



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-04803  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

04/21/2016

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant made sufficient progress resolving the debts alleged in his statement of reasons (SOR), which alleges 14 delinquent debts totaling \$37,955. While additional sustained financial effort is necessary, he has established a track record of debt payment and resolution. Financial considerations security concerns are mitigated. Access to classified information is granted.

**History of the Case**

On February 5, 2014, Applicant completed and signed a Questionnaire for National Security Positions (SF 86). (Government Exhibit (GE) 1) On March 28, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On May 7, 2015, Applicant responded to the SOR, and he requested a hearing. On February 11, 2016, Department Counsel was ready to proceed. On February 25, 2016, the case was assigned to me. On March 9, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 29, 2016. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits, and Applicant offered seven exhibits. (Transcript (Tr.) 16-19; Government Exhibit (GE) 1-5; Applicant Exhibit (AE) A-G) All proffered exhibits were admitted without objection. (Tr. 17, 19; GE 1-5; AE A-G) On April 6, 2016, DOHA received a copy of the transcript of the hearing.

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

In Applicant's SOR response, he admitted the debt in SOR ¶ 1.m, and he discussed the other SOR allegations without admitting or denying them. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 40-year-old employee of a defense contractor. (Tr. 5) He has been employed by the defense contractor for the previous three years in a position relating to aircraft maintenance. (Tr. 8, 27) In 1994, Applicant received a diploma of general education development (GED). (Tr. 5) In 2000, he married, and in 2008, he was divorced. (Tr. 7) His children are ages 10 and 14. (Tr. 7)

From 2000 to 2012, Applicant served in the Navy, and his specialty was aviation electronics technician. (Tr. 5-6) He left active duty as a petty officer second class, and he received an honorable discharge. (Tr. 6, 20) He was deployed three times to the Iraq theater of operations. (Tr. 27, 49-50) In 2010, he received an associate's degree in electronic engineering technology. (Tr. 6, 13; GE 1) He is attending college to earn a degree in computer science. (Tr. 6, 28-29)

### **Financial Considerations**

Applicant's history of delinquent debt is documented in his credit reports, SF 86, SOR response, and hearing record. From March 2012 to September 2012, Applicant was unemployed. (Tr. 20; GE 1; GE 2) His unemployment and his spouse's abuses of his credit were the primary genesis of the negative information in his credit reports.

The debt in SOR ¶ 1.a is a telecommunications collection debt for \$506. Applicant said he never had an account with the original creditor. (Tr. 30) His credit report included addresses where he never lived, and he disputed his responsibility for the debt in SOR ¶ 1.a. (Tr. 31) He requested that the creditor provide documentation showing his signature to show he opened or originated the account. (Tr. 31) Applicant's March 16, 2016 credit report shows the debt is disputed. (AE A at 2; AE G)

---

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

The debt in SOR ¶ 1.b is a charged-off credit card debt for \$2,718. The last action on the account was in 2008. (Tr. 33) Applicant believes his wife opened the account without his permission. (Tr. 33) His spouse declined to accept responsibility for the debt. (Tr. 34) Applicant elected to pay the debt in full even though he believed he was not responsible for it. (Tr. 34) The debt no longer appears on his credit report. (Tr. 34; AE G) On March 16, 2016, the creditor wrote the debt was settled in full. (AE E)

The debt in SOR ¶ 1.c is a vehicle-related debt for \$7,199. Applicant's girlfriend took his vehicle to another state without his permission. (Tr. 35) She made some payments on the vehicle loan; she stopped making payments; and the vehicle was repossessed. (Tr. 34-36) The debt was removed from Applicant's credit report, and Applicant believed the creditor had determined she was responsible for this debt. (Tr. 36; SOR response; GE 3) He is credited with successfully disputing this debt.

The debt in SOR ¶ 1.d for \$452 and the debt in SOR ¶ 1.l for \$557 are the same bank-collection debt. (Tr. 37) Applicant disputed his responsibility for the debt. (Tr. 37) The dispute is documented in his March 16, 2015 credit report. (AE G at 9)

The debt in SOR ¶ 1.e is a charged-off bank debt for \$1,275, and SOR ¶ 1.h is a charged-off debt for \$1,987. The debts in SOR ¶¶ 1.e and 1.h originated with the same bank creditor. Applicant believed the two debts owed to the creditor were resolved. (Tr. 39; AE A at 2) On his 2014 federal income tax return, he disclosed income of \$958 as documented in an Internal Revenue Service (IRS) form 1099-C for one of the debts. (Tr. 39-40; AE A at 2; AE C) He anticipates receiving an IRS form 1099-C for the other debt. (AE A at 2; AE G at 5)

The debt in SOR ¶ 1.f is a retail-collection debt for \$257. Applicant believed his spouse opened the account without his consent, and he disputed his responsibility for this debt. (Tr. 40; AE A at 2; AE G at 8)

The debt in SOR ¶ 1.g is a charged-off bank debt for \$8,623. Applicant's March 16, 2016 credit report shows the debt was paid and closed. (AE A at 2; AE G at 6) It indicates the creditor wrote off \$2,718. (AG G at 6) On his 2013 federal income tax return, he disclosed income of \$6,427 as documented in an IRS form 1099-C, as the amount the creditor wrote off. (Tr. 39; AE D; AE G at 6)

The debt in SOR ¶ 1.i is a judgment relating to an apartment complex for \$1,205. Applicant said he was not living in the apartment complex, and the creditor indicated the debt was a mistake, and the judgment was satisfied. (Tr. 42) The judgment does not appear on his current credit report. (GE 3)

The debt in SOR ¶ 1.j is a bank-collection debt for \$6,627. Applicant never had an account with the original creditor bank. (Tr. 48) Applicant did not recognize the debt; his credit repair company successfully disputed it; and it was removed from his credit report. (Tr. 44)

The debt in SOR ¶ 1.k is a utilities-collection debt for \$384. Applicant said the debt became delinquent while he was deployed; when he returned from deployment, the debt was paid; and it does not appear on his credit report. (Tr. 43-44; AE G)

The debt in SOR ¶ 1.m is a child-support arrearage for \$5,678. After leaving active duty, Applicant received unemployment compensation; however, fifty percent was used to pay his child support debt. (Tr. 21) Fifty percent of his unemployment compensation was insufficient to fully pay his child support, and an arrearage resulted. (Tr. 24) He informed the state and his former spouse that once he became employed, he would pay his child support and make payments on his arrearage. (Tr. 25-26) He made some payments, and on April 24, 2015, he reached a formal payment arrangement with the state to address his arrearage. He pays \$600 monthly in child support and \$150 monthly to address his child support arrearage. (Tr. 30; AE A at 2; AE B)

The debt in SOR ¶ 1.n is a telecommunications-collection debt for \$517. Applicant never had an account with the original creditor, and he disputed his responsibility for the debt. (Tr. 44) His credit repair company was able to have the debt successfully removed from his credit report. (Tr. 44)

Applicant's October 16, 2015 credit report shows eight negative entries relating to the following specific SOR paragraphs: ¶ 1.a for \$506 (GE 3 at 2); ¶ 1.b for \$2,718 (GE 3 at 5); ¶ 1.e for \$1,275 (GE 3 at 5); ¶ 1.f for \$257 (GE 3 at 4); ¶ 1.g for \$8,598 (GE 3 at 6); ¶ 1.h for \$1,987 (GE 3 at 4); he paid the non-SOR debt for \$103 (GE 3 at 4); and ¶ 1.m for \$5,091. (GE 3 at 5) As indicated previously, all of these negative entries in his October 16, 2015 credit report, except for the debts in SOR ¶¶ 1.a, 1.f, and 1.l, were resolved through successful disputes or payment.

Applicant's current annual income is \$70,000. (Tr. 29-30) He is current on his taxes and on his student loans. (Tr. 45) He has not had formal financial counseling; however, he utilizes a budget, and he has learned about finances and debt payment. (Tr. 47) He has saved \$1,000 for a contingency fund. (Tr. 48) His car payment is current. (Tr. 49)

Since January 2014, Applicant has been paying a credit repair company \$73 monthly to help him dispute or establish the legitimacy of debts on his credit report. (Tr. 36-38, 45; AE C; AE D) His former spouse's address was listed on Applicant's credit report. (Tr. 41) Applicant suspected his spouse of forging his name on credit card agreements. (Tr. 41)

In sum, Applicant settled and paid the debts in SOR ¶¶ 1.b, 1.g, and 1.k totaling \$11,725. His child support debt in SOR ¶ 1.m is in an established payment plan. He successfully disputed the debts in SOR ¶¶ 1.c, 1.e, 1.h, 1.i, 1.j, and 1.n. totaling \$18,780. He has disputed the debts in SOR ¶¶ 1.a, 1.d, 1.f, and 1.l totaling \$1,772. Several debts were paid as agreed. He assures that if his debt disputes are unsuccessful, he will pay the debts.

## 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 revised 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 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 (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 or 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**

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

AG ¶ 19 provides two 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 documented in his credit reports, SF 86, SOR response, and hearing record. Applicant’s SOR alleges 14 delinquent debts totaling \$37,955. Applicant has an admitted history including a repossessed vehicle, delinquent child support, and at least one delinquent credit card debt. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) 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), 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;<sup>2</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.

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).

AG ¶¶ 20(a) through 20(e) apply. Applicant's financial problems resulted from fraudulent activity on several of accounts attributed to him on his credit reports, divorce, and unemployment after he left active duty. His SOR alleges 14 delinquent debts totaling \$37,955. He settled and paid three SOR debts totaling \$11,725. His child support debt is in a state-approved payment plan. He successfully disputed six SOR debts totaling \$18,780. He has disputed four SOR debts totaling \$1,772, and he is awaiting the results of the disputes. He assures that if his disputes are unsuccessful, he will pay the debts. SOR ¶ 20(e) applies to the disputed debts.

---

<sup>2</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)).

Applicant is communicating with his creditors, and has assured he intends to pay his debts. I am confident that Applicant will conscientiously endeavor to resolve his debts. Based on Applicant's credible and sincere promise to timely pay his debts, future new delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." His payments of some of his debts showed good faith. He has sufficient income to keep his debts in current status and to continue making progress paying his remaining delinquent or unresolved debts. His efforts are sufficient to mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, he mitigated security concerns under the whole-person concept, *infra*.

### **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.

Under AG ¶ 2(c), 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 40-year-old employee of a defense contractor. He has been employed by the defense contractor for the previous three years in a position relating to aircraft maintenance. From 2000 to 2012, Applicant served in the Navy, and his specialty was aviation electronics technician. He left active duty as a petty officer second class, and he received an honorable discharge. He was deployed three times to the Iraq theater of operations. In 2010, he received an associate's degree in electronic engineering technology. He is attending college to earn a degree in computer science.

Applicant's financial problems resulted from circumstances beyond his control including fraudulent activity on several of accounts attributed to him on his credit reports, divorce in 2008, and unemployment after he left active duty. His credit reports show several non-SOR accounts were paid as agreed. His SOR alleges 14 delinquent debts totaling \$37,955. He settled and paid three SOR debts totaling \$11,725, and his

child support debt is in a state-approved payment plan. He successfully disputed six SOR debts totaling \$18,780. He has disputed four SOR debts totaling \$1,772, and he is awaiting the results of the four disputes.

Applicant communicates with his creditors, and has assured he intends to pay his debts. He understands that he needs to pay his debts, and the conduct required to retain his security clearance. 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 has established a "meaningful track record" of debt re-payment. Applicant needs to continue to pay his creditors, to continue to monitor his credit reports, and to resolve any negative financial entries that arise on his credit report. Applicant should continue his efforts to establish and maintain his financial responsibility.<sup>3</sup>

---

<sup>3</sup>The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [the applicant] the opportunity to have a security clearance while [the applicant] works on [his or] her financial problems."). This footnote does not imply that this decision to grant Applicant's security clearance is conditional.

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 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

Subparagraphs 1.a through 1.n: For Applicant

### **Conclusion**

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

---

MARK HARVEY  
Administrative Judge