



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-04051
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
 For Applicant: *Pro se*  
 03/27/2019

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant incurred delinquent debt during a prolonged separation from his ex-wife, and a period of unemployment after he separated from the military. Since returning to work in June 2017, Applicant has resolved \$12,000 in delinquent accounts, establishing a record of debt repayment. Applicant’s access to classified information is granted.

**Statement of the Case**

On December 20, 2017, 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 and recommended that the case be submitted to an administrative judge for a determination whether to deny his security clearance.

<sup>1</sup> The DOD CAF acted 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), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on September 26, 2018, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through E, without objection. After the hearing, Applicant timely submitted AE F through K, which were also admitted without objection.<sup>2</sup> DOHA received the transcript (Tr.) on October 4, 2018.

### **Findings of Fact**

Applicant, 41, has worked as an operations analyst for a federal contracting company since June 2017. He previously served in the U.S. Army from May 2002 to November 2016, achieving the rank of major (O-4). He was initially granted access to classified information in 1996 during his service in the Army Reserve Officer Training Corps (ROTC). He completed his most recent security clearance application in May 2017, disclosing outstanding federal and state income taxes and other delinquent accounts. Based on Applicant's disclosures and information developed during his background investigation, the SOR alleges that Applicant owes \$65,000 in delinquent debt. Most of the alleged debt is for the \$26,900 past-due balance on a mortgage account.<sup>3</sup>

Applicant's financial problems began in approximately 2008, when he received orders for his new duty station. His wife wanted to remain in State 1 in the family home with the couple's two minor children. Applicant agreed and moved to his new duty station unaccompanied. His wife did not work outside the home, so Applicant fully supported the household in addition to paying his separate living expenses. Applicant and his wife separated in 2010. They did not have a formal separation agreement, but Applicant agreed to continue the support arrangement, which cost him approximately \$2,000 per month. In addition, he also paid \$452 in child support for his daughter from another relationship.<sup>4</sup>

Applicant maintained this arrangement for eight years. The couple agreed to continue the support arrangement in their 2016 divorce decree. Applicant struggled financially and began to accumulate delinquent debt. He incurred a 2012 state income tax balance after his tax preparer erroneously applied a tax credit that Applicant was not entitled to receive. Although he filed his 2015 federal income returns as required, he could not afford to pay his additional tax obligation. He also began falling behind on the mortgage of the family home in early 2016 and ultimately lost the house to foreclosure in October 2016. After separating from the Army in November 2016, Applicant was unemployed for seven months until he began his current position. While unemployed, he received \$116 per week in unemployment compensation.<sup>5</sup>

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<sup>2</sup> HE III.

<sup>3</sup> Tr. 17-19; GE 1 – 3.

<sup>4</sup> Tr. 17, 20-22, 25, 30.

<sup>5</sup> Tr. 22-32, 38; AE H.

When Applicant returned to work in June 2017, he began earning \$70,000 annually. He has since earned a raise to \$84,000. He began repaying his delinquent debt. To date, he resolved the accounts alleged in SOR ¶¶ 1.c (\$6,619), 1.f (\$3,701), 1.h (\$60), 1.j (\$37), 1.k (\$36), and 1.l (\$32). He paid the outstanding state income taxes alleged in SOR ¶ 1.m (\$2,300) in October 2017. He claims to have entered into payment plans to resolve the student loans alleged in SOR ¶¶ 1.e (\$3,761) and 1.g (\$559) and the federal income taxes alleged in SOR ¶ 1.n (\$5,312) since May 2017, paying \$175 each month. However, he did not provide evidence of a payment history for the accounts. Applicant's home, which was secured by a loan from the Department of Veterans Affairs, was sold at a foreclosure sale. He does not know how much the home sold for and claims that the VA advised him that he does not owe a deficiency balance on the loan. The record is unclear about the status of the mortgage loan alleged in SOR ¶ 1.a. The debts alleged in SOR ¶¶ 1.b (\$9,542) and 1.d (\$6,351) remain unresolved.<sup>6</sup>

Applicant lives with his girlfriend and their infant daughter. He pays \$1,100 in child support for his two minor children and provides his oldest son approximately \$400 each month to help with his college expenses.<sup>7</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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,

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<sup>6</sup> Tr. 32, 34-37, 40-50; AE A-F, I-J.

<sup>7</sup> Tr. 16, 26, 39, 50, 58-59; AE G.

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.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. 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**

### **Financial Considerations**

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.<sup>8</sup> The SOR alleged that Applicant owed approximately \$65,000 in delinquent debt. The record establishes that he has a history of not meeting his financial obligations and inability to do so. He also failed to pay his federal and state income taxes as required.<sup>9</sup>

Applicant’s financial problems were caused by events beyond his control, his separation from his wife between 2009 and their divorce in 2016, and a seven-month period of unemployment after he separated from the military in November 2016. During that time, Applicant expended approximately \$2,500 each month to support his ex-wife and their two children, his third child from another relationship, as well as his own living expenses. He acted responsibly under the circumstances by resolving his delinquent debt when he returned to full employment. Since June 2017, he has resolved \$12,800 in delinquent accounts. Although Applicant paid five of the six accounts after he received the SOR, this is reasonable given that he returned to work less than six months before receiving the SOR. In addition, the amount of support he provides to his ex-wife and children decreased substantially, giving him more disposable income to resolve his delinquent accounts.

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<sup>8</sup> AG ¶ 18.

<sup>9</sup> AG ¶ 19 (a), (c), and (f).

“An applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.<sup>10</sup> Although a number of delinquent accounts remain unresolved, Applicant has demonstrated a sufficient record of debt repayment to mitigate the concerns raised by his finances.

### **Whole-Person Concept**

Based on the record, I have no doubts about Applicant’s ongoing security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant has held a security clearance without incident for over 20 years. The purpose of a security clearance case is not aimed at collecting debts. Rather the purpose is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the personal is an acceptable security risk.”<sup>11</sup> Here, Applicant’s financial problems do not raise any behavior that indicates poor self-control, lack of judgment, or an unwillingness to follow rules and regulations that may hinder his ability to properly handle or safeguard classified information.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.n:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge

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<sup>10</sup> See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).

<sup>11</sup> AG ¶ 2(a).