



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



In the matter of: )  
)  
) ISCR Case No. 12-06592  
)  
Applicant for Security Clearance )

**Appearances**

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

09/30/2015

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Although Applicant has been working toward the resolution of his delinquent debt through a Chapter 13 bankruptcy plan, he has failed to demonstrate sufficient rehabilitation or reform to mitigate the financial considerations concerns. Also, Applicant intentionally falsified his 2012 security clearance application. Clearance is denied.

**Statement of the Case**

On May 2, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.<sup>1</sup>

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<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.

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 decision without a hearing.<sup>2</sup> The Government submitted its written case on July 28, 2015. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He responded on August 17, 2015, providing additional documentation. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 10 and the documents submitted by Applicant are admitted as Applicant's Exhibits (AE) A through C, without objection. The case was assigned to me on September 1, 2015.

### **Findings of Fact**

Applicant, 46, was hired by a federal contractor in January 2012. He cannot work in the hired position unless he obtains a security clearance. Applicant served in the Navy from 1987 to July 2009. He held a security clearance until 2008, when his access to classified information was revoked. On his security clearance application submitted in February 2012, Applicant disclosed 23 months of unemployment between 2009 and 2012. He also disclosed several delinquent debts as well as receiving assistance for financial difficulties from two credit repair services at unspecified points in time. Applicant did not disclose any other derogatory information. The ensuing investigation confirmed that Applicant is indebted to eight creditors for approximately \$27,000 in delinquent debt.<sup>3</sup>

Applicant blames his financial problems on three periods of unemployment from July 2009 to March 2010, September 2010 to February 2011, and May 2011 to January 2012. He also cites the dissolution of his second marriage in 2003. In August 2014, Applicant filed for Chapter 13 bankruptcy protection seeking a repayment plan for \$76,000 in debt. He has paid over \$22,000 into the plan since September 2014, \$21,000 of which has been paid to his creditors. Of the eight debts alleged in the SOR, only two of the creditors (SOR ¶¶ 1.a and 1.e) have filed claims with the bankruptcy trustee. Applicant claims that the six other creditors did not pursue claims because he resolved the debts or because the creditors have no record of any delinquent balances attributable to him. He did not submit any evidence showing that he paid any of the SOR debts before filing for bankruptcy protection. Aside from general details about his Chapter 13 bankruptcy petition, Applicant did not provide any information about his current finances.<sup>4</sup>

The investigation also revealed that Applicant was convicted of driving under the influence of alcohol (DUI) in 1999. In response to the question, 'Have you EVER been charged with an offense involving alcohol or drugs?' Applicant indicated that he had not.

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<sup>2</sup> GE 3.

<sup>3</sup> GE 3, 5-9.

<sup>4</sup> GE 2 ,4; AE B-C.

He offers conflicting explanations for his failure to disclose the conviction. In his March 2012 background interview, Applicant stated that he did not report the incident on his security clearance application because he did not think it was reported on his arrest record. In response to the falsification allegation in the SOR, Applicant explained that he misunderstood the word 'ever' as used in the question.<sup>5</sup>

Applicant admits that, in 2008, his security clearance was revoked after he falsified a June 2006 security clearance application. He deliberately failed to disclose his many delinquent accounts and the 1999 DUI conviction.<sup>6</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, 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).

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<sup>5</sup> GE 2-3.

<sup>6</sup> GE 3, 8.

## 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>7</sup>

The SOR alleges that Applicant owes approximately \$27,000 in delinquent debt. The allegations are supported by the record, establishing the Government’s *prima facie* case.<sup>8</sup> Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>9</sup> Applicant receives partial mitigation for his efforts to reduce his debt through a Chapter 13 bankruptcy payment plan because it shows a willingness to repay his creditors.<sup>10</sup> However, this does not fully mitigate the financial concerns raised in the SOR. Only two of the eight SOR debts are being repaid in Applicant’s Chapter 13 payment plan because those creditors filed claims with the trustee. Just because six of Applicant’s creditors chose not to file claims with the trustee does not mean that the accounts have been resolved in his favor as Applicant claims. Applicant did not provide any evidence indicating that he paid any of the six accounts or that the creditors have forgiven the debts. A creditor’s decision not to actively collect a debt does not relieve the Applicant of repaying debts he knowingly incurred.

The record shows that Applicant has an extensive history of financial issues that are ongoing. Although Applicant experienced some periods of unemployment, he did not establish that his financial problems were entirely beyond his control or that he has acted responsibly in light of them. While he has received assistance from two credit repair services, it does not appear that these services had a positive effect on his finances. Ultimately, Applicant has not provided sufficient evidence to support a finding of financial rehabilitation or reform or of positive changes to his circumstances to support an improvement in financial health, habits, or practices. Accordingly, financial considerations concerns remain.

### Personal Conduct

Conduct involving a lack of candor or dishonesty, particularly, a failure to provide truthful and candid answers during the security process, raises questions about an individual’s reliability, trustworthiness, and ability to protect classified information.<sup>11</sup> The

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<sup>7</sup> AG ¶ 18.

<sup>8</sup> GE 2-6.

<sup>9</sup> AG ¶¶ 19(a) and (c).

<sup>10</sup> AG ¶ 20(d).

<sup>11</sup> AG ¶ 15.

SOR alleges that Applicant deliberately failed to disclose a 1999 DUI conviction on his June 2012 security clearance application. Proof of omission, alone, does not establish or prove an applicant's intent or state of mind when he completed the application. However, the record contains sufficient circumstantial evidence of Applicant's intent to falsify his security clearance application.<sup>12</sup> His first explanation – that he believed the conviction was no longer being reported on his record – is most telling. It indicates that Applicant did not reveal the incident because he did not believe that the government would discover it. Applicant's second explanation that he did not understand the wording of the question, specifically the use of the word 'ever,' is not credible. The language of the question is clear on its face. A reasonable person reading the same question would understand that disclosure of the 1999 conviction was required.

None of the personal conduct mitigating conditions applies. Applicant's falsification of his 2012 security clearance application is not an isolated incident. He has a history of attempting to hide derogatory information from the government as shown by the falsification of his 2006 security clearance application. In doing so, Applicant has demonstrated that he does not possess the trustworthiness and reliability required of an individual given access to classified information.

Accordingly, doubts remain about Applicant's security worthiness. 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>13</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.b - 1.d, 1.f - 1.h:	Against Applicant
Subparagraphs 1.a, 1.e:	For Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

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<sup>12</sup> AG ¶ 16(a).

<sup>13</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

## **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