



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-00956
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

06/01/2015

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant established his eligibility for continued access to classified information. He was unable to meet his financial obligations after his income decreased sharply. He resolved some of his delinquent debts through bankruptcy. The only delinquent debts that remained post-bankruptcy were student loans that Applicant incurred in attaining his undergraduate degree. He submitted documentation that following the bankruptcy he paid his student loans on a consistent basis before they were recently placed in forbearance status while he pursues a graduate degree. He has not incurred other delinquent debt in the five years that have passed since the bankruptcy. He has received financial counseling and his overall financial situation appears to now be under control. Clearance is granted.

**Statement of the Case**

On April 28, 2014, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging that his conduct and circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> On May 28, 2014, Applicant answered the

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security*

SOR, waived his right to a hearing, and requested a decision on the written record (Answer).

On February 2, 2015, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains six documentary exhibits, which were marked and admitted into evidence as Exhibits (Ex.) 1 – 6. Applicant submitted a response to the FORM (Response), which was marked and admitted into evidence as Ex. A. On April 13, 2015, I was assigned Applicant's case.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, I make the following findings of fact:<sup>2</sup>

Applicant is in his early thirties. He is married with three children. He served in the U.S. military from 2000 to 2006, receiving an honorable discharge. He is currently employed as a technician with a defense contractor. He held a security clearance while in the military, and has had access to and handled classified information since starting his current job in 2011.

Applicant submitted his current security clearance application (SCA) in 2013. He voluntarily disclosed a Chapter 7 bankruptcy in 2010. He explained that his pay decreased sharply in 2009, and he was unable to keep up with his financial obligations. His delinquent debts, except for the student loans he acquired to pursue an undergraduate degree, were discharged through bankruptcy. The 2010 bankruptcy is referenced in SOR ¶ 1.a.

Applicant also disclosed on the SCA his delinquent student loans. A credit report that was requested as part of his background investigation confirmed the bankruptcy and three delinquent student loan accounts. The only other negative entries are for past debts that were resolved through the bankruptcy. The credit report also reflects numerous accounts in good standing, including several student loan accounts.<sup>3</sup>

The SOR alleges that Applicant has several delinquent student loan accounts with a balance of nearly \$40,000 (SOR ¶ 1.b). Applicant submitted with his Response documentation that he was paying his student loans before they were placed in forbearance status. Applicant's student loans were placed in forbearance while he pursues a graduate degree. (Ax. A)

The SOR further alleges that Applicant has a separate set of student loans, totaling about \$10,000, which are also purportedly delinquent (SOR ¶ 1.c). Applicant

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*Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by DOD on September 1, 2006.

<sup>2</sup> In reaching the above findings of fact, I have made only those reasonable inferences supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

<sup>3</sup> The credit report, Gx. 6, is from 2013. A more recent report was not supplied by either party.

states that the student loan accounts referenced in ¶ 1.c are loans he co-signed for his ex-wife. With his Response, Applicant provided documentation establishing that these student loan accounts are not delinquent. He also submitted proof of receiving financial counseling. (Ax. A)

Applicant states in his FORM Response:

Since 2011 I have worked with classified information with Zero Discrepancies. I treat classified information with the utmost importance. I understand that having access to this information is a privilege, not a right. I take this privilege very seriously as I understand the ramifications should classified information be leaked or intercepted by persons it is not intended for. My position within my company affords me the opportunity to help train our nation's military to be the best in the world. I take great pride in doing what I do . . . .

(Ax. A, ¶ 5)

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865, § 2.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

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. 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 an 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.<sup>4</sup>

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The potential security concern regarding an applicant with financial problems is explained at 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 accumulation of delinquent debt, which led to a Chapter 7 bankruptcy in 2010, raises the financial considerations concern. The record evidence also raises the disqualifying conditions at AG ¶¶ 19(a) (inability or unwillingness to satisfy debts) and 19(c) (a history of not meeting financial obligations).

The guideline also lists a number of conditions that could mitigate security concerns raised by an individual’s past financial problems. The mitigating conditions that are potentially relevant in this case are:

AG ¶ 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

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<sup>4</sup> Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). An administrative judge is required to examine an individual’s past history and current circumstances to make a predictive judgment about an individual’s ability and willingness to protect and safeguard classified information. ISCR Case No. 11-12202; ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

separation), and the individual acted responsibly under the circumstances;  
and

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;

Applicant's past financial problems were related to a decrease in salary. He resolved about half of his past-due debts through bankruptcy. He resolved the remainder of his past-due debts, which are all related to student loans he incurred pursuing his undergraduate degree, by paying the debt and bringing the accounts current. His student loans are now in forbearance while he pursues a graduate degree. He received financial counseling through the bankruptcy process. He has apparently not incurred any other delinquent debt in the five years that have passed since the bankruptcy. In short, Applicant resolved his past financial issues and it now appears that his financial situation is under control. AG ¶¶ 20(b) and 20(c) apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>5</sup> Applicant served honorably in the military from 2000 to 2006. He has had access to and handled classified information in the past without apparent issue. He has been candid about his financial situation throughout the security clearance process. This favorable record evidence, coupled with the passage of five years since the bankruptcy without accumulation of additional delinquent debt or other financial issues, mitigates the security concerns raised by his past financial problems. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):      **FOR APPLICANT**

Subparagraphs 1.a – 1.c:      **For Applicant**

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<sup>5</sup> The non-exhaustive list of adjudicative factors are: (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.

## **Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge