



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00903

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

01/08/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant is a 36-year-old employee of a federal contractor. His financial problems were caused by circumstances beyond his control. He established financial responsibility by addressing his legal obligations commensurate with his financial means. Clearance granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 26, 2014. On July 20, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on August 27, 2015, and requested a decision based on the record in lieu of a hearing.

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<sup>1</sup> The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

The Government provided Applicant with the File of Relevant Materials (FORM) in October 2015. On December 1, 2015, Applicant requested an expedited hearing before an administrative judge. (Appellate Exhibit 1) The case was assigned to me on December 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 7, 2015, scheduling a hearing for December 16, 2015.

At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified and submitted 13 exhibits (AE 1 through 13). AE 13 was received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on December 24, 2015.

### **Procedural Issues**

Applicant requested an expedited hearing. At his hearing, Applicant stated that he had sufficient time to prepare, was ready to proceed, and affirmatively waived his right to 15 days advance notice of his hearing. (Tr. 13-15)

### **Findings of Fact**

In his answer to the SOR, and at his hearing, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.e, 1.f, 1.g, and 1.i through 1.p. He denied the factual allegations in SOR ¶¶ 1.b, 1.c, 1.d, and 1.h through 1.k. After a thorough review of the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 36-year-old administrative support specialist working for a federal contractor. He graduated from high school in 1997. He married in June 1998, and divorced in December 2008. He has three children, ages 18, 16, and 14 from this marriage.

Applicant disclosed in his 2014 SCA (Section 26 – Financial Record) that he was in arrears in his child support obligation. The background investigation addressed Applicant's financial problems and revealed the delinquent accounts alleged in the SOR, some of which are established by the Government's evidence and by Applicant's testimony.

The status of the alleged SOR delinquent accounts follows:

SOR ¶ 1.a alleged a \$25,386 delinquent child support obligation. Applicant's December 2008 divorce decree required him to pay \$791 monthly in child support. Initially, he made the payments directly to his ex-wife. He claimed that he and his ex-wife were not getting along, and in June 2009, Applicant started making his child support payments through the court to document his payments.

Applicant was unable to make consistent payments and fell behind on his child support obligation because of the additional living expenses he had after his December

2008 divorce. Additionally, he lost his full-time position with a federal contractor in October 2009, and developed medical problems and expenses between February 2010 and October 2012.

Applicant worked for a federal contractor, and possessed a security clearance between 2007 and October 2009. He provided logistics support for another government agency's recruitment efforts. Applicant lost his job and his clearance was terminated when his employer lost its federal contract in 2009. After losing his job with the federal contractor, Applicant worked as a laborer and first line supervisor for a private employer between 2009 and June 2014. However, his wages were reduced and his working hours were inconsistent.

Between February 2010 and October 2012, Applicant was diagnosed with brain arachnoid cysts. As a result, he suffered from severe migraine headaches that caused him to be absent from work for periods of time. He received medical treatment and has not had any more symptoms since October 2012. (AE 6)

Applicant's child support summary case account statement (submitted with his answer to the SOR) shows his child support payment history from June 2009 through July 2015. The account statement reflects that Applicant made somewhat consistent support payments, but most were for less than the amount he was ordered to pay. It also shows that Applicant requested a reduction in his support obligation after he lost his job in 2009, and that he reinitiated his support payments when he was hired by his current employer in 2014.

At his hearing, Applicant presented documentary evidence showing that in September 2015, his ex-wife requested the state to close Applicant's child support case. The reason of her request was "so that [Applicant] can obtain employment. Arrears are showing up in background check." The state's department of social services case information document shows that as of October 15, 2015, Applicant no longer had a child support obligation or an accrued child support debt. He only owed the state \$14. (AE 7)

Applicant's ex-wife submitted a letter indicating that although Applicant had been unable to meet his children's financial obligations on a consistent basis, he was fully involved in his children's upbringing. He provided consistent assistance and support by taking the children to doctor's appointments, meetings, sports practices, and by being a good parent. She anticipated that when Applicant "returns back to fulltime work, he will reestablish financial support contributions that had been previously agreed upon." (AE 13)

Concerning the debts alleged in SOR ¶¶ 1.b, 1.c, 1.h (duplicated under 1.j), 1.i, and 1.k, Applicant presented sufficient evidence to establish that these were not his debts. They were false or fraudulent accounts resulting from him being the victim of identity theft. He successfully disputed most of these debts and they were removed or are in the process of being removed from his credit reports.

Regarding SOR ¶ 1.d, Applicant established that this was a medical debt for services provided to his daughter. His ex-wife worked and Applicant's daughter was under his mother's medical insurance. The medical debt should have been filed against his wife's insurer, but it was mistakenly filed against him. Applicant disputed the debt and it was removed from his credit report.

The debts alleged under SOR ¶¶ 1.e through 1.g, and 1.m through 1.p, totaling \$1,250, were for medical services Applicant received. After receipt of the SOR, Applicant consolidated the debts, made a \$500 payment, and established a \$25 a month payment plan. As of his hearing day, he owed only \$600.

Concerning the debt alleged under SOR ¶1.i, Applicant admitted that this was his debt that became delinquent when work was slow. He established a \$25 a month payment plan with the collection agency and the debt was paid in November 2014.

Applicant testified that in 2014, he was contacted by a supervisor from the government agency he worked for between 2007 and 2009, and was asked to reapply for his old position. He was rehired in June 2014, and worked for a federal contractor until February 2015, when he was suspended pending the adjudication of the SOR security concerns. He requires a security clearance to retain his job.

Applicant submitted four favorable reference letters from a senior manager working for a federal contractor, a senior supervisor within the government agency, and two coworkers. He is considered to be a valuable and productive member of the office team. He is friendly, dependable, conscientious, and a self-motivated worker. All of Applicant's references would like to see him back at work.

Applicant expressed sincere remorse for his financial situation and accepted responsibility for his financial problems. He believes that he has been truthful and forthcoming during the security clearance process. He has learned a valuable lesson by going through the security clearance process. He now understands that he is required to maintain financial responsibility for him to be eligible for a security clearance. Applicant believes that with his anticipated earnings from his job with the federal contractor, he will not have any problems paying his debts and current living expenses. He promised to maintain his financial responsibility.

### **Policies**

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that 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 ¶ 18)

Applicant has a history of financial problems that included a substantial past-due child support obligation and several delinquent debts. Financial considerations disqualifying conditions AG ¶ 19(a): "inability or unwillingness to satisfy debts," and AG ¶ 19(c): "a history of not meeting financial obligations," apply.

AG ¶ 20 lists conditions that could mitigate the financial considerations security concerns:

(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.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. However, the debts became delinquent under circumstances that do not cast doubt on his current reliability, trustworthiness, and judgement.

AG ¶ 20(b) applies. Applicant's financial problems were the result of his divorce, his periods of underemployment, and his inability to work because of medical reasons. Applicant's underemployment, medical problems, and divorce were circumstances beyond his control that contributed or aggravated his financial problems.

Considering the evidence as a whole, I find Applicant has shown sufficient financial responsibility for AG ¶ 20(b) to apply. After he was let go from his position with a federal contractor, Applicant obtained a position with a private company and continued to work. However, he was underemployed and missed work because of his medical problems. Applicant demonstrated financial responsibility when he sought a reduction of his child support obligation, maintained contact with creditors, and disputed fraudulent debts for accounts he did not open. I note that his child support payment record shows consistent payments, albeit for less than what was required to pay.

After he was hired in 2014, Applicant started to address his delinquent debts and notified the child support services that he was again employed. Applicant's evidence shows that he made payments toward his delinquent debts commensurate with his income at the time. Applicant was recently released from his child support obligation, and he currently owes no child support. He also established that after receipt of the SOR he started paying his past-due debts, and successfully disputed fraudulent entries on his credit report.

Applicant's financial problems are under control. With his current job earnings, Applicant will be able to establish viable payment plans to address his remaining delinquencies. The credit reports in evidence show that he is not living beyond his means, and he has no new delinquent debts. Considering the evidence as a whole, Applicant has shown financial responsibility and sufficient progress in the resolution of his debts.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 36-year-old employee of a federal contractor. His financial problems were caused by circumstances beyond his control. He established financial responsibility by addressing his legal obligations commensurate with his financial means. He understands that he is required to maintain financial responsibility for him to be eligible for a security clearance. I believe Applicant will continue to responsibly address his debts and take care of his children.

### **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
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Subparagraphs 1.a - 1.p:	For Applicant
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### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge