



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 12-09565
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll J. Connelly, Esq., Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

05/23/2016

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by his past financial trouble. He addressed his financial situation by receiving financial counseling, reaching out to his creditors, and has either paid or is paying his debts. He also successfully disputed incorrect information appearing on his credit reports. He currently manages his finances in a responsible manner. Clearance is granted.

**History of the Case**

On May 19, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information (Answer).

<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On December 14, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for January 21, 2016.<sup>2</sup> The hearing was convened as scheduled. Department Counsel offered Government exhibits (Gx.) 1 – 5. Applicant testified, called a character reference as a witness, and offered Applicant exhibits (Ax.) 1 – 2 and A – G. Applicant's request for additional time to submit matters for my consideration post-hearing was granted. He timely submitted Ax. H – J. All exhibits were admitted into the record without objection. The hearing transcript (Tr.) was received by DOHA on February 1, 2016, and the record closed on February 26, 2016.<sup>3</sup>

### **Findings of Fact**

Applicant is in his late thirties. He served in the U.S. military from 1995 to 2003. His military service included multiple sea deployments. He was a shift supervisor during these deployments, supervising 20 – 30 other U.S. military members. He held a security clearance while in the military, received multiple awards and decorations for his military service, and received an honorable discharge. (Tr. at 12-13, 54; Gx. 1.)

Applicant has been with his current employer, a federal contractor, since approximately 2011. He is a network systems engineer. He has held a security clearance since 2006. A former co-worker writes that Applicant has worked on a number of highly sensitive U.S. Government projects and always handled the information he was granted access to properly and with the utmost discretion. Applicant is well regarded by current and former colleagues and friends for his professionalism, reliability, trustworthiness, and good judgment. He mentors young people through youth sports programs. (Tr. at 13-14, 55-58; Gx. 1; Ax. F.)

Applicant incurred a number of past-due debts after a government contract he was working on was not renewed and he was unemployed for a time. Also, he moved from his former home in State A to State B, with a higher cost of living. Upon moving, Applicant deferred his student loans, but failed to contact his lenders at the end of the deferment period and the loans went into default status. He disclosed his past-due debts on his recent security clearance application and discussed his finances in detail during his background investigation.

In early 2014, Applicant contacted the creditors holding his student loans and rehabilitated them. He has been paying his student loans on a consistent monthly basis through automatic debits from his bank account since January 2014. He has been making additional monthly payments towards paying down the principal. He has reduced the balance owed from approximately \$25,000 to about \$13,000. His student loans, which are referenced at SOR 1.a – 1.d, are current. (Tr. at 15-18, 27-36; Ax. 1; Ax. G; Ax. H.)

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<sup>2</sup> Prehearing correspondence (including the notice of hearing), case management order, and Department Counsel's discovery letter are attached to the record as Hearing Exhibits (Hx.) I – III, respectively.

<sup>3</sup> The record was originally kept open until February 5, 2016, but was extended at Applicant's request. Post-hearing correspondence is attached to the record as Hearing Exhibit (Hx.) IV.

Applicant also contacted the creditors for the debts listed at 1.g – 1.i, and paid the debts. He was unaware of the debts until receiving the SOR, as the bills had gone to his former home in State A. (Tr. at 18-20; Ax. 2.)

Upon receiving the SOR, Applicant also became aware that security concerns were being raised about three debts that he thought he had already addressed. Specifically, the \$14,000 credit card debt referenced at 1.e and the two relatively minor debts totaling about \$200 referenced at 1.f and 1.j. (The debt in 1.f is for a utility bill from his former residence in State A and the debt in 1.j is for monthly music club dues.) In 2014, when Applicant first became aware that these debts were appearing on his credit report, he hired a credit repair company (CRC). The CRC disputed the three debts and they were subsequently removed from Applicant's credit reports. Of note, of the three credit reports admitted into the record, the three debts at issue only appear on an earlier 2012 report, but not more recent reports from 2014 and 2015.

Applicant was recently advised by a representative from his bank to file additional disputes with each of the creditors for the three debts referenced at SOR 1.e, 1.f, and 1.j. Applicant, after conducting his own internet research, became concerned that the incorrect entries on his past credit report might be due to confusion with a close family member with the same name. He filed written disputes with each of the creditors and credit agencies. In doing so, he followed the advice and tailored his dispute letters to the model provided on the website of a U.S. Government agency. (Tr. at 21-27, 36-48; Gx. 4; Gx. 5; Ax. B - Ax. E; Ax. I.)

Applicant has received formal and informal financial counseling through his bank, a U.S. Government agency sponsored online money management program, and his sister who is a loan officer at a bank. He earns approximately \$110,000 annually. His current credit report reflects no negative entries and all accounts, including his student loans, are in good standing. (Tr. at 14-15, 51-54; Gx. 5; Ax. J.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

## **Analysis**

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

The security concern under this guideline is explained at AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s past financial issues raise the Guideline F security concerns. The record evidence also establishes the disqualifying conditions at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant bears the burden of mitigating the security concerns raised by the evidence. The financial considerations guideline lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems originally stemmed from short-term unemployment and a move to a higher-cost area of living. Although he took longer than would be expected from a cleared contractor to address his financial situation, it is generally well understood that it can take some time to resolve past financial difficulties. More importantly, he took the necessary steps to address and resolve his financial situation.

First, over two years ago, he contacted the creditors for his student loans – by far the largest of his outstanding debt – and rehabilitated the loans through consistent monthly payments since January 2014. Second, he paid the other debts that he had not been aware until receiving the SOR. Third, he provided corroborating, documentary proof of payment and of having successfully disputed the debts that were inaccurately reported on his 2012 credit report. Fourth, he is taking proactive, responsible steps to avoid having the incorrect information from wrongly being reported again. Fifth, he received financial counseling and manages his financial affairs consistent with the advice he received, to include paying down the principal on his student loans.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.<sup>4</sup> Applicant met his burden. Specifically, I find

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<sup>4</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

that AG ¶¶ 20(a) through 20(d) either apply in full or in part and, when considered together with the whole-person matters noted herein, mitigate the financial considerations security concern.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been candid about his past financial problems since the start of the security clearance process. He served honorably in the military and has held a clearance for approximately 20 years without apparent issue except for the past financial problems listed in the SOR. He addressed his past debts and currently manages his finances in a responsible manner. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for access to 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, Guideline F (Financial Considerations)	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge