



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



In the matter of: )  
)  
) ISCR Case No. 18-02303  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

06/07/2019

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant’s debts arose largely during his second marriage, after his wife lost her job and they fell behind on household expenses and other debts. Applicant’s debts are now largely resolved and are under control. Applicant provided sufficient evidence to mitigate financial security concerns. Applicant’s eligibility for continued access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 21, 2015. On October 19, 2018, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, due to his delinquent debts. The DOD CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG), (December 10, 2016), effective June 8, 2017.

Applicant answered the SOR on November 15, 2018, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 9, 2019. On January 31, 2019, DOHA issued a notice of hearing scheduling Applicant's case for February 19, 2019.

Applicant's hearing was held as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5. Applicant submitted Applicant's Exhibits (AE) A through E. All exhibits were admitted without objection. Applicant and one other witness testified. I held the record open to allow Applicant the opportunity to submit additional documentation. Applicant subsequently submitted several documents,<sup>1</sup> which were marked as AE F through AE N and admitted without objection.<sup>2</sup> DOHA received the transcript of the hearing on March 4, 2019. The record initially closed on April 8, 2019. On April 16, 2019, Applicant sent an e-mail detailing his continued efforts to resolve one of the SOR debts. I admitted his e-mail as AE O and closed the record.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.b-1.f. He denied SOR ¶ 1.a, with an explanation. I incorporate his admissions into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 43 years old. He was married from 1999 to 2005. He and his first wife had two children, a son (age 17) and a daughter (age 18). (Tr. 47-48, 52-54) Applicant remarried in 2009. They divorced in late 2017. His second wife has two children, by a prior relationship. (Tr. 33, 35)

Applicant served honorably in the United States Navy from 1993 to 2001. Since then, he has worked for his current employer, a large defense contractor. He works as a security analyst and facility security officer and has a \$93,000 annual salary. He has held a clearance for about 25 years. (Tr. 10-11, 32-33, 35, 47-48, 54)

The debts alleged in the SOR are a foreclosed mortgage, two charged-off student loans, two past-due medical debts, and a cable bill. Applicant listed several of them on his SCA. They are detailed on credit reports in the record. (GE 4, GE 5, GE 6). He discussed his debts in background interviews in December 2016 and November 2017. (GE 2, GE 3)

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<sup>1</sup> Applicant's first post-hearing document was a complete copy of the property settlement from his divorce, an excerpt of which was admitted at hearing as AE A. I incorporated the full document in AE A.

<sup>2</sup> AE F is Applicant's 2018 performance appraisal. AE G through AE L are labelled as Applicant described them in his March 4, 2019 e-mail. AE M and AE N relate to Applicant's student loan debts.

Applicant explained that the delinquent debts were due to his wife's job loss and her student loans, and his own four-year decline in income due to increases in taxes. (GE 1; Tr. 61-63) Applicant's financial problems began in 2009, when his wife lost her job at a large retailer. He also asserted that they fell behind due to his wife's overspending. (Tr. 35-39)

Applicant pursued financial counseling through his employer's Employee Assistance Program (EAP). He said he was told to come up with a reasonable budget and to stick to it. Applicant was not able to do that. (Tr. 38-39, 57, 60)

In 2008, before he remarried, Applicant purchased a home. His mother co-signed the loan. Applicant and his wife became jointly responsible for the \$1,800 monthly mortgage payments when they married, in 2009. They fell behind in about April 2015. He was making about \$80,000 annually at the time. (Tr. 35-37) They attempted to modify their home loan, but were unsuccessful, and the home was foreclosed in December 2016. (SOR ¶ 1.a) (Tr. 39-43, 58, 69-70)

AE D is an IRS Form 1099-A for the property for the 2016 tax year. AE D lists the mortgage owed as about \$190,000, and the fair market value of the property as about \$155,000, leaving a deficiency balance of about \$35,000. The property agreement shows Applicant is responsible for the deficiency balance. (AE A at ¶¶ 16, 21).<sup>3</sup>

Applicant's mother was issued an IRS Form 1099-A for the property for the 2016 tax year confirming the amounts. (AE D) AE D lists Applicant's mother as the debtor, though AE D was mailed to Applicant at his address in State 1. He testified that a Form 1099-A was also mailed to him, but was erroneously mailed to his mother's address, in another state. He said the document has been lost, in part because his mother is elderly, frail, and has cognitive difficulties. (Tr. 28-30, 70-72) At the time of the hearing, the home had yet to be sold at auction by the bank, so the total amount Applicant owes on the deficiency balance, if anything, is unclear. (Tr. 71-74)

In January 2019, Applicant attempted to procure a private loan to pay his debts, but was denied because he did not have sufficient good credit. (AE B; Tr. 34-35) He then enrolled in a credit repair service to clean up potentially inaccurate or invalid accounts in his credit record. (Tr. 27, 47; AE C) It was pointed out to him at hearing, however, that this would do little good, since he had admitted most of the debts in the SOR, thereby validating them. (Tr. 63-69)

SOR ¶ 1.b (\$13,215) and ¶ 1.c (\$8,913) are two charged-off student loans, both in his wife's name, though he was a co-signer. His wife stopped making payments on them in about 2014. The property settlement agreement shows that he is responsible for them.

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<sup>3</sup> Applicant also noted that, on the advice of his divorce counsel, he assumed the payments for his former wife's car to keep it from being repossessed. (Tr. 79-80)

(AE A at ¶ 21; Tr. 43-46, 60, 80). The debts have both been settled and paid. (AE H, AE I; AE K, AE M, AE N)

SOR ¶ 1.d (\$144) is a past-due medical debt. It has now been paid. (AE J, AE K) SOR ¶ 1.e (\$278) is a past-due cable debt. It has now been paid. (AE G) SOR ¶ 1.f (\$115) is a past-due medical debt. Applicant attempted to pay it but was unsuccessful. (AE O)

Applicant now lives with his girlfriend. She owns the home but he contributes to the household expenses. He pays \$500 a month in child support for his minor child from his first marriage, and is current. Tr. 48-49) He pays \$45 a month to the credit repair company, but can terminate the agreement at any time. (Tr. 88-90). His finances have stabilized since his divorce. (Tr. 77-78)

As an FSO, Applicant is professionally aware that financial problems and delinquent debt can give rise to a security concern. (Tr. 51) As the FSO for a large defense contractor, Applicant dictates security protocol for the company's several thousand employees and visitors. He ensures compliance with the National Industrial Security Program Operating Manual (NISPOM), including matters of personnel security. (Tr. 56-57 74-77)

Applicant is highly regarded at work. In December 2017, his company was given a "superior" security rating by the Defense Security Service in a security assessment in which, as the FSO, Applicant played a key role. (AE E; Tr. 32-33) He has earned excellent performance ratings. (AE F)

Applicant's supervisor testified. The witness is responsible for security compliance, and is several levels above Applicant in seniority. Applicant has worked with or for the witness for several years, in various capacities. The witness regards Applicant as loyal, trustworthy, and someone who properly protects classified information. Tr. 82-88)

## **Policies**

It is well established that no one has a right to a security clearance.<sup>4</sup> As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."<sup>5</sup>

The adjudicative 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

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<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

<sup>5</sup> 484 U.S. at 531.

“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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.<sup>6</sup>

AG ¶ 19 provides conditions that could rise security concerns. Disqualifying conditions AG ¶¶ 19(a): “inability to satisfy debts”; and 19(c): “a history of not meeting

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<sup>6</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

financial obligations” are applicable, given the record evidence of Applicant’s delinquent debts.

The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts.

SOR debt ¶ 1.a is the foreclosed mortgage from Applicant’s former marital home, about \$190,000. As noted in the property settlement document, AE A, he is responsible for the deficiency balance, estimated at about \$35,000. The debt remains unresolved, since the property remained unsold at the time of the hearing. Thus, AG ¶ 20(a) is not applicable.

Applicant’s debts occurred due to several circumstances. His wife lost her job, the family income was affected by tax increases, and his wife fell behind on her student loan payments. Applicant also asserted that his wife’s overspending contributed to their financial woes. Applicant was not able to keep up with the mortgage and other monthly expenses on a single income, though he remained employed. Applicant’s debts resulted largely from circumstances beyond his control. The first prong of AG ¶ 20(b) applies.

When Applicant and his wife fell behind on their mortgage, in April 2015, he pursued financial counseling through his employer’s EAP program. He was told to make a budget and to stick to it, which proved difficult. Applicant briefly hired a credit repair firm to resolve accounts on his credit report that he was not responsible for, but this was not effective since he acknowledged responsibility for all the debts in the SOR. Applicant gets some credit under AG ¶¶ 20(b) and 20(d) for his pre-hearing efforts to resolve his debts, even though they were largely not very effective.

But for the deficiency balance, Applicant's debts are largely resolved. His former wife's student loan debts (SOR ¶¶ 1.b and 1.c), for which he assumed responsibility, have now been settled and paid. The debts at SOR ¶¶ 1.d and 1.f have been paid. Applicant attempted to resolve the small debt at SOR ¶ 1.e, but could not locate the creditor. Applicant and his wife divorced in late 2017. All of his debts are attributable to that timeframe, and his finances have since improved. AG ¶ 20(c) applies.

### **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(d):

- (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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances. I have incorporated my comments under Guideline F in my whole-person analysis.

I had the opportunity to observe Applicant's demeanor during the hearing, and to assess his credibility. I found him a credible witness. I also credit his lengthy career in personnel security as an FSO for his company and in other positions. Applicant also recognized he was in financial difficulty and sought advice on how to rectify it. The origins of his debts are limited to the timeframe of his second marriage, and he has now begun to stabilize his finances. Though he did so at a later stage, perhaps, than he should have, I believe he will use the hearing as a learning experience to avoid similar financial issues in the future. Overall, the record evidence leaves me without questions or doubts as to Applicant's continued 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:                      AGAINST APPLICANT

Subparagraphs 1.a-1.f:                      For Applicant

## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant continued eligibility for access to classified information. Eligibility for access to classified information is granted.

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Braden M. Murphy  
Administrative Judge