



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-04457
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

08/28/2014

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**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

**Statement of the Case**

On February 28, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that cited security concerns under Guideline F (Financial Considerations). This action was taken 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* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the DOD on September 1, 2006.

In his April 8, 2014 Answer to the SOR, Applicant admitted one SOR allegation, and denied the other two, with explanations. He also requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 10, 2014. At the hearing on June 26, 2014, the Government offered seven exhibits, admitted into evidence as Government Exhibits (GE) 1 through

7. Applicant testified, and offered two exhibits, admitted as Applicant Exhibits (AE) A and B. I held the record open to allow Applicant to submit additional documentation. He timely submitted six documents, which I admitted as AE C through H. The Government's exhibit list is marked as Hearing Exhibit (HE) I. Email correspondence after the hearing regarding Applicant's post-hearing submissions are marked as HE II through VI. DOHA received the transcript (Tr.) on July 8, 2014.

### **Findings of Fact**

After reviewing the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is a 48-year-old high school graduate. After he and his first wife divorced, he married his second wife in 1998. He has two children, 14 and 24 years of age. He served as an enlisted member of the Army from 1986 until his honorable discharge in 2008. Since that time, he has worked for federal contractors. He has held a top secret security clearance since 1986. He joined his current employer in 2011 as a senior information assurance engineer. (GE 1, 3)

While serving in the Army, Applicant's deployments included five combat tours. His wife handled the family's finances during his deployments. She worked on contract jobs, and was unemployed for periods of three to four months in 2003, 2006, and 2008. Her unemployment compensation was insufficient to meet their expenses during those periods. It became difficult to keep up with the family expenses and debt payments. Applicant applied for and received a loan to pay off debts (allegations 1.a/1.b). However, they continued to have financial difficulties. Applicant testified that they "[w]ere robbing Peter to pay Paul." In addition, Applicant and his wife were having marital problems because of his deployments. She was considering divorce, and did not want to contribute to paying the family debts. Applicant's salary was approximately \$60,000 to \$65,000. Their home was foreclosed the same year. (GE 2; Tr. 19, 28, 42-43, 51-52)

In 2008, Applicant realized that his military pay was insufficient to meet his financial obligations, and decided to retire from the Army to seek a higher-paying job. He began employment with a defense contractor, and his salary increased by approximately \$20,000. He began working to resolve his delinquencies. He took \$16,000 of the family savings and used it to bring current as many delinquent debts as possible. Applicant has continued to timely pay his accounts. His 2014 credit report shows numerous accounts with on-time payments in 2012, 2013, and 2014. (GE 1; AE B; Tr. 20-25, 50-52)

Applicant also retained a law firm to assist him with resolving debts. The firm has provided him with financial counseling. It also investigates debts that may be inaccurate or invalid, and assists with removing them from the credit report. It challenged debts on Applicant's credit report, and was successful in removing nine debts. His June 2014

credit report shows numerous accounts with a consistent record of payment. He testified that his credit score in about 2011 was “in the fours or fives.” His 2014 credit score has increased to 707, which is in the “good” range. He pays \$99 per month to the law firm, and provided documentation showing his payment in July 2014. (AE A, B, E, H; Tr. 25, 97-100)

Applicant’s current gross annual salary is \$136,000, and his military retirement adds approximately \$25,000 gross annually. His wife currently earns approximately \$125,000. He testified that, because he is not a homeowner, he does not take a mortgage deduction, and approximately 40 percent of both his and his wife’s salary is paid in income taxes. In his 2013 personal financial statement (PFS), Applicant listed monthly expenses of \$8,559 and debt payments of \$1,232. He testified he also pays \$1,800 per month in educational expenses for his two daughters, which he did not list on his PFS. (GE 2; Tr. 52-68)

Applicant and his wife have one joint account for family expenses, and each has additional separate bank accounts. He did not list a net remainder for the family, but estimated that he personally has had a monthly net remainder of approximately \$1,600 for the past three years. He has a total of almost \$18,000 in cash assets and retirement savings. He testified he and his wife have changed their habits over the past several years. They have become more involved in their church, and spend less money on restaurants and entertainment outside the home. (GE 2; Tr. 52-68)

Applicant's three delinquent debts, as listed in the SOR, total \$41,881. However, the debts at allegations 1.a and 1.b are duplicates. Excluding the duplicate allegation (1.b), the adjusted delinquent total is \$22,369. The debts appear in credit reports from November 2011, September 2013, and May and June 2014. (GE 4-6; AE B) The status of Applicant's SOR debts follows.

**1.a/1.b, \$21,625 – PAYMENT PLAN.** When Applicant and his wife were having difficulties meeting their financial obligations during his deployments, he applied for and received a loan from Creditor A in 2007. He used it in part to pay off debts. It became delinquent and was sold to Collection Agency B in 2011.<sup>1</sup> Applicant testified that although he made progress on resolving many debts, he could not afford to pay every debt that he owed. His attorney informed him that he was not liable for the debt owed to Creditor A/Collection Agency B based on the state statute of limitations, and he should not pay it. Although Applicant was advised he was not liable, he has chosen to pay it. He established a payment plan with Collection Agency B in July 2014 that requires an initial payment of \$1,000, and subsequent monthly payments of \$300. He provided a copy of his bank statement showing he has made the initial payment. (AE B, F, H; HE IV; Tr. 46-50, 103-108, 117)

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<sup>1</sup> Applicant's June 20, 2014 credit report lists the debt under Collection Agency B, and indicates that the original creditor was Creditor A. Department Counsel agreed that the debts listed at allegations 1.a and 1.b are the same debt. (AE B; Tr. 118)

**1.c, \$744 – PAID.** The SOR alleges that Applicant owes taxes to County A. The county notified Applicant's employer of a tax lien in November 2011. One week later, on November 29, 2011, Applicant paid the debt in full. He provided a letter from the County A treasurer's office showing that he has a zero balance.<sup>2</sup> He also provided a tax record covering 2006 through 2013, showing that he has consistently paid the taxes due to his current county of residence, County B, and that as of March 2014 he owes no taxes to County B. (GE 7; AE C, D; Tr. 18-19)

Applicant testified that during his military service, he received the Legion of Merit for outstanding performance, held joint staff positions, worked as a recruiter, served on Inspector General duty, and completed five combat deployments. (Tr. 28, 31)

### **Policies**

Each security clearance decision must be an impartial, commonsense determination based on examination of available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>3</sup> Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is issued only to resolve the question of whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to the Applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.<sup>5</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her

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<sup>2</sup> Department Counsel agreed that Applicant has resolved the tax debt. HE III.

<sup>3</sup> Directive. 6.3.

<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

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.<sup>6</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant had relatively low income while serving in the Army, as well as marital stress that led to financial mismanagement during his deployments. Numerous debts became delinquent. The record supports application of the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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; and
- (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.

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<sup>6</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Applicant's financial problems are not in the distant past because he is still working to resolve one delinquent debt. However, he has eliminated the primary cause of his difficulties by obtaining civilian employment at a significantly higher salary than his military pay. Given his family's substantial current income, and his record of resolving debts over the past five years, it is unlikely his delinquencies will recur. His current reliability and judgment are not in doubt. AG ¶ 20(a) applies.

AG ¶ 20(b) concerns situations where applicants' debts become delinquent because of conditions that are beyond their control. Here, Applicant's financial problems stemmed from a combination of low income, and his wife's unhappiness in their marriage and resulting unwillingness to contribute to debt payments from her own income. The income he received from his chosen military career was not in his control, nor were his wife's financial decisions. Applicant acted responsibly by seeking and obtaining higher salaries, working on his marriage, and restoring his financial footing by bringing numerous debts under control. AG ¶ 20(b) applies.

Applicant received financial counseling from the law firm he retained to help him resolve debts. Of the two debts in the SOR, he paid the county tax debt in 2011. The larger debt, the home equity loan, remained unpaid as of the date of the SOR. However, Applicant did not include this debt in the group he worked to resolve for two reasons: he was unable to afford to pay this debt while he was paying the other debts; and he relied on the advice of his attorney, who told him that this particular debt had aged to the point where he was no longer liable for it under the state statute of limitations. However, Applicant has now resolved many of his past debts, has decided to pay this debt, and has taken action to do so. Applicant's debts are under control, and the remaining debt is being resolved. AG ¶ 20(c) applies.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful

consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has provided honorable service to the United States through 22 years of military service, including five combat tours. However, during his military service, Applicant accrued significant debts. He took action to resolve them by seeking higher pay through civilian jobs, which have provided him with steadily increasing income. His wife also has substantial income.

It has taken several years to regain his financial footing, but he has made substantial progress in reducing his debt load. He obtained financial counseling, had nine debts removed from his credit report, and made consistent payments on his legitimate debts. Through his efforts over the past five years, he has brought his credit score from the “fours or fives” to over 700. Of the two SOR debts, he had paid one three years before the SOR was issued. He had not worked on the other because he relied on his attorney’s advice. He has now set up a plan to pay it. With his substantial monthly remainder, he will have no difficulty meeting the terms of his payment plan. I conclude, based on his track record, that he will continue to resolve the remaining debt. An applicant is not required to establish that he has paid off every debt listed in the SOR. He must only show, as Applicant has, that he has a plan to resolve his debts and has taken action to implement it.<sup>7</sup>

Overall, the record evidence satisfies the doubts raised about Applicant’s suitability for a security clearance. For these reasons, I conclude he has mitigated the security concerns raised by the cited adjudicative guideline.

### **Formal Findings**

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.c	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant’s request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge

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<sup>7</sup> See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).