



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-02805
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

07/20/2015

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant's financial problems were not caused by irresponsible, reckless, or negligent behavior. Although some of the alleged debts remain unresolved, Applicant is making a good-faith effort to repay his creditors. Clearance is granted.

**Statement of the Case**

On December 16, 2014, the Department of Defense (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 or continue Applicant's security clearance and recommended

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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.

that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> At the hearing, convened on April 14, 2015, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through G, without objection. After the hearing, Applicant submitted AE H through N, which were also admitted without objection.<sup>3</sup> I received the transcript (Tr.) on April 22, 2015.

### **Findings of Fact**

Applicant, 34, has worked as an electronics technician for a federal contractor and has held a security clearance since 2008. In August 2013, Applicant submitted a security clearance application to upgrade his clearance level. The ensuing investigation revealed that Applicant is indebted to 11 creditors for approximately \$24,000 and that he previously had \$20,000 in debts discharged in a 2005 bankruptcy.<sup>4</sup>

Applicant began having financial problems during his first marriage, which lasted from 2003 to 2008. He admits that he and his ex-wife had poor financial habits. They decided to resolve their marital debt through Chapter 7 bankruptcy protection. After the divorce, Applicant claims that his finances were stable until 2013. In 2012, Applicant and his ex-wife agreed to joint custody of their two children. Although they split physical custody, Applicant still paid child support. In 2013, Applicant ended a relationship with a girlfriend with whom he had been living and splitting household expenses. Living on his own with his children, he struggled to pay his recurring household expenses and child support. To reduce his expenses, Applicant voluntarily surrendered a vehicle to the creditor. The account, which is alleged in SOR ¶ 1.a, has a \$6,200 deficiency balance, not the \$18,000 alleged in the SOR.<sup>5</sup>

In the fall of 2014, Applicant's ex-wife reneged on their custody arrangement, resuming full, primary custody of the children. Applicant retained counsel. Since the end of 2014, Applicant has spent \$3,800 in legal fees. Applicant and his ex-wife were scheduled to participate in a custody settlement conference in May 2015. He anticipates that the conference will not resolve the dispute. Applicant believes he will have to incur additional legal fees to litigate the issue further.<sup>6</sup>

To date, Applicant has resolved 3 of the 11 debts alleged in the SOR, ¶¶ 1.e, 1.f, and 1.h. He has entered into a payment plan of \$300 per month for the auto loan

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<sup>2</sup> The Government's discovery letter, dated October 15, 2014, is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> The e-mails regarding the admissibility of the applicant's exhibits are included in the record as HE II.

<sup>4</sup> Tr. 18-19, 32; GE 1, 3-5.

<sup>5</sup> Tr. 19-23, 35-39, 57-60; AE N.

<sup>6</sup> Tr. 54-55, 60-63

deficiency balance alleged in SOR ¶ 1.a. The debt alleged in SOR ¶ 1.g was discharged in Applicant's 2005 bankruptcy. Applicant admits that he owes the debt alleged in SOR ¶ 1.b (\$1,148), but cannot afford to make payments at this time. Applicant has attempted to contact all of the creditors alleged in the SOR. He is disputing the debts alleged in SOR ¶¶ 1.c, 1.d, 1.i, and 1.j because he has been unable to verify them. At the time of this decision, Applicant had not received correspondence from the credit reporting agencies regarding the disposition of the disputed accounts. He has been unable to identify the creditor for the unidentified \$132 medical account alleged in SOR ¶ 1.k.<sup>7</sup>

Applicant earns \$46,000 annually and has amassed approximately \$40,000 in retirement savings. He is in a new relationship and lives with his girlfriend. They split the recurring household expenses. After paying his share of the bills, Applicant has between \$800 and \$900 in disposable income each month. At hearing, Applicant testified that he lives comfortably within his means.<sup>8</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

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 contained in the record.

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.

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<sup>7</sup> Tr. 21-22, 24-31, 35, 42-48, 53; AE B-M.

<sup>8</sup> Tr. 51-54.

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 and endures throughout off-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 the 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.

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

### Guideline F, 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>9</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant admits that he owes approximately \$24,000 on the 11 delinquent accounts alleged in the SOR. The credit reports in the record establish the government’s *prima facie* case. Applicant has demonstrated an inability to pay his bills and a history of financial problems, resulting in unresolved delinquent debts.<sup>10</sup> However, Applicant has submitted sufficient information to mitigate the security concerns. Applicant did not incur debt under circumstances that reflect negatively on his security worthiness.<sup>11</sup> While Applicant’s financial problems during his first marriage were caused by poor financial habits, his more recent financial problems were caused by a change in circumstances and his custody dispute with his ex-wife. Applicant has acted responsibly under the circumstances by contacting each of his creditors, disputing the debts he cannot confirm, and taking steps to resolve his delinquent debt.<sup>12</sup> Applicant has demonstrated a good-faith effort to resolve his delinquent debt by entering into a payment arrangement for his largest outstanding debt for \$6,200 (SOR ¶ 1.a) and

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> AG ¶¶ 19(a) and (c).

<sup>11</sup> AG ¶ 20(a).

<sup>12</sup> AG ¶ 20(b).

resolving four other of the alleged accounts (SOR ¶¶ 1.e, 1.f, 1.h, and 1.g), totaling \$2,600.<sup>13</sup>

After reviewing the record, I have no doubts about his suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant's financial problems are not indicative of financial irresponsibility, poor self-control, lack of judgment, or an unwillingness to follow rules and regulations. While Applicant is not debt-free, he has established a sufficient record of debt repayment and debt reduction to mitigate the security concerns. Accordingly, his request for access to classified information is granted.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.l:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge

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<sup>13</sup> AG ¶ 20(d).