 1.a through 1.e, 1.h, and 1.i after 2009. (Tr. 30)

Around March 5, 2018, Applicant retained a credit repair company (CRC) to assist him with his finances. (Tr. 27-28) On March 5, 2018, the president of a CRC wrote that they were assisting in the dispute of false information on his credit report. (SOR response) CRC wrote all of Applicant's creditors, and told Applicant not to contact his creditors. (Tr. 18, 26, 30-31) Applicant wanted to pay one of the debts, and CRC told him not to do that because it was a "bad deal." (Tr. 27) He paid CRC almost \$800, and he believed CRC has started to repair his credit rating. (Tr. 18, 27) Later, he said he may have paid CRC about \$1,400. (Tr. 40) His credit reports were clearing up; however, he was unsure what CRC was doing to accomplish his improved credit. (Tr. 27, 31)

## 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 Director of National Intelligence 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. Sep. 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>2</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>3</sup> 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.

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<sup>2</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>3</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)).

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).

The SOR alleges nine delinquent debts totaling \$115,946. Applicant denied the debts in SOR ¶¶ 1.f (\$41) and 1.g (\$97), and he is credited with mitigation of these two SOR allegations. He employed CRC to improve his credit report; however, he conceded he was responsible for the debts in SOR ¶¶ 1.a through 1.e, 1.h, and 1.i. A friend who was living with him irresponsibly handled his finances while he was away from home, which is a circumstance largely beyond his control. He does not receive full mitigating credit under AG 20(b) because he did not establish that he acted responsibly under the circumstances. He had more than six years to make progress resolving his delinquent debts, and he provided minimal evidence of progress.<sup>4</sup>

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

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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.

<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>.

charged off. Applicant's failure to provide more evidence of debt resolution precludes mitigation of the charged-off debts on his credit report.

Applicant did not provide documentation relating to his SOR debts 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; (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.

Applicant did not provide sufficient documentation about why he was unable to make greater documented progress resolving the debts in SOR ¶¶ 1.a through 1.e, 1.h, and 1.i. There is insufficient assurance that his financial problems are 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 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 52-year-old maintenance manager, and he has worked for a DOD contractor for the previous six years. Applicant served the federal government 35 years including service in the Army on active duty. He received an honorable discharge. There is no evidence of criminal activity or workplace misconduct. He has contributed to national security.



The evidence against grant of a security clearance is more substantial. Applicant owes several delinquent debts totaling more than \$115,000. There is no evidence of progress after 2009 in the resolution of seven delinquent debts. His actions raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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. 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 consideration 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 through 1.e:	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraphs 1.h and 1.i:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge