



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



In the matter of: )  
 )  
 ) ISCR Case No. 12-06756  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

06/26/2015

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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. Applicant failed to mitigate the security concerns raised by his \$23,400 in unresolved delinquent debt and his failure to disclose the delinquent accounts on his security clearance application. Clearance is denied.

**Statement of the Case**

On October 28, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance.

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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.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on March 16, 2015. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant who received the FORM on March 27, 2015. He responded timely. Without objection, the documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 7 and the documents submitted by Applicant are admitted as Applicant's Exhibits (AE) A through C. The case was assigned to me on June 1, 2015.

### **Findings of Fact**

Applicant, 54, has worked for a federal contractor since May 2011. Before accepting his current position, Applicant worked as a store clerk in a small hardware store. He previously held a security clearance between 1980 and 2001 when he served in the U.S Air Force. Applicant submitted a security clearance application in March 2012. The ensuing investigation revealed that Applicant owes approximately \$23,400 on 22 delinquent accounts.<sup>3</sup>

Applicant did not disclose any derogatory financial information on his security clearance application in response to the question seeking information about delinquencies involving routine accounts. In his Answer to the SOR, Applicant claims that he was in a bad place when he completed the application and that he answered the questions on the application to the best of his ability. At the time Applicant completed the form, he had not received any mail from his creditors at his new address. He did not believe that he had any charged-off accounts or any accounts that were greater than 120 days past due. He also stated that any discrepancies were cleared up in his subject interview with a background investigator. However, in his April 2012 subject interview, Applicant informed the investigator that he listed 11 delinquent accounts on the original copy of the application he completed. When the application was returned to him for corrections, the delinquent accounts were deleted.<sup>4</sup>

According to Applicant, his financial problems began during the dissolution of his second marriage in May 2011. During the divorce proceedings, Applicant relocated to another state for his current job. Applicant explains that in addition to his relocation and living expenses, he continued to pay the mortgage on the home he previously shared with his ex-wife, as required by the terms of their divorce. On his own, he also assumed responsibility for the college expenses of their three children. His finances were strained by the increase in financial obligations and a decrease in income caused by a \$900 reduction in Applicant's disability benefit from the Department of Veterans Affairs. Applicant's financial problems worsened after he remarried in July 2011. Before their marriage, Applicant's third wife worked in the medical field, earning \$65,000 annually. Shortly after their marriage, she began experiencing a series of health issues that rendered her disabled and unable to work. As a result, Applicant assumed responsibility

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<sup>2</sup> GE 3.

<sup>3</sup> GE 4.

<sup>4</sup> GE 3-4, 6.

for her financial obligations. Applicant prioritized the needs of his family, their recurring living expenses, and his secured debt. He allowed unsecured debts to fall delinquent.<sup>5</sup>

Applicant admits 18 of the 22 debts alleged in the SOR. He denies the debts alleged in SOR ¶¶ 1.f (\$2,842) and 1.l (\$30) because he is not familiar with them. Applicant discussed the debts in his subject interview in April 2012. Since then, he has not provided any documentation to establish a legitimate basis for disputing that he is not responsible for the alleged debt. Applicant denies the debt alleged in SOR ¶ 1.r as a duplicate of ¶ 1.k. Although the account balances reported on the credit reports in the record are the same, \$85, the accounts show different creditors, different account numbers, and different activity dates. Applicant also denies the debt alleged in SOR ¶ 1.u (\$2,811), claiming that the debt has been satisfied through the garnishment of his military retirement pay. He did not provide any documentation to corroborate his claim.<sup>6</sup>

As for the 18 debts Applicant admits, he has only taken steps to address the student loan debts alleged in SOR ¶¶ 1.a through 1.c. Applicant rehabilitated the loans and began making payments under a new payment plan in April 2015. In 2014, the debts alleged in SOR ¶¶ 1.h (\$1,400), 1.i (\$1,261), and 1.n (\$1,117), were forgiven by their creditors.<sup>7</sup> Applicant properly reported the forgiven debt as income on his 2014 federal income tax return and paid the necessary taxes. The remaining debts are unresolved.<sup>8</sup>

Applicant intends to pay his debts and avers that he will do so in time. In his response to the FORM, Applicant identified a number of changes in cash flow that will allow him to do so. His wife was awarded Social Security disability benefits, which allowed them to pay off her car loan. The garnishment on Applicant's military retirement pay will be satisfied in the upcoming months. Applicant believes these changes will make \$850 to \$1,000 available for the payment of his delinquent accounts. Also, Applicant's claim against the Veteran's Administration regarding the reduction of his disability benefits was resolved in his favor. He expects to receive a lump-sum payment of \$4,000 in retroactive pay.<sup>9</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

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<sup>5</sup> GE 3, 6.

<sup>6</sup> GE 3, 5, 7.

<sup>7</sup> Applicant also claims that SOR ¶ 1.f was also forgiven by the creditor. However, none of the account identifiers on the cancellation of debt forms matches that debt or any other alleged in the SOR.

<sup>8</sup> AE A - C.

<sup>9</sup> GE 3, AE A - C .

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).

### **Analysis**

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>10</sup>

The SOR alleges that Applicant owes approximately \$23,400 in delinquent debt. The allegations are supported by the record, establishing the Government's *prima facie* case.<sup>11</sup> Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>12</sup> Although Applicant's financial problems may have been caused by events beyond his control, he has not proven that he acted responsibly given his circumstances. Nor does the evidence establish that Applicant has made a good-faith effort to repay his creditors. Applicant has taken active steps to resolve only 3 of the 24 delinquent accounts in the SOR, the student loan accounts alleged in ¶¶ 1.a through 1.c. With only two payments on these debts, Applicant has not established a positive history of repayment or actual debt reduction. Furthermore, the resolution of SOR ¶ 1.u

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<sup>10</sup> AG ¶ 18.

<sup>11</sup> GE 4-9.

<sup>12</sup> AG ¶¶ 19(a) and (c).

by garnishment (which is not supported by the record), and the cancellation of debts alleged in SOR ¶¶ 1.h, 1.i. and 1.n were resolved, albeit in Applicant's favor, by action of the respective creditors.

Applicant has stated his intentions to pay his debts in the future. However, this promise, no matter how genuine, does not mitigate the security concern. Applicant failed to establish a track record of financial reform or rehabilitation. Accordingly, none of the financial considerations mitigating conditions apply.

## **Personal Conduct**

Conduct involving a lack of candor or dishonesty, in particular, 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>13</sup> The SOR alleges that Applicant deliberately failed to disclose any derogatory information on his March 2012 security clearance application. Applicant denies the allegation. Proof of omission, standing alone, does not establish or prove an applicant's intent or state of mind when he completed the application. Applicant has provided conflicting explanations for his omissions. Neither is credible. Applicant was admittedly in a bad place emotionally and financially when he completed his security clearance application. It is likely that securing better paying employment was a priority for him at the time. This provides sufficient circumstantial evidence of Applicant's intent to withhold information from the government.<sup>14</sup>

Applicant's deliberate falsification is not a minor offense. Applicant held a security clearance for the duration of his 21-year career in the military. He undoubtedly completed numerous security clearance applications and should have known the importance of full disclosure. He has not acknowledged or taken responsibility for his behavior. None of the personal conduct mitigating conditions apply.

Based on the record, doubts remain about Applicant's ability to properly handle and safeguard classified information. Ultimately, Applicant failed to meet his burdens of production and persuasion. The security concerns raised in the SOR remain. Following *Egan*<sup>15</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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<sup>13</sup> AG ¶ 15.

<sup>14</sup> AG ¶ 16 (a).

<sup>15</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

### **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.a – 1.v:	Against Applicant
Paragraph 2, Personal Conduct	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant

### **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