



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



In the matter of: )  
)  
) ISCR Case No. 14-00510  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

10/23/2014

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for a security clearance to work in the defense industry. During 27 months of underemployment, Applicant incurred \$92,200 delinquent debt. Since returning to full income in 2013, Applicant has made a good-faith effort to repay his creditors. The record confirms Applicant's track record of debt repayment and a willingness to resolve his delinquent debts. Applicant has reduced his outstanding delinquent debt to approximately \$33,200. Clearance is granted.

**Statement of the Case**

Acting under the relevant Executive Order and DOD Directive,<sup>1</sup> on March 20, 2014, DOD issued a Statement of Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information.

<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.

The SOR detailed the factual basis for the action under the financial considerations guideline.

Applicant answered the SOR and requested a decision without a hearing. The Government submitted its written case on June 11, 2014, and sent a complete copy of the file of relevant material (FORM), which included a brief and seven documents marked for identification, to Applicant. He received the FORM on June 24, 2014, and was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Although Applicant did not object to the items appended to the Government's brief, only the items identified as Government's Exhibits (GE) 1 through 6 are admitted for reasons discussed below. Applicant did not submit additional documentation. The case was assigned to me on September 11, 2014. I opened the record to allow Applicant to submit additional information. He timely submitted Applicant's Exhibits (AE) A through C,<sup>2</sup> which were admitted without objection.<sup>3</sup>

### **Evidentiary Issues**

The Government offers as GE 7, a Personal Summary from the Joint Personnel Adjudication System, dated June 9, 2014. The summary indicates that Applicant's sponsoring company lost its facility clearance in January 2014 and separated Applicant from its employ the same month. The document suggests that DOHA may not have jurisdiction over this matter. *Sua sponte*, I obtained an updated JPAS Person Summary, dated September 2014 to resolve the issue. The Person Summary establishes that Applicant's security clearance application is being sponsored by his current employer. Accordingly, the document identified as GE 7 is excluded from the record because the document provides outdated information that, on its face, causes confusion about a material question of law. The September 2014 JPAS summary is admitted to the record as HE II.

The Government's brief presents information summarizing the Report of Investigation (ROI) completed as a result of Applicant's background investigation. The ROI is not in the record.<sup>4</sup> In a footnote of the FORM, the Government directs Applicant to lodge any objection to the ROI summary in his reply to the Government's brief.<sup>5</sup> There is no indication that Applicant was provided a copy of the ROI, as required, which prevents him from authenticating or formulating his objection, if any, to the Government's summary of its contents. Based on the Directive ¶ E3.1.20, the summarized ROI are inadmissible and will not be considered.

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<sup>2</sup> AE A: Applicant's Letter, dated October 10, 2014; AE B: Applicant's Letter with Attachment, dated October 15, 2014; AE C: Credit Report, dated October 15, 2014.

<sup>3</sup> The Government's response to AE A through C is appended to the record as Hearing Exhibit (HE) I.

<sup>4</sup> FORM at 4-5.

<sup>5</sup> FORM at 4.

## Findings of Fact

Applicant, 60, has worked as a subject matter expert for a federal contractor since January 2013. In addition, Applicant also takes on work through his own company, which has been in operation since 1993. Applicant claims to have held a security clearance for the past 35 years. According to the JPAS, Applicant has held a security clearance since at least 2008. Subject to a periodic reinvestigation, Applicant submitted his most recent security clearance application in May 2013. In response to questions about his financial record, Applicant disclosed several delinquent debts, which he attributed to an unexplained 27-month loss of income.<sup>6</sup>

The SOR alleges that Applicant is indebted to five creditors on ten accounts totaling \$92,156. In his Answer, Applicant denies each of the debts alleged in the SOR, claiming the debts have either been paid or are being resolved through payment plans. Credit reports dated June and October 2014, confirm that the debts are being resolved as Applicant stated in his Answer. The accounts alleged in ¶¶ 1.b, 1.c, 1.d, 1.g, 1.h, and 1.j show zero balances with notations that the accounts are paid collections or have been settled. The accounts alleged in ¶¶ 1.e, 1.f, and 1.i show reduced balances consistent with the payment arrangements Applicant reported. He also provided documentation showing seven months of payments to the account alleged in ¶1.a. To date, Applicant has reduced his delinquent debt to approximately \$33,200.<sup>7</sup>

According to the credit reports in the record, Applicant has a credit history dating back to the late 1970's. The credit reports suggest that Applicant did not have any financial problems or derogatory credit history before 2012.<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.

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<sup>6</sup> GE 3-4; HE I.

<sup>7</sup> GE 3, 5-6; AE A-C; Answer.

<sup>8</sup> GE 5-6.

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.

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**

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. The SOR alleges that Applicant is indebted to five creditors for approximately \$92,000. Applicant admits that he incurred the delinquent debts, which are substantiated by his May 2013 credit report, during a 27-month period when his income was significantly reduced. Despite Applicant’s denials of the SOR allegations, the record contains sufficient evidence to establish the Government’s *prima facie* case, that Applicant had a brief history of being unable to pay his debts.<sup>10</sup>

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> AG ¶¶ 19(a) and (c).

While there is not enough information in the record to determine if Applicant's loss of income was caused by events beyond his control, the record does support a finding that Applicant has made a good-faith effort to resolve his delinquent debts.<sup>11</sup> The credit reports and payment records in evidence establish that Applicant has settled six of the ten accounts alleged in the SOR and is making payments towards the remaining four accounts. According to the credit reports, Applicant finances are under control.<sup>12</sup> He has not incurred any additional delinquent debt and his accounts are in good standing.<sup>13</sup>

### **Whole-Person Concept**

I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). There is nothing in the record to suggest that Applicant's financial problems were caused by excessive spending or irresponsible financial practices. The record contains sufficient evidence of financial rehabilitation.

### **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
Subparagraph 1.a – 1.j:	For Applicant

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<sup>11</sup> AG ¶ 20(d).

<sup>12</sup> AG ¶ 20(c).

<sup>13</sup> The Government points out in HE I that the October 2014 credit report indicates that Applicant has two outstanding judgments: the first a \$6,900 judgment entered against him in 2008, the second a \$5,900 judgment entered in July 2013. The Government did not allege either judgment in the SOR or move to amend the SOR. Applicant disclosed both debts on his security clearance application and indicated that the 2008 judgment was paid in 2009 and that he was setting up a payment plan for the other account. The record is silent as to whether the ensuing investigation revealed information the debts were resolved as Applicant reported. Assuming *arguendo* that these debts remain unresolved, their existence alone does not change the analysis in this case given Applicant's record of debt repayment.

## **Conclusion**

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

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Nichole L. Noel  
Administrative Judge