



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



In the matter of: )  
)  
) ISCR Case No. 14-03120  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

04/14/2016

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. Applicant failed to mitigate the security concerns raised by his unresolved delinquent debt. Clearance is denied.

**Statement of the Case**

On October 6, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance.

Applicant answered the SOR and requested a hearing.<sup>2</sup> In April 2015, Applicant withdrew his request and requested that the case be decided on the written record.<sup>3</sup>

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> GE 3.

The Government submitted its written case on August 11, 2015. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on September 6, 2015, and provided a response. The case was assigned to me on November 2, 2015. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1<sup>4</sup> through 5, without objection. The Applicant's documents are admitted as Applicant's Exhibits (AE) A and B.<sup>5</sup>

### **Findings of Fact**

Applicant, 65, has worked as a federal contractor since December 2003. Applicant, who retired from the military after 22 years of service, was granted a security clearance in 1981. The record does not contain any information about a more recent clearance. Applicant completed his most recent security clearance application in April 2013. The ensuing investigation revealed several delinquent accounts. The SOR alleges that Applicant owes \$38,500 on 10 delinquent accounts.<sup>6</sup>

Applicant has lived and worked abroad since December 2003. He manages his U.S.-based accounts by e-mail or through the internet and pays his financial obligations on time. Applicant did not learn of the delinquent accounts alleged in the SOR until his background investigation. He admitted co-signing for a student loan for his daughter (SOR ¶ 1.j \$18,000), but did not know the loan had gone into default. Applicant resolved the account in November 2013. Applicant claims that he was unaware of the other accounts alleged in the SOR, but takes responsibility for them because they were likely opened by his ex-wife or another one of his family members. All of the alleged accounts were opened between 2008 and 2012.<sup>7</sup>

Although Applicant has expressed his intent to pay the delinquent accounts alleged in the SOR, he has not yet done so, blaming the difficulty of corresponding with creditors while living outside the United States.<sup>8</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior,

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<sup>3</sup> GE 5.

<sup>4</sup> In the FORM, the Government indicates that GE 1 is Applicant's response to the SOR. However, GE 1 also contains the SOR.

<sup>5</sup> In his response, Applicant included a copy of the FORM, the SOR, and his answer to the SOR. These documents are not admitted as Applicant's exhibits because they are duplicative of the Government's Exhibits. However, the copies remain in the correspondence file.

<sup>6</sup> GE 2-4.

<sup>7</sup> GE 1, 3-4; AE A-B.

<sup>8</sup> AE A.

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(c), 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.

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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 decision.

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**

### **Financial Considerations**

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] 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."<sup>9</sup>

The SOR alleges that Applicant owes approximately \$38,500 on 10 delinquent accounts. However, the credit reports in the record do not support SOR ¶¶ 1.c and 1.d. Accordingly, I find for Applicant on these two allegations. The evidence supports SOR allegations ¶¶ 1.a–1.b and 1.e–1.j, totaling \$29,750. Applicant admits responsibility for these debts. This is sufficient evidence to determine that Applicant has demonstrated a history of not meeting his financial obligations.<sup>10</sup> The record contains some evidence in mitigation, but not enough to overcome the security concerns raised by the delinquent accounts alleged in the SOR.

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> AG ¶ 19(c).

Applicant has resolved the largest alleged account, SOR ¶ 1.j for the \$18,000 student loan he co-signed for his daughter, showing a good-faith effort to repay his delinquent accounts.<sup>11</sup> Although Applicant has not specifically claimed that he is a victim of identity theft, it is plausible, given that Applicant has not lived in the United States for the past 13 years, that he did not open the other accounts alleged in SOR. While delinquent debt resulting from identity theft is beyond Applicant's control, he has not acted responsibly in light of his circumstances. He has not challenged the debts with the credit reporting agencies or notified them of potential identity theft. Nor has Applicant taken any steps to confront his family or prevent them from illegally obtaining credit in his name in the future. As a result, his finances remain an ongoing source of vulnerability and exploitation and cannot be considered to be under control. This assessment is not changed by the fact that Applicant is able to pay many of his recurring accounts timely.

After reviewing the record, I conclude that despite the favorable evidence in the record, Applicant has failed to mitigate the concerns raised by his current finances. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. Ultimately, Applicant failed to meet his burdens of production and persuasion. Because the security concerns raised in the SOR remain, following *Egan*<sup>12</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

### **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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a-1.b and 1.e-1.i:	Against Applicant
Subparagraphs 1.c-1.d, and 1.j:	For Applicant

### **Conclusion**

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge

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<sup>11</sup> AG ¶ 20(d).

<sup>12</sup> *Navy v. Egan*, 484 U.S. 518 (1988).