



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00012
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

02/20/2015

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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 owes approximately \$12,916 in unresolved delinquent debt, including an outstanding state tax lien. Clearance is denied.

**Statement of the Case**

On February 18, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<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. The Government submitted its written case on May 7, 2014. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. Applicant received the FORM on May 25, 2014, and was given 30 days to file objections and submit material to refute, extenuate, or mitigate SOR allegations. Applicant did not submit a response to the FORM by the June 24, 2014 deadline, nor did he object to the attachments,<sup>2</sup> which are admitted as Government's Exhibits (GE) 1 through 8. The case was assigned to me on December 15, 2014.

### **Findings of Fact**

Applicant, 39, has worked as an engineer for a federal contractor since approximately April 2005. He has held a security clearance since at least 1998. On his most recent security clearance application dated October 2012, Applicant disclosed some derogatory financial information regarding delinquent medical bills and a car loan. The ensuing investigation revealed and the SOR alleges that Applicant is indebted to 22 creditors for approximately \$12,916, including a 2008 state tax lien (SOR ¶ 1.a, \$1,325).<sup>3</sup>

Applicant claims that his financial problems began after his wife lost her job and Applicant was responsible for supporting a family of seven (two adults and five children) on one income. From the credit reports in the record, the accounts alleged in the SOR became delinquent between 2007 and 2012. Applicant offers as a secondary reason for his financial problems, that his wife mismanaged the family finances, which also resulted in delinquent accounts. In response to this problem, Applicant states that he has taken control over the family finances.<sup>4</sup>

In his Answer to the SOR, Applicant admits responsibility for 20 of the 22 alleged accounts, claiming that the debts alleged in SOR paragraphs 1.j (\$828) and 1.v (\$201) have been paid. He also stated that he is making payment arrangements for the remaining 20 debts. The credit reports in the record confirm that Applicant has paid the collection account alleged in SOR paragraph 1.v. However, there is no evidence to corroborate the resolution of the debt alleged in SOR paragraph 1.j. or payment plans for any of the other debts alleged in the SOR. Although Applicant sent letters to each creditor proposing a payment plan, there is no evidence showing that any payments have made toward the resolution of his delinquent accounts.<sup>5</sup>

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<sup>2</sup> Appellate Exhibit (AP EX) I.

<sup>3</sup> GE 5.

<sup>4</sup> GE 4-5.

<sup>5</sup> GE 4-7.

## 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).

## Analysis

### Financial Considerations

Unresolved delinquent debt is a security concern because "an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds."<sup>6</sup> Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.<sup>7</sup> The Government does not have to prove that an applicant poses a clear and present danger to national security,<sup>8</sup> or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show

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<sup>6</sup> AG ¶ 18.

<sup>7</sup> ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

<sup>8</sup> See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.<sup>9</sup>

The SOR alleges that Applicant owes approximately \$12,900 in delinquent debt. The allegations are supported by the record, establishing the Government's *prima facie* case.<sup>10</sup> Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>11</sup> Applicant did not present sufficient information to mitigate the financial concerns in the SOR. Even if Applicant's financial problems were caused by his wife's unemployment, an event beyond his control, Applicant did not provide enough information to support a finding that he has acted responsibly to resolve his financial issues. He did not specify when his wife lost her job, the length of her unemployment, or the resulting decrease in household income. Applicant also failed to show what steps, if any, he has taken to resolve his delinquent debt. The payment of one SOR debt (§ 1.v) and Applicant's letters to his creditors does not connote a good-faith effort to repay his delinquent debt.<sup>12</sup> Finding no evidence to the contrary, I find that Applicant's financial problems are ongoing and that his finances are not under control. As such, Applicant's unresolved delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant failed to meet his burdens of production and persuasion. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial concerns. Applicant did not provide sufficient evidence showing the resolution of his delinquent debt or any evidence to show financial reform or rehabilitation. 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.

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<sup>9</sup> See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989).

<sup>10</sup> GE 5-8.

<sup>11</sup> AG §§ 19(a) and (c).

<sup>12</sup> ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue).

<sup>13</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.u:	Against Applicant
Subparagraph 1.v:	For 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