



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



In the matter of: )  
 )  
----- ) ISCR Case No. 15-00256  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

02/10/2016

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s credit reports and statement of reasons (SOR) allege six delinquent debts totaling \$20,165. Applicant resolved all of the SOR debts, except for one debt for \$7,678, which is in a payment plan. 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 August 28, 2011, and February 3, 2014, Applicant completed and signed Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Government Exhibits (GE) 1, 2) On August 1, 2015, the Department of Defense Consolidated Adjudications Facility (DOD 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 September 8, 2015, Applicant responded to the SOR, and he requested a hearing. On October 28, 2015, Department Counsel was ready to proceed. On November 5, 2015, the case was assigned to me. On January 8, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 28, 2016. (HE 1) For technical reasons, DOHA was unable to establish a video teleconference (VTC) connection with Applicant's overseas location. (Transcript (Tr.) 12) Applicant waived his right to an in-person and VTC hearing, and elected to present his case using teleconference as his communication medium. (Tr. 12-13) Applicant waived any objection to the timeliness or content of the notice. (Tr. 16-17) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered eight exhibits, and Applicant offered seven exhibits, which were admitted into evidence without objection. (Tr. 19-23; Government Exhibit (GE) 1-8; Applicant Exhibit (AE) A-G) He provided one exhibit after his hearing, which was admitted without objection. (AE H) On February 3, 2016, DOHA received a copy of the transcript of the hearing.

### **Findings of Fact**

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.f. 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, who has worked as an inventory specialist in a warehouse at an overseas location for two years. (Tr. 6, 15, 24) In 1998, he married, and in December 2012, he divorced. (Tr. 10) He has a 16-year-old daughter from his first marriage. (Tr. 10) In 2015, he married, and his spouse has a 13-year-old child. (Tr. 10)

In 1993, Applicant graduated from high school, and he is currently attending college. (Tr. 6) His goal is to complete his bachelor's degree in business with a focus in logistics. (Tr. 7) In 1993, he joined the Army, and in 2013, he honorably retired from active service as a sergeant first class (E-7). (Tr. 7-8) He served in Iraq from June 2004 to June 2005 and from April 2008 to May 2009. (AE H) He served in Afghanistan from February 2011 to February 2012. (Tr. 7; AE H) His military occupational specialty was maintenance supervisor (91X). (Tr. 8) He receives 80 percent disability (\$1,645 monthly) from the Department of Veterans Affairs. (VA). (Tr. 8-9, 26)

### **Financial Considerations**

Applicant's finances were adversely affected by his divorce and by debts his former spouse failed to pay while he was deployed to combat zones. Applicant's credit reports, SOR, and SOR response established the following delinquent debts, and their status is as follows:

SOR ¶ 1.a alleges a charged-off debt for \$7,678. Applicant borrowed the money from the creditor to finance his divorce. (Tr. 28) Applicant recently reached an agreement with the creditor to pay \$235 monthly until the debt is half paid, and then he will pay the remainder of the debt with a lump-sum payment. (Tr. 28-32) He made the first payment of \$235. (Tr. 28)

SOR ¶ 1.b alleges a charged-off credit card debt for \$410. (Tr. 33) On August 31, 2015, Applicant paid the debt in full. (Tr. 33; AE B)

SOR ¶ 1.c alleges a collection account resulting from an electrical debt for \$168. (Tr. 35) On August 31, 2015, Applicant paid this debt. (Tr. 35; AE C)

SOR ¶ 1.d alleges a charged-off account with a zero balance. (Tr. 36) In January 2013, Applicant paid off the debt to the creditor. (Tr. 36) He recently checked with the creditor, and the creditor said his account was closed. (Tr. 36-37; AE F)

SOR ¶ 1.e alleges a charged-off debt for \$6,531, and ¶ 1.f alleges a charged-off debt for \$5,378. The debts are duplications of each other. (Tr. 37-38) In 2013, Applicant received an Internal Revenue Service (IRS) Form 1099-C. (Tr. 37-40; AE D) The IRS contacted Applicant and advised him he owed an additional \$987 in federal income taxes because of the release from the creditor. (Tr. 38) In 2015, Applicant paid the debt to the IRS. (Tr. 38-39)

Applicant's SOR does not list a debt owed to the Defense Finance and Accounting Service (DFAS). Applicant said that DFAS was collecting \$37,727 from his military retired pay because of a debt owed when he was on active duty. (Tr. 41-42; GE 7 at 2) When Applicant was deployed to Afghanistan, his spouse received a housing allowance. When he returned to the United States, DFAS advised him that he had an overpayment because he was not supposed to receive a housing allowance while he was deployed. (Tr. 47) He did not receive disciplinary action because of the receipt of excess housing allowance. DFAS may be erroneously collecting from his retirement pay as his spouse and daughter were not living in government housing while he was deployed, and at the time of his deployment to Afghanistan, he was not divorced. (Tr. 47) Applicant said he would check with DFAS to ensure the debt was valid. (Tr. 47)

Applicant currently has \$9,800 in his savings account. (Tr. 44) He does not have any credit cards, and his taxes are paid. (Tr. 44-45) He does not have any non-SOR delinquent debts. (Tr. 41-45) Applicant promised to timely pay his debts. He discussed his expenses and income, and he has sufficient income to keep his debts in current status and to continue making progress paying his remaining SOR debt and DFAS.

### **Character Evidence**

Applicant's DD Form 214 reflects the following awards: Iraq Campaign Medal with two Campaign Stars; Meritorious Service Medal; Combat Life Commendation Medal (6<sup>th</sup> Award); Army Achievement Medal (5<sup>th</sup> Award); Army Good Conduct Medal (5<sup>th</sup> Award); National Defense Service Medal (2<sup>nd</sup> Award); Afghanistan Campaign Medal

with two Campaign Stars; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; Noncommissioned Officer Professional Development Ribbon (3<sup>rd</sup> Award); Army Service Ribbon; Overseas Service Ribbon (4<sup>th</sup> Award); Kosovo Campaign Medal with Bronze Service Star; NATO Medal (2<sup>nd</sup> Award); and Driver and Mechanic Badge. (AE H)

## 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, SOR response, and hearing record. Applicant's SOR alleges, and the evidence establishes a history of six delinquent debts totaling \$20,165. 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>1</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(d) apply. Applicant's financial problems resulted from his divorce and debts generated while he was deployed. These are circumstances beyond his control which adversely affected his finances. Applicant paid or resolved five of the six debts listed on his SOR. He has a payment plan to address the remaining SOR debt for \$7,678.

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<sup>1</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)).

Based on Applicant's credible and sincere promise to timely pay his debts, future 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 debt. His efforts are sufficient to fully 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, who has worked as an inventory specialist in a warehouse at an overseas location for two years. Applicant is currently attending college, and his goal is to complete his bachelor's degree in business with a focus in logistics. In 2013, he honorable retired from active service as a sergeant first class. He served in Iraq from June 2004 to June 2005 and from April 2008 to May 2009. He served in Afghanistan from February 2011 to February 2012. He receives 80 percent disability from the VA.

Applicant's credit reports and SOR establish a history of five delinquent debts totaling less than \$15,000, after accounting for the duplicated debt in SOR ¶¶ 1.e and 1.f. Applicant resolved all of the SOR debts, except for one debt for \$7,678, which is in a payment plan. Applicant's finances were adversely affected by his deployments and his divorce in December 2012. He acted responsibly under the circumstances by working to resolve his debts. He promised to pay the remaining unpaid SOR debt for \$7,678. 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, and I am confident he will maintain his financial responsibility.<sup>2</sup>

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.

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<sup>2</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.

## **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.f:   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.

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MARK HARVEY  
Administrative Judge