



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



In the matter of: )  
)  
) ISCR Case No. 14-01576  
)  
Applicant for Security Clearance )

**Appearances**

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

03/31/2015

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant failed to mitigate the financial considerations and criminal conduct concerns alleged in the SOR. His \$5,400 in delinquent debt remains unresolved and he failed to submit any information to mitigate his 2009 and 2010 arrests. Clearance is denied.

**Statement of the Case**

On June 10, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and criminal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

<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.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on November 4, 2014. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on November 14, 2014. He did not respond. The case was assigned to me on February 3, 2015. I admitted the items attached to the FORM as Government's Exhibits (GE) 1-6 without objection.

### **Evidentiary Rulings**

The Government offered Applicant's February 2014 subject interview for admission into evidence. Applicant did not authenticate the document. As such, the document is not admitted.<sup>3</sup>

### **Findings of Fact**

Applicant, 50, has worked as an electronic mechanic for a federal contractor since at least October 2003. On his February 2013 security clearance application, Applicant disclosed derogatory information about his finances and criminal history.<sup>4</sup>

The background investigation confirmed that Applicant is indebted to seven creditors for approximately \$5,400. These debts are alleged in the SOR.<sup>5</sup> Applicant claims that he began having financial problems when his wife became unable to work because of a health issue. As a result, Applicant claims that his household income decreased by approximately 33%. Although Applicant did not specify when his wife stopped working, the accounts alleged in the SOR became delinquent between 2007 and 2013. However, GE 6, a January 2014 credit report shows that between 2004 and at least December 2013, Applicant received approximately 48 short-term loans. The accounts alleged in ¶¶ 1.a, 1.d-1.f, appear to be for short-term loans. Applicant denies that he owes the debt alleged in ¶ 1.a because it has been charged off by the creditor. He admits owing the accounts alleged in ¶¶ 1.b – 1.g. At present, all seven accounts remain unresolved. Applicant did not provide any current information about his finances.<sup>6</sup>

The investigation also confirmed the two arrests Applicant disclosed on his security clearance application. He was arrested in July 2009 and charged with theft. The charge was dismissed in December 2009. Applicant was arrested again in April 2010 and charged with fraudulent possession of a prescription and forgery of a financial

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<sup>2</sup> GE 3.

<sup>3</sup> See Directive ¶ E3.1.20.

<sup>4</sup> GE 3.

<sup>5</sup> Based on GE 6, I find that SOR ¶¶ 1.g and 1.h are duplicates. Both accounts report similar creditor names. The accounts also have matching account numbers and account balances. Accordingly, I find in Applicant's favor on SOR ¶ 1.h.

<sup>6</sup> GE 3-4, 6.

instrument,<sup>7</sup> both felonies. He received deferred adjudication and was sentenced to five years of probation. The court released Applicant from probation in November 2013 and dismissed the charges. Applicant did not provide any information about the circumstances of either arrest. On his security clearance application, Applicant disclosed that he abused prescription medication between July 2008 and January 2009 to medicate a back problem that resulted in two surgeries.<sup>8</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

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.

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**

### **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

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<sup>7</sup> Applicant argues that he was not charged with forgery of a financial instrument. However, he did not provide any evidence to support his claims.

<sup>8</sup> GE 6.

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> The Government does not have to prove that an applicant poses a clear and present danger to national security,<sup>10</sup> or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.<sup>11</sup>

The SOR alleges that Applicant owes approximately \$5,400 in delinquent debt. The allegations are supported by the record, establishing the Government's *prima facie* case.<sup>12</sup> Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>13</sup> Although the total amount of delinquent debt owed is relatively small, Applicant's heavy reliance on short-term loans is a further indication that he is unable to live within his means and that his finances remain a concern. Applicant has not presented any information to mitigate these concerns. The record does not contain enough information to support a finding that the events causing Applicant's financial problems were beyond his control or that he acted responsibly to resolve them. There is no indication Applicant is making any effort to resolve his delinquent accounts or that his finances are otherwise under control. Accordingly, none of the financial mitigating conditions apply.

### **Criminal Conduct**

Criminal activity calls into question a person's ability or willingness to comply with laws, rules, and regulations, as well as a doubt about a person's judgment, reliability, and trustworthiness.<sup>14</sup> Although the charge was dismissed, Applicant was arrested and charged with theft in 2009. Shortly thereafter, he received deferred adjudication on two felony charges related to the fraudulent possession of a prescription and forgery of a financial instrument.<sup>15</sup> While the offenses occurred a number of years ago, this does not mitigate the concerns raised by Applicant's criminal conduct, both of which speak directly to Applicant's trustworthiness. The record does not contain any evidence that the Applicant did not commit either offense. Nor did he provide any evidence to support a finding that the factors that motivated the commission of these acts are no longer present in his life or that the underlying circumstances are unlikely to recur. Applicant has not provided any evidence to show rehabilitation or reform.

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

<sup>11</sup> See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989).

<sup>12</sup> GE 5-8.

<sup>13</sup> AG ¶¶ 19(a) and (c).

<sup>14</sup> AG ¶ 30.

<sup>15</sup> AG ¶¶ 31(a) and (c).

Ultimately, Applicant failed to meet his burdens of production and persuasion. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, mitigate the financial concerns, or establish evidence of financial rehabilitation. The security concerns raised in the SOR remain. Following *Egan*<sup>16</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

### **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:	AGAINST APPLICANT
Subparagraph 1.a- 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Criminal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a. – 2.b:	Against Applicant

### **Conclusion**

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge

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<sup>16</sup> *Navy v. Egan*, 484 U.S. 518 (1988).