



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



In the matter of: )  
)  
) ISCR Case No. 14-01052  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

05/13/2015

**Decision**

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 he still owes a significant amount of delinquent debt, he is making a good-faith effort to repay his creditors. Clearance is granted.

**Statement of the Case**

On May 1, 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

<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 February 10, 2015, I admitted Government's Exhibits (GE) 1 through 3, without objection. After the hearing, Applicant submitted Applicant's Exhibits (AE) A through C, which were also admitted without objection.<sup>3</sup> I received the transcript (Tr.) on February 18, 2015.

### **Findings of Fact**

Applicant, 38, has worked for his employer, a federal contractor, since 1999. He has held a security clearance, without incident, since 1997. On his August 2013 security clearance application, Applicant disclosed derogatory financial information, including delinquent accounts, wage garnishments, and a 2011 home foreclosure. The ensuing investigation established that Applicant owes approximately \$95,000 on 13 delinquent accounts. Two of those accounts, totaling \$59,000 are for the deficiency balance on his foreclosed home. Applicant admits each debt alleged in the SOR.<sup>4</sup>

Applicant married in 2002. He and his wife have two children, ages 12 and 9. In 2005, the couple purchased their first home – a single family home that sat on less than 2.5 acres of land for approximately \$170,000. Before 2008, Applicant testified that he and his wife were able meet all of their financial obligations, even if margins were sometimes tight. After she completed school in 2006, Applicant's wife began working. They enjoyed a combined income of approximately \$100,000. The couple's expenses increased with their increase in income. Then, in 2008, without giving notice to her employer or Applicant, Applicant's wife quit her job. As a result, their household income decreased by approximately 25%. According to Applicant and his wife, their financial problems began shortly thereafter.<sup>5</sup>

Both testified that Applicant tried, but he could not meet their financial obligations on his income alone. Applicant believed that returning to school was the only way he could increase his earning potential. Using the tuition benefit offered through his job, Applicant began taking classes. His decision to do so did not impact the family's finances. He earned his master's degree in 2011. Dissatisfied with her previously chosen course of study, Applicant's wife also decided to return to school full-time in the spring 2009. Although she financed most of her education with student loans, Applicant paid some of her school expenses from the reduced household budget. Applicant was unable to keep up with all of the household bills, including the mortgage on their home. Applicant sought help from his mortgage company to no avail. Four of the thirteen

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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. 19-20; GE 1-3.

<sup>5</sup> Tr. 14-17, 22, 38-38, 44-45; GE 1.

alleged accounts fell delinquent between 2009 and 2010. Applicant's financial problems worsened in 2010, when he and his wife separated. As a result of the separation, both Applicant and his wife left the marital home and established separate residences. The bank foreclosed on the home in February 2011, leaving a deficiency balance of \$35,000 and \$24,000 on the first and second mortgages, respectively.<sup>6</sup>

In 2011, Applicant's finances continued to deteriorate as he experienced the first of two garnishments of his wages. First, Applicant's former homeowners' association began garnishing 20% of Applicant's bi-weekly pay to satisfy \$6,000 in delinquent dues as well as the expenses related to their recovery. When that garnishment was completed, another creditor, a credit card company, began garnishing Applicant's pay for the \$4,500 debt alleged in SOR ¶1.i. Applicant was able to negotiate a garnishment rate of 15% with the creditor. As his wages were garnished, Applicant continued to incur delinquent debt. Nine of the accounts alleged in the SOR fell into collection status in between 2011 and 2013. After the garnishments ended in 2013, Applicant negotiated a payment plan of \$250 per month to resolve the \$9,000 debt alleged in SOR ¶ 1.c. Applicant has also resolved the debt alleged in SOR ¶ 1.f (\$93).<sup>7</sup>

Applicant is working toward rehabilitating his finances. Because he cannot afford an attorney, he has no plan to file for divorce in the foreseeable future. Although he and his wife share custody of the children - with the children dividing their time equally between the two parents, Applicant voluntarily pays his estranged wife \$1,800 each month in child support. This is an agreement between Applicant and his wife. Applicant is not under a court-mandated child support order. Applicant has sought financial counseling. He has consulted with a financial planner on an annual basis since 2013. In addition to helping Applicant plan for future expenses, such as his children's college tuition (Applicant saves \$500 monthly for this expense), the planner also helps Applicant manage his budget. Applicant monitors his spending using a financial management website. With regards to his outstanding delinquent debt, Applicant plans to repay the debts alleged in the SOR one at a time, starting with the larger debts.<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

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<sup>6</sup> Tr. 20, 22-24, 35-36, 44-49; GE 2-3.

<sup>7</sup> Tr. 24-27, 38-40, 43.

<sup>8</sup> Tr. 20-21, 30,33, 40-43.

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.

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.

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<sup>9</sup> AG ¶ 18.

Applicant admits that he owes approximately \$95,000 on the 13 delinquent accounts alleged in the SOR. His admissions as well as 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 raised by his finances.

The largest of those nine debts is the combined \$59,000 deficiency balance on the marital home. However, under the anti-deficiency statute in the state where Applicant purchased the home, neither the holder of the first nor second mortgage securing the home can recover any difference in the amount obtained by the sale and the amount of the indebtedness and any interest, costs, and expenses. The anti-deficiency statute applies to foreclosed, single-family homes sitting on less than 2.5 acres of land.<sup>11</sup> Accordingly, the debts alleged in SOR ¶¶ 1.b and 1.m are uncollectible. However, a finding that these debts are legally uncollectible does not end the inquiry into Applicant's security worthiness; the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner must also be examined.<sup>12</sup>

Applicant did not incur debt under circumstances that reflect negatively on his security worthiness. Applicant's financial problems, including the foreclosure of his home, are related to his marital problems. After his wife unexpectedly quit her job in 2008 and the couple's subsequent separation in 2010, Applicant was left to resolve debts incurred during the marriage on his own. Of the 13 accounts alleged in the SOR, 9 were opened during the marriage. All thirteen accounts fell delinquent between 2010 and 2013, the years after Applicant and his wife separated and the years his wages were being garnished. Given the constraints caused by wage garnishments on his income between 2011 and 2013, Applicant has acted responsibly to resolve his delinquent debt. He has made a good-faith effort to resolve his delinquent debt by entering into a payment arrangement to resolve his largest outstanding debt for \$9,000 (SOR ¶ 1.c). He has also resolved the accounts alleged in SOR ¶¶ 1.f and 1.i. He has articulated a plan to resolve his remaining delinquent accounts. Applicant has sought financial counseling and he actively monitors his spending. Applicant has not incurred any delinquent debt since 2013.<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). Although it is true, that at the current rate, it will take Applicant years to resolve his delinquent debt. However, the Appeal Board has held that, "an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act

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<sup>10</sup> AG ¶¶ 19(a) and (c).

<sup>11</sup> The relevant anti-deficiency statute is attached to the record as HE III.

<sup>12</sup> See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

<sup>13</sup> AG ¶¶ 20 (b) – (d).

responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.<sup>14</sup> Applicant has done so. While it cannot be denied Appellant still owes a great deal of money, this fact that does not ultimately resolve the question of an individual’s security worthiness. An evaluation of Applicant’s circumstances show that, in the 18 years he has held a security clearance, he has not engaged in any behavior that indicates poor self-control, lack of judgment, or an unwillingness to follow rules and regulations. 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.m:	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>14</sup> See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).