



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 14-04507
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: Dale Gutwein, Personal Representative

05/26/2015

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**Decision**

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TUIDER, Robert J., Administrative Judge:

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

**Statement of the Case**

On April 6, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On October 16, 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 continued or revoked.

On November 14, 2014, Applicant responded to the SOR. On January 8, 2015, Department Counsel was ready to proceed on Applicant's case. On January 21, 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 3, which were received into evidence without objection. Applicant testified, called one witness, and offered Applicant Exhibits (AE) A through P, 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 and 1.c with explanations; and denied ¶¶ 1.b, and 1.d through 1.i with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 48-year-old surveillance team member and ground controller, who has been employed by a defense contractor since February 2013. He currently holds an interim secret security clearance. Applicant seeks a permanent secret security clearance, which is a requirement of his continued employment. (GE 1; Tr. 17-19)

Applicant graduated from high school in 1985. He has been attending college intermittently since 1989 and expects to graduate with a bachelor of science degree in homeland security in May 2015. Applicant has earned several work-related certificates. (GE 1; Tr. 13, 19-22)

Applicant was previously married three times – 1986 to 1989, 1990 to 1994, and 1998 to 2002. Those marriages ended by divorce. Applicant has a 27-year-old son, who is independent, and a 10-year-old daughter, who lives with him. He also had a 3-year-old son born during his third marriage, who passed away. On September 11, 2008, Applicant and the mother of his 10-year-old daughter entered into a stipulation by which Applicant was granted custody of their daughter. (GE 1; AE B; Tr. 23-25)

Applicant served in the U.S. Marine Corps from 1986 to 1990, and was honorably discharged as a corporal (pay grade E-4). He remained in the Marine Corps Inactive Ready Reserve (IRR) from 1990 to 1992 and was honorably discharged as a sergeant (pay grade E-5). Applicant held two military occupation specialties while in

the Marine Corps -- 5811 (military police) and 3051 (logistics specialist). (GE 1; AE I; Tr. 25-27)

## Financial Considerations

Applicant's SOR contains 12 separate allegations consisting of 2005 Chapter 7 bankruptcy, a 2004 state tax lien, one charged-off account, and nine collection accounts. (SOR ¶¶ 1.a – 1.l)

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

SOR ¶ 1.a – Chapter 7 bankruptcy filed in 2005 and discharged in 2006. At the time Applicant filed for bankruptcy, he was president and chief executive officer of an information technology business. In May 1998, his deceased son previously discussed, was born with a central nervous system disorder with a six-month life expectancy. The challenges his son posed were financially and personally significant. Two years after his son was born, Applicant's wife filed for divorce and left with her daughter leaving Applicant to care for their disabled and terminally ill son. As a result of time commitments and the financial strain of caring for his son, Applicant was unable to devote the required time and attention to his business. His business failed and Applicant explored various options to recover, but after seeking professional advice and evaluating his options, he closed his company in 2002 and filed for bankruptcy in 2005. (SOR answer; GE 1, Tr. 35-44, 53)

Applicant's post-bankruptcy financial problems stem from a failed sustainable energy solutions company that he and his partner formed. The company was viable until Applicant's partner retained the services of private finding organization for the purpose of raising business capital. However, the individual with whom Applicant's partner had retained to raise capital took their company's money "somewhere in the neighborhood of a couple hundred thousand dollars" and moved to a foreign country. As a result, Applicant and his partner were forced to dissolve their company. In the process, Applicant lost his life savings. (Tr. 46-49) Additionally, Applicant incurred medical debts as a result of a lapse in company insurance coverage for nonpayment of premiums. Around the time his company was being dissolved, he also incurred expenses to move to the state where his mother was terminally ill. (SOR answer; Tr. 50)

SOR ¶ 1.b – Out-of-state tax lien filed against Applicant in 2004 for \$10,763. In 2003, Applicant filed paperwork in anticipation of conducting business out of state; however, he never did conduct business in that state. Applicant neglected to file required reports with the state and the state sought estimated fees and filed a lien against Applicant for non-payment of those fees. Applicant stated that the state in question acknowledged that he does not owe any money, but will not release the lien. Applicant's attorney has counseled him to file an appeal with the state's unemployment commission to have the lien released. **ACCOUNT BEING DISPUTED.** (SOR answer; AE A; Tr. 58-63)

SOR ¶ 1.c – Credit card collection account for \$6,720. This account was opened in April 2005 and should have been included in Applicant’s October 2005 Chapter 7 bankruptcy. Department Counsel stipulated that this debt should have been included in Applicant’s bankruptcy and discharged; however, it appears on his April 2014 credit report. **ACCOUNT RESOLVED.** (SOR answer; GE 3; Tr. 44-45)

SOR ¶ 1.d – Charged-off credit card account for \$966. By letter dated February 12, 2015, Applicant entered into an agreement to make \$50 monthly payments until debt is paid off. **ACCOUNT BEING RESOLVED.** (SOR answer; AE E; Tr. 51-52, 54)

SOR ¶¶ 1.e – collection account for \$1,020; 1.f - collection account for \$396; 1.g - collection account for \$354; 1.h – collection account for \$326; 1.j – collection account \$202; and 1.k – collection account for \$183. Applicant enrolled these accounts in a debt consolidation service. By letter dated February 10, 2015, the debt consolidation service stated that all of these debts were settled and paid. **ACCOUNTS RESOLVED.** (SOR answer; AE F; Tr. 55-58)

SOR ¶ 1.i – Collection account for sanitation service for \$229. By letter dated February 9, 2015, this account has been paid in full. **ACCOUNT RESOLVED.** (SOR answer; AE G; Tr. 54-55)

SOR ¶ 1.l – Collection account for broadband service for \$179. The creditor incorrectly claimed Applicant did not return his equipment when he closed his account. Applicant successfully disputed this debt. By letter dated November 12, 2014, the creditor acknowledged their error, notified the credit bureaus, and apologized for any inconvenience their error may have caused. **ACCOUNT DISPUTED AND RESOLVED.** (SOR answer; AE H; Tr. 55)

Applicant has not sought financial counseling. Apart from these debts, Applicant is current on all of his other obligations. (Tr. 64-67)

### **Character Evidence**

Applicant’s personal representative testified on his behalf stating that he has known Applicant for approximately two years. He stated that he and Applicant are friends, their families vacation together, and that Applicant is trustworthy to the point that he “would trust him with his credit cards or anything else.” (Tr. 68-69)

As a parent, Applicant is very involved with his 10-year-old daughter. Her latest 5<sup>th</sup> grade report card indicates that she is a “B” student and per her teacher’s comment is an overall “great girl.” (AE C) Applicant submitted five character reference letters from his college – two letters from the college president, one letter from the financial aid assistant, one letter from the campus executive officer, one letter from an advisor from the office of student life, and one letter from the director of development. These letters convey the collective message that Applicant is highly regarded as a student, both academically and in non-academic activities. Applicant contributes significantly to

student organizations, the college's veteran's organization, and college foundation. (AE J – AE M)

Applicant also submitted three work-related character reference letters from his team leader, lead ground controller, and chief executive officer. These letters discuss the contribution Applicant is making to the company and emphasize his trustworthiness. (AE N) Lastly, Applicant submitted a character letter from a long-time friend who spoke of his character, commitment to his family, and how he excelled during adversity. (AE P) Applicant is also an active and accomplished diver. (AE O)

### **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 also 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. Applicant's 2005 bankruptcy is of limited security significance because it is not recent, and it represents his efforts to resolve his debts and obtain a fresh financial start.

Full application of AG ¶ 20(b) is warranted. Applicant's recent divorce, illness and death of his child, and business failures were unplanned and costly. Applicant reached out to his creditors, and as noted, has resolved or is resolving 10 out of 11 of his debts and is disputing the 11<sup>th</sup> debt. Applicant has made substantial progress in regaining financial responsibility.<sup>1</sup>

AG ¶ 20(c) is not applicable. Applicant is living within his means. Having paid or in the process of resolving the debts and having a reasonable basis to dispute two of his debts, Applicant is able to receive full credit under AG ¶¶ 20(d) and 20(e).

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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 (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.

## 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, assisting other veterans in his post-service, and service as a defense contractor weigh heavily in his favor. He is a law-abiding citizen, a dedicated father, 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 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 most recent divorce, death of his child, and business failures, 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 Applicant's years of financial responsibility before falling into debt, 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.i:               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. Tuider  
Administrative Judge