



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 14-03203  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

06/23/2015

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On March 11, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On August 19, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) effective on September 1, 2006

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for

Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted.

On September 23, 2014, Applicant responded to the SOR. On January 8, 2015, Department Counsel was ready to proceed on Applicant's case. On January 23, 2015, DOHA assigned Applicant's case to me. On January 23, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for February 13, 2015. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through E, which were received into evidence without objection. I held the record open until February 27, 2015 to afford Applicant an opportunity to submit additional evidence. Applicant timely submitted AE F through M(5), which were received into evidence without objection. On February 24, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In his SOR answer, Applicant admitted SOR ¶¶ 1.a, 1.d through 1.h, 1.j, 1.l, 1.n, and 1.o with explanations; and denied ¶¶ 1.b, 1.c, 1.i, 1.k, 1.m, and 1.p, through 1.v with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 61-year-old truck driver employed by a defense contractor since September 2012. He seeks a secret security clearance, which is a requirement of his continued employment. (GE 1; Tr. 13-14, 19, 33-37, 70-71)

Applicant was awarded his GED in 1976. He served in the U.S. Air Force from 1973 to 1976. Applicant went on to serve in the Air National Guard from 1976 to 1978, and then in the Army National Guard from 1978 to 1980, and was honorably discharged. (GE 1, GE 2; Tr. 13, 19-23)

Applicant has been married three times with his first two marriages ending by divorce. He married his third wife in 1998 and has been separated from her since 2001. Applicant has been living with a cohabitant since 2004. He has eight children with his oldest being 40 and his youngest being 7. He is paying child support for his two youngest children in the amounts of \$135 and \$700 per month to their respective mothers. However, in the case of his youngest child he is currently paying \$778 per month to pay off an arrearage owed, discussed below. (GE 1, GE 2; Tr. 13-14, 23-32)

## Financial Considerations

Applicant's SOR lists 22 debts totaling approximately \$26,000, and two of the largest debts are for child support arrearages in the amounts of \$12,721 and \$2,456 owed to two different states. (SOR ¶¶ 1.a – 1.v; Tr. 12) Applicant attributes his financial difficulties to a vehicle accident in 2005, and two uncovered surgeries in 2006 and 2010. During these times, he was unable to work and fell behind on his debts. Also, he suffers from diabetes and is "in and out" of the hospital. (Tr. 73-75)

The following summarizes the status of each SOR allegation or debt:

SOR ¶ 1.a – Collection account owed to State A for past-due child support in the amount of \$12,721 on an account with a balance of \$27,296. Applicant stated that the balance owed does not reflect the \$300 monthly payments he paid for three years through an informal arrangement with his youngest child's mother. Regardless, Applicant is current on his monthly \$779 child support payments, which not only covers his monthly child support payment, but also addresses his arrearage. **DEBT BEING RESOLVED.** (SOR answer; GE 1 – GE 4; AE A, AE B, AE I, AE J, AE L; Tr. 39-42, 66-69)

SOR ¶ 1.b – Delinquent account for \$5,721 owed to a finance company. Applicant co-signed for an automobile loan for a former girlfriend. She defaulted and the finance company repossessed the automobile. Applicant was not aware that his former girlfriend defaulted until he was contacted by the finance company. Applicant contacted creditor and is making \$125 monthly payments. **DEBT BEING RESOLVED.** (SOR answer; GE 1 – 4; AE A, AE B; Tr. 42-46)

SOR ¶ 1.c – Collection account for \$603 for a cable company bill. Debt arose when cable company charged Applicant for equipment that he purportedly did not return. Applicant contacted the creditor and convinced them that he did return the equipment. This is the same debt alleged in SOR ¶ 1.u, below. **DEBT RESOLVED.** (SOR answer, GE 2 – 4; AE B, AE G; Tr. 46-48)

SOR ¶ 1.d – Delinquent account for \$558 for a medical bill. Applicant contacted creditor and is making \$158 monthly payments. This is the same debt alleged in SOR ¶ 1.k, below. **DEBT BEING RESOLVED.** (SOR answer; GE 2 – 4; AE B; Tr. 48-49)

SOR ¶ 1.e – Delinquent account for \$95 for a medical bill. Applicant paid this account in full. **DEBT RESOLVED.** (SOR answer; GE 2 – 4; B; Tr. 49-52)

SOR ¶¶ 1.f – 1.h - Delinquent accounts \$80, \$52, and \$52 for medical bills. Applicant paid these accounts in full. **DEBTS RESOLVED.** (SOR answer; GE 2 – 4; AE B; Tr. 49-52)

SOR ¶ 1.i – Delinquent account for \$44 for a medical bill. Applicant paid this account in full. **DEBT RESOLVED.** (SOR answer; GE 2 – 4; AE B; Tr. 52-53)

SOR ¶ 1.j – Past-due account owed to State B for child support for \$2,456. Applicant was making \$135 monthly payments, but recently increased his monthly payments to \$150. **DEBT BEING RESOLVED.** (SOR answer, GE 2-4; AE B, AE K; Tr. 53-55, 66-69)

SOR ¶ 1.k – Collection account for \$558 for a medical bill. This the same debt alleged in SOR ¶ 1.d, above. **DUPLICATE DEBT.** (SOR answer; GE 2 – 4; AE B; 48-49, 55-57)

SOR ¶ 1.l – Delinquent account for \$933 for a medical bill. The amount actually increased to \$1,245, and reflects debts consolidated in SOR ¶¶ 1.n and 1.o, below. Applicant settled the debt for the lesser amount of \$1,000, set up a payment plan, and is making payments. **DEBT BEING RESOLVED.** (SOR answer; GE 2 – 4; AE B, AE C; Tr. 57-58)

SOR ¶ 1.m – Delinquent account for \$53 a medical bill. Applicant made a good-faith attempt to contact creditor before and after his hearing, but was unable to locate. Information on credit report is either inaccurate or incomplete. **DEBT RESOLVED.** (SOR answer; GE 2 – 4; AE B; AE F, AE G; Tr. 58-59)

SOR ¶¶ 1.n and 1.o – Delinquent accounts for \$232 and \$278 for medical bills. These debts were consolidated by the same creditor as noted in SOR ¶ 1.l, See above. **DEBTS BEING RESOLVED.** (SOR answer; GE 2 – 4; AE B; Tr. 59-61)

SOR ¶ 1.p – Delinquent account for \$159 for an unknown creditor. Applicant made a good-faith attempt to contact creditor before and after his hearing, but was unable to locate the creditor. Information on his credit report is either inaccurate or incomplete. **DEBT RESOLVED.** (SOR answer; GE 2 – 4; AE B; AE F, AE G; Tr. 61)

SOR ¶ 1.q – Delinquent account for \$94 for former employer's equipment. Applicant paid this account in full. **DEBT RESOLVED.** (SOR answer; GE 2 – 4; AE B; Tr. 61-62)

SOR ¶¶ 1.r through 1.t – Collection account for \$93 for entertainment company; collection account for \$356 for cell phone company; and collection account for \$300 for credit card, respectively. Applicant made a good-faith attempt to contact creditors before and after his hearing, but was unable to locate these three creditors. Information on credit report is either inaccurate or incomplete. Applicant disputes the fact that these accounts are his. **DEBTS RESOLVED.** (SOR answer; GE 2 – 4; AE B; AE F, AE G; Tr. 62-65)

SOR ¶ 1.u – Collection account for \$603 for cable company bill. This the same debt alleged in SOR ¶ 1.c, above. **DUPLICATE DEBT.** (SOR answer; GE 2 – 4; AE B; 48-49, 65)

SOR ¶ 1.v – Delinquent account for \$631 for medical bill. This is a duplicate of medical bills previously listed. See SOR ¶ 1.i. **DUPLICATE DEBT.** (SOR answer; GE 2 – 4; AE B; Tr. 65)

Applicant's annual salary is approximately \$37,000 and he estimates that he has a net monthly remainder of \$800 to \$900. He has not sought financial counseling. Apart from these debts, Applicant is current on all of his other obligations. (Tr. 30, 37, 71-75)

### **Character Evidence**

Applicant stated that he does not have a criminal background, and is trustworthy. (Tr. 75) He added that his cohabitant is retired military, holds a security clearance, and that he and she drive together. (Tr. 76)

Applicant submitted five reference letters from persons such as his cohabitant and co-worker, as well as, former employers. These individuals collectively capture the last two decades and describe Applicant from a personal and professional perspective. They enthusiastically describe Applicant as trustworthy and professional. (AE M(1) – AE M(5)).

### **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. See *a/so* Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, 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 and the Secretary of Defense 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 (4<sup>th</sup> 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 her 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**

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.”

Applicant's history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations 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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

Full application of AG ¶ 20(b) is warranted. Applicant's accident and surgeries were unplanned and costly. He not only was unable to work and earn income, but also did not have sufficient medical insurance for 100% coverage. Applicant reached out to his creditors, and as noted, has resolved or is resolving all of his debts. He has made substantial progress in regaining financial responsibility.<sup>1</sup>

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<sup>1</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

AG ¶ 20(c) is applicable. Although Applicant did not receive financial counseling, there are clear indications that the problem is being resolved or is under control. A review of his monthly budget indicates that he is living within his means. Having paid or in the process of resolving the debts and having a reasonable basis to dispute several of his debts, Applicant is able to receive full credit under AG ¶¶ 20(d) and 20(e). Notably, Applicant has addressed his child support arrearages and is current on those payments.

### **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(a):

(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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's military service and service as a defense contractor weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that 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

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(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 maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

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 omitted).

Due to circumstances beyond his control, Applicant’s debts became delinquent. Despite the financial setback as a result of his accident and surgeries, it is clear from Applicant’s actions that he is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered his military service, the circumstances that led to his financial difficulties, his financial recovery and steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his situation, his character evidence, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **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 to 1.v: For Applicant

## **Conclusion**

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

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Robert J. Tuidor  
Administrative Judge