



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-11803

**Appearances**

For Government: Allison O'Connell, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

11/24/2014

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

**Statement of Case**

On February 4, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The 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 (Directive); and the Adjudicative Guidelines (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on May 28, 2014, and requested a hearing. The case was assigned to me on August 20, 2014, and was scheduled for hearing on October 23, 2014. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on four witnesses (including himself) and 27 exhibits (AEs A-AA). The transcript (Tr.) was received on November 3, 2014.

### **Procedural Issues**

Before the close of the hearing, Department Counsel moved to withdraw the allegations covered by subparagraph 1.i of the SOR. For good cause shown, Department Counsel's motion was accepted.

Prior to the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documentation of his student loan payments relative to his accounts covered by subparagraphs 1.f and 1.g. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded seven days to respond.

Within the time permitted, Applicant supplemented the record with a personal financial statement, correspondence from creditor 1.m, a distinguished service award from his former police department employer, and payments on his student loan accounts. Applicant's post-hearing submissions were admitted as AEs BB-JJ.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 7 relief in November 2011 and was discharged in March 2002; (b) incurred a delinquent federal tax debt of \$925; (c) incurred a delinquent state tax debt of \$1,095; and (d) accumulated 10 delinquent consumer debts exceeding \$38,000.

In his response to the SOR, Applicant admitted some of the allegations and denied others. He claimed his federal tax debt (subparagraph 1.b) and student loan debts (subparagraphs 1.f and 1.g) have since been brought current, while other debts were paid (subparagraph 1.i) He attributed many of his financial difficulties to his wife's diagnosed depression.

Applicant claimed he has made concerted efforts to address his debts since he discovered his past-due accounts. And he claimed he has dedicated himself to helping his community and country and received awards from his local police department and U.S. government agencies who recognized his hard work and contributions.

### **Findings of Fact**

Applicant is a 47-year-old intelligence analyst for a defense contractor who seeks a security clearance. (GE 1; Tr. 64) The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

## **Background**

Applicant married in June 1995 and has three children from this marriage. (GE 1; Tr. 19, 67) He earned a bachelors of science degree in January 1989 and acquired graduate school credits between September 2007 and December 2008. Applicant claimed no military service. He has held security clearances with a previous employer. (Tr. 65-66) For over 20 years Applicant was employed by a major-city police department and retired in 2011 with the rank of detective lieutenant. (GE 1; Tr. 65)

Applicant's wife of almost 30 years is currently employed on a full-time basis. (Tr. 20, 30) Previously, she was employed part-time by a law firm. (Tr. 31)

## **Applicant's finances**

Prior to 2002, Applicant's wife managed their finances and did not keep up with their bill payments. He attributed his wife's payment lapses to her medical depression condition. (GE 2; Tr. 21, 31-32, 69-69, and 77) Asked about her circumstances in 2001, she acknowledged her medical issues (primarily depression), her loss of employment, and her failure to keep Applicant properly informed of her failure to pay their bills in a timely way. (Tr. 67-69) She took prescribed medications (mainly Prozac) for her depression condition.

After Applicant's wife lost her job in 2001 (Tr. 21-22), both encountered sustained difficulties in paying their bills. (Tr. 22) Unable to work out payment plans with their creditors, they jointly petitioned for Chapter 7 bankruptcy protection. (GE 5; Tr. 211-22, 25) In their petition, they scheduled \$150,000 in secured debts (including a \$120,000 first mortgage on their home), and \$40,000 to \$50,000 in unsecured debts. (Tr. 93-95) Their debts were discharged in March 2002. (GEs 2 and 5 and AE A; Tr. 66). The first trust mortgagee later foreclosed on its trust deed, which did not produce enough sale proceeds to satisfy the second mortgagee's secured interest. (Tr. 94-97)

For the first 10 years following their bankruptcy discharge, Applicant and his wife were able to maintain their bills in current status with some input from Applicant. (Tr. 22-23) In 2011, Applicant's wife experienced a major depressive episode. (Tr. 23, 72, and 79) Unable to focus on her financial responsibilities while in a depressive state of mind, Applicant's wife ceased paying their bills. (Tr. 23, 67-68, and 80)

In 2013, Applicant became delinquent in his federal taxes (\$925) and state taxes (\$1,095) for the tax year of 2012. (GE 2; Tr. 36-37) He has since satisfied his federal tax debt and received a confirming letter from the IRS of his satisfying his tax debt. (AE B; Tr. 25, 36, and 70) And in 2013, he entered into an installment agreement with his state's comptroller to pay off the delinquent state tax balance. He has since satisfied the \$315 owing on his installment agreement with the state. (AE C; Tr. 25, 70)

Applicant obtained two student Government-guaranteed loans in October 2007: one for \$12,000 and another for \$8,500. (GEs 2-4) Terms of payment on these loans was

\$667 a month on the \$12,000 loan and \$419 a month on the \$8,500 loan. (GE 4) Both of these accounts (creditors 1.f and 1.g) became delinquent and were assigned to the Government in December 2012 in accordance with their terms of payment. In January 2014, Applicant entered into a repayment agreement with the collection agent for his student loan creditors. (AEs E and F) Since January 2014, Applicant has maintained these accounts in current status with agreed \$500 monthly payments. (AEs EE-JJ; Tr. 26, 41-42, 67-68, and 71)

Between 2007 and 2012, Applicant accumulated delinquent consumer loan debts exceeding \$15,000. (GEs 2-4) These debts are identified in Applicant's credit reports as follows: creditor 1.d (\$329); creditor 1.e (\$1,097); creditor 1.h (\$177); creditor 1.i (\$2,470); creditor 1.j (\$893); creditor 1.k (\$536); creditor 1.l (\$552); and creditor 1.m (\$1,093). (GEs 2-4) Applicant attributed his account delinquencies to his wife's medical condition and her failure to maintain the accounts in current status. (GE 2; Tr. 23-24, 34)

Since learning of the delinquencies in these accounts in June 2013, or thereabouts, he has made diligent efforts to pay them off. (GE 2; Tr. 24, 67-68) With a more effective set of prescribed medications, Applicant's wife is medically sound and able to resume her payment responsibilities. (Tr. 22, 29-32, 38, 72 and 75)

Applicant documented his payment or successful resolution of his debts with creditor 1.d (AE D); creditor 1.h (AE X); creditor 1.i (since withdrawn by Department Counsel); and creditor 1.k (GE 3 and AEs P-Q, T, and Y). Neither Applicant nor his wife could identify the remaining debts listed in the SOR (i.e., creditors 1.e, 1.j, 1.l, and 1.m), and Applicant continues to dispute these listed debts. (AEs G, I-K, P-O, T, Y, and CC; Tr. 26-29, 39, 48-52, 70-71, and 73-74) These creditors have not responded to their inquiries, and the debts no longer appear on Applicant's updated credit reports. (AEs P-Q, T, and Y; Tr. 65-66)

Applicant has not received any financial counseling since he completed his required on-line counseling course associated with his 2001 Chapter 7 bankruptcy petition. (Tr. 76) He reported net monthly income of \$11,564 for himself and his wife. *Compare* AEs R and Z with BB. He reported monthly expenses of \$7,088, debt payments of \$1,250, and a net monthly remainder of \$3,226. (AE BB) Applicant and his wife currently own their own home, and they are current in their mortgage payments. (AE BB; Tr. 67)

### **Awards and endorsements**

In recognition of his meritorious efforts as a member of his local police employer, Applicant received numerous awards. (Aes N-O; Tr. 65-66) He is well-regarded by his friends and colleagues who know him. (AE AA; Tr. 53-62) A friend and member of a U.S. law enforcement agency who knows Applicant and is familiar with his career in law enforcement credited Applicant with reliability and trustworthiness. His direct supervisor who sees him daily characterizes him as a reliable and trustworthy public servant. (Tr. 61-63)

## Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### Financial Considerations

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known

sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG, ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant's history of delinquent debts, attributable in part to historical reliance on his wife's bill-paying responsibilities and her ensuing bouts with depression that impaired her ability to manage their family finances. Following their Chapter 7 discharge in 2002, Applicant and his wife maintained their bills in current status for several years before falling behind again: this time with their federal and state taxes, Applicant's student loans, and a number of consumer accounts. Applicant's actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c) “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Following his discharge from Chapter 7 bankruptcy in 2002, Applicant was able to maintain his family's finances in stable order for a number of years under the able management of his wife. After his wife suffered another depressive episode in 2011, however, she could no longer keep their debts current and allowed many of their debts to become delinquent. Records reflect serial delinquencies in their federal and state taxes, student loans, and various consumer accounts between 2007 and 2012.

With proper medications and spousal assistance, Applicant's wife regained her health and has made steady progress in paying off their listed tax debts and most of their listed consumer debts and arranging payment plans to pay off Applicant's delinquent student loans. Applicant's post-2012 efforts merit application of MC ¶ 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."

Applicant's only financial counseling consisted of the required on-line counseling he received in connection with his Chapter 7 petition. Without more elaboration of the nature of the on-line counseling he completed, no more than partial application of MC ¶ 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," is warranted in these circumstances. By addressing his identified delinquent debts, Applicant has established a promising track record for resolving his debts. MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," fully applies to Applicant's situation.

Applicant's documented tax, student loan, and consumer debt payment history reflect satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's unidentified and disputed debts listed in his credit reports and SOR are not enough to deprive him of the mitigation benefits achieved from his recent payment efforts. So long as Applicant is able to establish a credible and realistic plan, or plans, to resolve his financial problems, accompanied by significant actions to implement his plan, he meets the Appeal's Board requirements for stabilizing his finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008). See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan., 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

By his documented successful disputes with listed creditors he could not identify, Applicant demonstrated earnest efforts to address these remaining creditors as well. His actions warrant the application as well of MC ¶ 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.”

From a whole-person standpoint, Applicant presents with a distinguished law enforcement career and meritorious record of civilian employment with his defense contractor employer. He has impressive support from his friends, colleagues, and direct supervisor who know him. While his history of debt accruals is considerable, with the help of his wife, he has developed a solid track record of debt management and is committed to restoring his finances to respectable levels consistent with holding a security clearance.

Applicant’s documented payment initiatives are significant and reflect a serious commitment on his part to stabilize his finances. Only those debts he has been unable to identify has he not addressed to date. And these disputed debts have since been deleted from his updated credit reports. Overall, Applicant’s corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

**GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT**

Subparas. 1.a-1.h and 1.j-1.m: For Applicant

Subpara. 1.i: Withdrawn

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge





