



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



In the matter of: )  
)  
) ISCR Case No. 14-00673  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/06/2015

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant lost his home to foreclosure in November 2011. He owed about \$74,702 in delinquent debt as of April 2014, including \$54,990 on a second mortgage and \$11,591 for a timeshare. His belated efforts to resolve his debts do not fully mitigate the financial judgment concerns. Clearance is denied.

**Statement of the Case**

On April 2, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant a security clearance for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on August 6, 2014. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 25, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I issued a Notice of Hearing scheduling the hearing for October 15, 2014.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) were admitted into evidence without objection. Department Counsel also submitted a chart as a supplement to his oral closing argument. The chart was marked as a hearing exhibit, but was not entered as a formal exhibit. Applicant testified on his own behalf, as reflected in a transcript (Tr.) received on October 24, 2014, and he submitted one exhibit (AE A), which was entered without objection. I held the record open after the hearing, initially for two weeks, for Applicant to submit additional documentary evidence. On October 28, 2014, at Applicant's request, I extended the deadline for submissions to November 14, 2014. Applicant timely forwarded a personal statement (AE B) and a household budget (AE C). Department Counsel raised no objections by the November 25, 2014 deadline, and the documents were accepted into evidence.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F that as of April 2, 2014, Applicant owed collection debts totaling \$63,111 (SOR 1.a-1.h and 1.j), including a \$54,990 mortgage delinquency. Additionally, a joint mortgage for a timeshare was in foreclosure with an \$11,591 balance (SOR 1.i). When he answered the SOR, Applicant denied the alleged debts, but for the timeshare foreclosure. He indicated that he was working out repayment arrangements.

### **Findings of Fact**

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 51-year-old operations supervisor, who has worked for a defense contractor since March 2003. (GE 1; Tr. 35-36.) He seeks to retain a secret-level security clearance, which he has held since November 2003. (GEs 1, 2.)

Applicant and his now ex-wife married for the first time in June 1994 and divorced in August 1997. They have a son, who was 20 months old when they married. Applicant also has a daughter, now age 30, from a previous relationship.

Applicant and his ex-wife cohabited after their divorce, and she handled the debt payments when they were together. (Tr. 39.) In July 2005, Applicant and his ex-wife took on a primary mortgage of \$224,000 and a second mortgage of \$56,000 (SOR 1.g). In April 2009, Applicant's ex-wife stopped paying their first and second mortgages. (GE 3.)

Applicant and his ex-wife remarried in March 2010, only to separate three days later. (GE 1; Tr. 36.)

In August 2010, Applicant bought a timeshare through a real estate loan of \$11,695 (SOR 1.i). He paid on that loan only until January 2011 when he stopped paying because of a dispute over the maintenance fees. The lender initiated foreclosure proceedings in August 2011. (GEs 2, 3; Tr. 54-56.)

Applicant moved out of his house around October 2011. (Tr. 32.) He returned from TDY to find that his then spouse was having an extramarital affair. Applicant put some of his belongings in storage and rented a motel room. In early November 2011, Applicant and his ex-wife lost their home to foreclosure. The primary mortgage was settled by the lender redeeming the home in a foreclosure auction, but their second mortgage was unresolved (SOR 1.g). (GEs 3, 4; Tr. 46.)

Applicant was away from the area while on temporary duty (TDY) for his employer from January 2012 to November 2012, with the exception of two weeks in September 2012. His employer paid for his living arrangements. Applicant then resided in a local motel from November 2012 to August 2013, when he began renting a three-bedroom house. His son and son's girlfriend had a son in May 2013, and Applicant needed to provide a home for them. After they were settled, Applicant went on TDY until January 2014. (GEs 1, 3; Tr. 28, 51, 53.)

On September 13, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant responded affirmatively to the financial record inquiries concerning any failure to file or pay any Federal, state, or other taxes within the last seven years and any delinquency involving routine accounts. He explained that he belatedly learned that his federal and state income tax returns for tax year 2010 had not been filed on time or paid but that he had resolved his \$2,500 federal tax debt in May 2013. As for routine delinquencies, Applicant indicated that his home had been sold in a short sale to the mortgage company. He added that he could not afford the \$1,500 monthly payment on his own, after his spouse reportedly had moved out. Applicant also listed a \$500 motor vehicle tax debt, which he paid in full in August 2013. (GE 1.)

A check of Applicant's credit on September 24, 2013, revealed several outstanding collection accounts not disclosed on his e-QIP: a \$60 debt from November 2011 (SOR 1.a); a \$58 medical debt from October 2011 (SOR 1.b); a \$2,667 electric power debt from June 2011 (SOR 1.c); a \$1,146 wireless phone debt from August 2012 (SOR 1.d); a \$553 telephone services debt from December 2012 (SOR 1.e); a \$3,000 bail bond debt from January 2012<sup>1</sup> (SOR 1.f); a \$454 insurance debt (SOR 1.h); and a \$203 insurance debt from January 2013 (SOR 1.j). In addition, Applicant owed \$54,990 on the defaulted second mortgage for his foreclosed home (SOR 1.g) and \$11,591 on the timeshare loan (SOR 1.i). (GE 3.)

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<sup>1</sup> Applicant signed for a bail bond for the spouse of his ex-wife's friend. (Tr. 41.)

Applicant was confronted about the previously undisclosed delinquencies during an October 30, 2013 interview with an authorized investigator for the Office of Personnel Management (OPM). Applicant told the OPM investigator that he and his ex-wife were in divorce proceedings partially because of his ex-wife's inability to manage their finances. Applicant indicated that his ex-wife failed to pay the bills on time, to include their mortgage and some electricity bills. He was unaware how many payments were missed. Applicant expressed his belief that he owed nothing on the mortgage for the home he had shared with his ex-wife after a short sale of the residence. About the unlisted debts, Applicant claimed no knowledge of the debts. He expressed his intent to research the accounts and pay them if necessary. (GE 4.)

At his security clearance hearing, Applicant attributed his debts to being on the road for work and not receiving bills. Around June or July 2014, he withdrew \$20,000 from his 401(k) with the intent of paying off the bills that he owes. (Tr. 25, 27, 60-61.) He reached the creditors owed the electric power debt in SOR 1.c, the bail bond debt in 1.f, and the timeshare debt in SOR 1.i. The timeshare creditor had agreed to settle for a \$5,000 lump-sum payment while the power company agreed to settle for \$1,300. (Tr. 26, 43, 57.) The bail bond debt had accrued to about \$4,100. (Tr. 44-45.) Applicant indicated that he would be settling the timeshare and bail bond debts in the next week. (Tr. 26-27, 45.) About why he had not yet made the payments, Applicant explained that his son had a drinking problem and had been unemployed until recently, when he began working at a car wash. (Tr. 32.) Additionally, the creditor owed the bail debt had taken him to court. He was waiting to see whether he would be legally liable for the debt, and he learned only two days ago that he would have to pay it. (Tr. 43-45, 60.) Applicant has not investigated the debts identified in SOR 1.a, 1.b, 1.d and 1.j, which are on his credit record. (Tr. 42-43, 57.) He disputes the \$454 insurance debt (SOR 1.h). Applicant's son had an accident while driving Applicant's vehicle in early 2013. Applicant's insurer added Applicant's son to the policy, which increased Applicant's monthly payment to \$454. When it came time to pay his bill for the month, Applicant refused to pay, and he cancelled his policy. (Tr. 47-48.) The car sustained front-end damage in the accident, which Applicant has not had repaired. Applicant is paying \$511 a month on his loan for the vehicle, which presently is not drivable. (Tr. 49-50.)

Applicant's annual salary with the defense contractor is \$81,000. (Tr. 53.) He has three vehicles. Only one, a 1987 model-year sports car, is in working order. (Tr. 58, 62.) Applicant is paying the insurance for his son's 1994 sport utility vehicle. (Tr. 63.) Applicant's son does not contribute financially to the household apart from paying for diapers and some food for his toddler. (Tr. 63.) His son's girlfriend does not work outside the home. (Tr. 64.) Applicant estimates that he has spent about \$1,500 a month to care for his son and son's family since 2011. (Tr. 34.) Applicant's grandson required two surgeries, including most recently around late August 2014. Applicant paid for the costs associated with his grandson's hospital stay (i.e., transportation, lodging, and food for his son). (Tr. 51-52.)

The record was held open until November 14, 2014, for Applicant to demonstrate efforts to resolve his debts. As of his November 14, 2014 response, Applicant was

disputing the debts in SOR 1.a and SOR 1.h. He had not been successful in resolving the debts in SOR 1.b, 1.c, 1.d, and 1.j. He recently learned that the wireless phone debt in SOR 1.d had been sold to another collection agency. Applicant indicated that he had paid \$533 to resolve the debt in SOR 1.e; \$3,000 to settle the bail bond debt in SOR 1.f; and a negotiated amount of \$4,000 to settle the timeshare debt in SOR 1.i. (AE B). Applicant provided no documentation confirming those payments. Yet, I find his claims of payment to be credible in light of his candid admission to waiting for resolution of the bail bond issue before resolving any of his delinquencies. He submitted a monthly budget showing \$4,467.98 in net income and \$2,975.96 in monthly expenses, giving him discretionary funds of \$1,492.02 per month.<sup>2</sup> He reported he had \$7,000 of his \$20,000 in 401(k) funds after satisfying in full the \$533 debt in SOR 1.e, paying \$100 toward the electric utility debt in SOR 1.c, and settling the debts in SOR 1.f for \$3,000 and SOR 1.i for \$4,000. (AEs B and C.) Applicant presented no evidence of any effort on his part to address the mortgage delinquency in SOR 1.g.

A general foreman at work, who has known Applicant for approximately 11 years, attests to Applicant being hardworking and responsible in fulfilling his work duties. Applicant completes tasks with dedication and meets expectations. (AE A.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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

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<sup>2</sup> Applicant miscalculated his net income after expenses on his budget form. (AE C.) He indicated he had \$1,592.02 remaining when his figures show a net remainder of \$1,492.02.

mitigate facts admitted by 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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**

The security concern about financial considerations is set forth in 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 history of delinquent debt is documented in his September 13, 2013 e-QIP, his October 30, 2013 OPM personal subject interview, and his September 24, 2013 credit report.<sup>3</sup> They establish the approximately \$74,702 in delinquent debt alleged in the SOR. Two disqualifying conditions under AG ¶ 19 apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

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<sup>3</sup> In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

Concerning the mitigating conditions, AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s current, reliability, or good judgment,” applies, if at all, only to the second mortgage, which was incurred when he was still involved with his ex-wife. He asserts that she did not manage their finances properly, but when discussing his mortgage on his e-QIP, Applicant explained that he could not afford to make the payments on his own after his ex-wife moved out. The evidence shows that the other SOR debts were debts were incurred after his marital separation in March 2010. Applicant bought a timeshare in August 2010 and then chose to default on the loan after he disputed the assessment of the timeshare’s maintenance fees. The insurance debt in SOR 1.h, which he still disputes, is from Applicant’s failure to pay his monthly bill when the insurance company raised his rate after his son’s accident in 2013. The debts in SOR 1.a-1.f and 1.j were placed for collection between 2011 and 2013. Furthermore, Applicant’s failure to address the delinquencies on his credit record before his October 2014 security clearance hearing is recent evidence of questionable financial judgment that is not mitigated under AG ¶ 20(a).

Applicant attributes his collection accounts and mortgage foreclosures to his ex-wife’s failure to make the payments on their obligations while he was on TDY. (Tr. 31.) AG ¶ 20(b) is implicated where debts are incurred because of factors, such as a marital divorce or separation, are outside of one’s control:

(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 evidence falls considerably short of showing that the debts were incurred due to no fault of his own. As previously noted, the insurance and timeshare debts in SOR 1.h and 1.i were incurred because Applicant chose not to pay them over some disputed fees. Furthermore, Applicant had an obligation to his creditors to ensure that his debts were being paid, even if his ex-wife handled the payments. He displayed little knowledge about his accounts when he was interviewed by the OPM investigator. Moreover, AG ¶ 20(b) does not mitigate his inattention to his debts before late October or early November 2014, when he made some payments. AG ¶ 20(b) has some applicability in that Applicant could not have foreseen that his son would have a child and require considerable financial assistance. At the same time, the evidence shows that Applicant has more than \$1,400 in net income after paying monthly expenses, including the cost of rent and food for his son, son’s girlfriend, and their child, so he should have been able to pay the smaller debts on his credit record, such as the medical debt in SOR 1.b. Applicant had taken no steps to investigate some of the debts on his credit record as of mid-October 2014.

Mitigating conditions 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,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” are partially established. Applicant asserted credibly

in November 2014 that he made the payments to satisfy the telephone debt in SOR 1.e and to settle the bail bond (SOR 1.f) and timeshare (SOR 1.i) debts. On the other hand, Applicant has yet to address the \$54,990 delinquent second mortgage (SOR 1.g). His loan was \$27,303 past due as of March 2013 with no evidence of payments. He has no plans in place currently to resolve the debts in SOR 1.b, 1.d, and 1.j, which are not in dispute.

Concerning the disputed collection debts in SOR 1.a and SOR 1.h, Applicant did not meet his burden under AG ¶ 20(e) to show that the debts were invalid or that he is no longer liable to repay them. AG ¶ 20 (e) requires a showing of a reasonable basis to dispute the legitimacy of the debt:

(e) the person 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.

Particularly with respect to the insurance debt, Applicant admitted that his son had an accident while driving his vehicle and that the insurance company raised his rate, which he chose not to pay. Applicant did not explain why he was disputing the debt in SOR 1.a.

Applicant has \$7,000 left of the \$20,000 withdrawn from his 401(k). After the \$7,633 in debt payments made after his security clearance hearing, he still has \$59,478 in delinquent debt on his credit record that is not likely to be resolved in the near future. He is not required to resolve every debt for security clearance eligibility. Yet, his failure to give priority to addressing his financial accounts is inconsistent with sound financial judgment expected of someone who holds a secret-level security clearance. The financial considerations concerns are not adequately mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>4</sup>

Applicant may have trusted his ex-wife to handle their debts with little to no involvement or oversight on his part, but they separated in March 2010. They divorced for the second time, partially over her failure to handle their financial affairs. Applicant did nothing before the SOR was issued to resolve his debts, despite a positive monthly cash

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<sup>4</sup> The factors under AG ¶ 2(a) are as follows:

- (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.



flow. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990.). Based on the record before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility at this time.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge