



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01712
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Charles Hale, Esq., Department Counsel  
For Applicant: *Pro se*

04/29/2016

**Decision**

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86) on February 26, 2014. On September 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on October 30, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

March 7, 2016, and a hearing was scheduled for April 4, 2016. The hearing was convened as scheduled. Applicant testified at the hearing, and was accompanied by his spouse who assisted him with dates and some of the financial details. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 12, 2016. The record was held open until April 22, 2016, to permit Applicant to submit additional documentary evidence. Applicant submitted exhibits (AE) H through O, which were admitted without objection.

### **Findings of Fact**

The SOR alleged 12 delinquent debts, failure to file federal and state income tax returns for tax years 2010 to 2012, and a Chapter 13 bankruptcy filed in 2005, and discharged in 2010. Applicant admitted the tax allegations, bankruptcy, and two debts, and denied the remaining debts. He provided some explanations with his Answer to the SOR. At the hearing, Department Counsel moved to amend the SOR to conform to the evidence. Amendments to SOR ¶¶ 1.m and 1.p resulted in changes to the tax year the federal and state tax returns were not filed, from 2010 to 2013. These changes resulted in corrected allegations of failure to file federal and state tax returns for tax years 2011 to 2013.<sup>1</sup> After a careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old and has been employed by a government contractor since 2003. He completed some college, and honorably served in the U.S. Navy for nine years of active duty and two years in the reserve. He currently holds a DOD security clearance and is requesting that it be renewed. Applicant married in 1996 and has four children, two of which are adults; one serving in the military and one a nurse; and two of which are school-age teenagers who live at home.

Applicant's financial problems began after he was discharged from active duty in 2002. Applicant found it difficult to find a well-paying job and was laid-off from the best paying position. He eventually began working for his current employer in 2003. Applicant claimed he had difficulty meeting his financial obligations resulting from his transition from active duty to the civilian workforce. He filed Chapter 13 bankruptcy in 2005 and made all required bankruptcy plan payments, ending in a final discharge of debts in 2010.<sup>2</sup>

In 2013, Applicant's spouse became ill and had to reduce her work to part-time. By 2014, her illness progressed resulting in several hospitalizations. She was unable to work her required time and lost her job.<sup>3</sup> She does not currently work, which has caused

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<sup>1</sup> Tr. 30.

<sup>2</sup> Tr. 38, GE 5.

<sup>3</sup> AE F.

a financial burden because of the reduced income.<sup>4</sup> Applicant reported a gross income in 2011 of \$108,478; in 2012 he reported \$110,355; in 2013 he reported \$116,980; and in 2014 he reported \$104,405.<sup>5</sup>

In 2012, Applicant attempted to prepare his federal and state tax returns for the 2011 tax year, but was unable to complete the return because he did not have the necessary figures, and he did not understand why the computer program he used showed that he owed tax.<sup>6</sup> He eventually allowed the filing deadline to lapse without filing. Over the following two years, he continued to ignore his federal and state tax returns because they required figures from the previous returns. Finally, in April 2015, Applicant had a professional tax preparer complete all federal and state tax returns for tax years 2011 to 2014, and Applicant stated that he filed them.<sup>7</sup> He also testified that he began payments to the IRS and state tax authority in 2015,<sup>8</sup> although he apparently did not have a formal agreement with either. He testified that he owes the IRS about \$3,000 and has been paying \$120 per month since June 2015.<sup>9</sup> Likewise, Applicant testified that a state tax obligation of about \$700, was being satisfied through \$75 per month payments, which began in August 2015.<sup>10</sup> Finally, Applicant stated that his 2015 tax return would be filed by the April 2016 deadline.

Two SOR debts alleged automobile repossessions (SOR ¶¶ 1.a and b). The largest debt (\$15,845) became delinquent in late 2014. Applicant contacted the collection agent and was offered a reduced payoff amount, but he did not have the funds to make a lump sum payment. The agent was to return his call with a proposed installment plan. The other repossession resulted in a charged-off account in 2012. Based in his inquiries, Applicant received a formal Cancellation of Debt (IRS Form 1099-C) for this debt in 2015.<sup>11</sup>

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<sup>4</sup> Tr. 21-23.

<sup>5</sup> AE A-D.

<sup>6</sup> Tr. 23-26, 59-63.

<sup>7</sup> Answer, Tr. 26.

<sup>8</sup> The SOR did not allege non-payment of taxes.

<sup>9</sup> Tr. 61. After the hearing, Applicant submitted a handwritten note (AE N), dated April 8, 2016, documenting a phone call to the IRS. It states the IRS representative did not have “taxes for previous years 2011, 2012, 2013” and that Applicant was to fax proof of filing his returns and an installment agreement request form by April 22 to make formal arrangements to begin paying.<sup>9</sup> Applicant also provided a fax transaction sheet (AE O) showing eight pages were faxed on April 22, 2016; however the faxed pages were not attached to the exhibit.

<sup>10</sup> Tr. 62. After the hearing, he provided a state tax authority agreement (AE M), dated April 11, 2016, noting that the balance due is \$1,332, and a payment plan of \$79.78 per month for 18 months was established to begin May 15, 2016.

<sup>11</sup> AE H.

Two SOR debts alleged delinquent student loans (SOR ¶¶ 1.c and g). Applicant's 2014 credit bureau report (GE 3) shows two student loan debts that may have been assigned to the government (Sally Mae). Applicant provided two exhibits (AE I and J) showing two current student loans accounts with the new lender, with account numbers corresponding to the Sallie Mae accounts. Applicant testified that the student loan accounts were consolidated with the current lender and that they are now up to date. The old student loans no longer appear on Applicant's current credit bureau report (CBR),<sup>12</sup> and the Sallie Mae accounts show a zero balance.

Applicant testified that he called a credit card company to inquire about a \$795 credit card account (SOR ¶ 1.d) that was reported to be charged-off, however the creditor was unable to locate the account and there is no collection agent listed. Applicant testified that another debt, a \$37 medical account (SOR ¶ 1.e), was paid.

A 2008 default judgment for \$1,641 by an apartment complex where Applicant's family lived (SOR ¶ 1.f) has not been paid. Applicant stated in his personal subject interview (PSI) that he did not agree with the increased rent charged by the landlord. He stated "the landlord took him to court over the rent" and the court found him to be responsible. He stated the landlord thereafter terminated the lease and he paid the last month's rent in full. During the hearing, Applicant confirmed that he attended the court proceeding and had a copy of the judgment, but has not had any post-judgment contact with the court and that the apartment complex has no record of the debt.<sup>13</sup> He disputed the debt, arguing that his security deposit should have been applied to cover the judgment owed.<sup>14</sup> This judgment does not appear on his current CBR.

Applicant claimed a \$747 debt from a TV service provider (SOR ¶ 1.h) was paid, but he was unable to provide a receipt. In his post-hearing submission, he stated that he contacted provider and a collection agent, but both were unable to find a record of the account. They advised him to dispute the debt with the credit reporting bureaus, which he did.<sup>15</sup> This debt does not appear on his current CBR.

Two minor medical debts totaling approximately \$142 listed with collection agents (SOR ¶¶ 1.i and 1.j) have not been addressed. He inquired into a \$30 library debt placed with a collection agent (SOR ¶ 1.k). He noted the library does not have a record of the debt, however Applicant did not show that he contacted the collection agent. Finally, Applicant is unable to locate the creditor for a \$11 medical debt (SOR ¶ 1.l). None of these debts appear on his current CBR.

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<sup>12</sup> GE 4.

<sup>13</sup> Tr. 52-54; GE 2.

<sup>14</sup> Tr. 52.

<sup>15</sup> AE K.

Applicant has not received targeted credit or budget counseling, although he testified that he met with a counselor or credit repair service to discuss his bankruptcy options.<sup>16</sup> He testified that he has savings and checking accounts with an average balance of approximately \$350, and a 401(k) retirement account valued at approximately \$4,000. After payment of monthly expenses and debts, he has a remainder of approximately \$150 per month.<sup>17</sup> His most current CBR shows no new delinquencies.<sup>18</sup> He submitted a 2014 employer performance review with positive comments for leadership characteristics and individual goals, and general praise for consistently exceeding expectations.<sup>19</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance

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<sup>16</sup> Tr. 64.

<sup>17</sup> Tr. 33-36.

<sup>18</sup> GE 4.

<sup>19</sup> AE E.

decision.<sup>20</sup> In *Department of Navy v. Egan*<sup>21</sup>, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>22</sup>

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.<sup>23</sup>

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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.

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<sup>20</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>21</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>22</sup> *Egan*, 484 U.S. at 531.

<sup>23</sup> *Egan*, 484 U.S. at 531.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file his federal and state income taxes on time. In addition, he accumulated delinquent debts, including a judgment. Finally, Applicant completed a Chapter 13 bankruptcy in 2010. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 attributes his past financial difficulties to an unstable work history after separating from the military and reduction in pay until he was hired in his current position in 2003. Additionally, in 2013 his family began to lose income earned by his spouse and lost it completely by 2014 as a result of her illness. He filed all delinquent tax returns and has been paying on tax arrears since 2014. Although all debts have not

been resolved, Applicant has made significant efforts to pay, make arrangements to pay, or dispute the major debts as detailed in my findings of fact.

There is sufficient evidence to determine that the majority of Applicant's financial obligations have been or are being resolved. I am persuaded that he acted responsibly under the circumstances to take action to address his debts within his financial means given the recent loss of household income. He has filed his delinquent tax returns and is making progress on paying his tax obligations. I am convinced that he will continue his efforts to stay financially solvent and will address his future financial obligations in a responsible manner. Financial concerns are mitigated under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e).

### **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 relevant 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.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline 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.<sup>24</sup>

Although Applicant has not addressed some de minimis debts listed in the SOR, they no longer appear on his credit report and do not rise to the level of financial concern. He has made meaningful efforts to inquire about and address the debts that he could, and dispute others that he considered incorrect or unjust. He suffered a loss of income because of his spouse’s illness and job loss, but has a steady and successful work history and appears to have a handle on his overall financial situation.

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis. I have also considered Applicant’s stable work history, positive employment evaluation, efforts taken to address his debts, and recent credit report. Although Applicant did not present a perfect case in mitigation, he presented enough to convince me of his sincere efforts to address his financial situation and will continue down that path. Applicant established a plan to recover from his failure to file tax returns and resolve his financial issues within his ability and budget, and has made good-faith efforts to implement that plan. His testimony, accompanied by his spouse, was credible and sincere. He has shown his attempts to resolve the most significant financial issues raised, and has sufficient assets and income to meet his current financial obligations. Besides the items addressed above, his current CBR shows he is current on all other financial obligations and he has not incurred new delinquencies.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **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 – 1.s:	For Applicant

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<sup>24</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge