



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



In the matter of: )  
)  
) ISCR Case No. 14-01154  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

11/26/2014

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Appellant became delinquent on his child support payments when he was unemployed after leaving the Air Force. He has paid the delinquent child support obligation. The financial considerations security concerns have been resolved. Clearance is granted.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on April 30, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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.

On June 12, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated September 19, 2014. The FORM contained eight attachments.

On October 7, 2014, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On October 22, 2014, Applicant responded to the FORM. Department Counsel did not object to the response, which was admitted into the record. On November 20, 2014, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied owing the medical debt listed in SOR 1.a, \$3,575 and denied he owed delinquent child support. After a thorough review of the pleadings, and exhibits, I make the following additional findings of fact:

Applicant is a 28-year-old mechanic who has worked for a defense contractor since September 2011, and seeks to obtain a security clearance. At the end of August 2010, when he left active duty with the United States Air Force, he was a crew chief in the rank of sergeant (E-4). Applicant did not wish to leave the Air Force, but left due to downsizing in his career field.

In June 2010, Applicant divorced and was required to pay \$700 monthly child support. His children are ages eight and ten. Payments for June, July, and August 2010 were made from his military pay. From September 2010 through September 2011, he was unemployed and attending school. (Item 7) While unemployed, he sent child support payments sporadically and sent the money directly to his ex-wife or his mother and not through the state child support office. Applicant stated he was naïve for making payments directly to his ex-wife.

From June 2010 through June 2012, Applicant's ex-wife and children were living with his mother who was providing them food, lodging, and utilities. (Item 7) By making his payments directly to his ex-wife or to his mother, the state child support enforcement office believed he was \$26,000 delinquent in his child support obligation.

In September 2011, after receiving his current job, and continuing until August 2013, Applicant began sending his ex-wife weekly child support of \$80 to \$150.<sup>2</sup> (Item 7) He provided documentation that between June 2012 and January 2013, he sent his ex-wife directly \$2,115 by money gram. (FORM Answer) He asserts he made additional payments during this period, but was unable to document the payments. FORM

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<sup>2</sup> This amount of weekly support equates to \$346 to \$650 monthly, which was short of the required \$700 monthly child support. There are 26-two week pay periods each year and not 24, which increases the monthly amount being paid.

Answer) Since mid-August 2013, \$389 has been withheld bi-weekly<sup>3</sup> by garnishment for child support.

Between February 2013 and September 2014, Applicant paid his ex-wife \$38,932 and did so through the state child support disbursement unit. (FORM Answer) This resulted in an overpayment of his child support obligation by \$10. (Item 3) In February and March 2014, he made \$23,000 in payments following the receipt of his delayed U.S. Department of Veteran's Affairs (VA) disability payment.

In February 2012, Applicant suffered from food poisoning, which required an overnight hospital stay. He incurred a \$3,700 medical debt (SOR 1.a) on which he made a \$200 initial payment and \$50 monthly payments thereafter. (Item 3) Although he was making his monthly payments, the debt was listed as a collection. When Applicant questioned the creditor as to why the debt was listed as a collection, the creditor was unable to explain why this had occurred. As of December 9, 2013, this debt was settled in full. (Item 3)

Prior to Applicant's divorce in 2006, Applicant purchased a 2003 Toyota pickup for \$21,000, which was paid off. He never missed a payment on the vehicle. In 2010, he purchased a 2006 Nissan, which he also paid off and on which all payments were made timely. In 2006, he purchased a \$4,700 motorcycle. He made timely payments and is now paid off. In 2012, he purchased a 2007 Honda for \$13,000, which is now paid for. (FORM Answer) He is current on his mortgage, utility bills, and other obligations.

### **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 must 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 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 interests of 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

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<sup>3</sup> Bi-weekly child support of \$389 equates to \$843 monthly child support.

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 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 Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent

substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant was unable to pay the full amount of his child support obligation following his separation from the Air Force. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual 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.

From June 2010 until June 2012, Applicant's ex-wife and two children lived with his mother. His mother provided them with lodging, food, and utilities. Applicant was unemployed from September 2010 through September 2011. During this time he naïvely made child support payments directly to his ex-wife or to his mother and not through the state child support department. After obtaining his current job in September 2011, his monthly child support payments were less than what had been court ordered. Starting in mid-August 2013, the required monthly child support payments have been paid by garnishment. Between March 2013 through September 2014, Applicant paid \$38,932 through the state child support disbursement unit. Additionally, in December 2013, prior to the issuance of the SOR, Applicant paid the medical debt listed in SOR 1.a.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by his unemployment after leaving the Air Force, which made it impossible to meet his child support obligations. He made some child support payments to his ex-wife, but failed to send them through the state child support office. He has now paid all delinquent child support obligations. It is unlikely he will again make payments directly to his ex-wife for child support payments or fall behind on his support payments. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced divorce and unemployment along with the financial burden associated with each. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid all past-due child support obligations. Therefore, there are clear indications that the problem is resolved and is under control. Additionally, he repaid both obligations, which represents a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20 (c) and ¶ 20 (d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries, but were for medical treatment and child support.

Although Applicant was unable to make full monthly child support payments, he paid what he could while unemployed. Additionally, his mother was providing support not only for his children, but also his ex-wife, received in-kind support because she provided to them lodging, food, and utilities from the time of the divorce, June 2010,

thorough June 2012. Since mid-August 2013, Applicant has been paying the full amount of his monthly child support. He paid his ex-wife almost \$39,000 in 2013 and 2014 for past-due child support obligations and is now current on his support obligations.

The issue is not simply whether all Applicant's debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

### **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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a and 1.b For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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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CLAUDE R. HEINY II  
Administrative Judge