



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01998
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: Ryan Nerney, Esq.

07/20/2015

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**Decision**

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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 failed to mitigate the concerns raised by his unresolved delinquent debt and his deliberate falsification of a June 2011 security clearance application. Clearance is denied.

**Statement of the Case**

On August 7, 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

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<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. Department Counsel served Applicant with a copy of discovery and an amended SOR in October 2014.<sup>2</sup> The amended SOR added eight allegations (SOR ¶¶ 1.f – 1.m) under the financial considerations guideline and two allegations (SOR ¶¶ 2.a – 2.b) under the personal conduct guideline. Applicant timely responded to the amended SOR, answering each new allegation. At the hearing on April 13, 2015, I amended the SOR, admitted Government's Exhibits (GE) 1 through 7, and Applicant's Exhibits (AE) A through D, without objection. After the hearing, Applicant submitted AE E, which was also admitted without objection.<sup>3</sup> I received the transcript (Tr.) on April 21, 2015.

### **Findings of Fact**

Applicant, 35, has worked as an electronics technician for a federal contractor since June 2011 and submitted a security clearance application around the same time. The ensuing investigation revealed that Applicant is indebted to 13 creditors for approximately \$21,600; and that he omitted derogatory information about his employment history from the security clearance application.<sup>4</sup>

In May 2007, Applicant was medically retired from the Air Force after nine years of active-duty service. Applicant, the only source of income for his family, was not prepared for the sudden loss of income. After his retirement, Applicant attended school, earning a diploma in aviation mechanics in August 2009. He financed his education with student loans and worked sporadically. After graduating, Applicant was unemployed for two months before securing employment as an aviation mechanic with a federal contractor. Applicant held the job for six days before he resigned.<sup>5</sup>

While attending the two-week orientation class for the federal contracting job, Applicant's teacher engaged the students in a conversation about a failed domestic terrorist attack. Applicant believes that the teacher found his opinion on the issue offensive. He was then called into a meeting with security about his comments. Applicant testified that he was given the option to resign or be terminated, though he claims that he did not believe that he would be fired that day. Upset by the accusations and how his employer handled the situation, Applicant resigned that day. A month later, a source informed the FBI that Applicant made statements advocating acts of terrorism. Applicant was never interviewed by the FBI, and did not learn about the tip until he received the discovery in preparation for the security clearance hearing. Applicant denies making any statements supporting terrorism. Applicant testified that in response

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<sup>2</sup> The SOR amendment and discovery letter are appended to the record as Hearing Exhibit (HE) I and HE II, respectively.

<sup>3</sup> The Government's response to Applicant's post-hearing submission is appended to the record as HE III.

<sup>4</sup> Tr. 20-21; GE 1-6.

<sup>5</sup> Tr. 21-22.

to the teacher's inquiry, he stated that the matter did not concern him because his family was not near the location of the thwarted attack.<sup>6</sup>

Applicant quickly found other employment and has since been employed without interruption. However, Applicant testified that the subsequent positions did not pay a lot of money. Before accepting his current position, Applicant worked as a civilian employee of the Air Force from March 2010 to June 2011. He decided to transition into a contractor position because he believed he would be able to earn more money. Upon applying for the job, Applicant was required to complete a security clearance application. In response to questions about his employment history, Applicant did not disclose his 2009 resignation from the other federal contracting job. He did not consider the circumstances of his resignation unfavorable.<sup>7</sup>

For the majority of their 15-year marriage, Applicant's wife has not worked outside the home because she did not earn enough money when employed to cover the cost of the childcare for their two children. When their youngest child started school in August 2014, Applicant's wife entered the work force with a job earning \$27,000 annually. Anticipating an \$800 increase in income each month, Applicant's wife, who handles the family finances, began setting up payment plans to address their delinquent accounts. They made one payment toward the debt alleged in SOR ¶ 1.a (\$3,897) before Applicant's wife lost her job in October 2014. She found another job in February 2015, but was fired in March 2015 for absenteeism — she missed four days of work to care for one of their sick children. Applicant's wife continues to look for employment. She is also in school, working towards a master's degree. She is financing her education with student loans.<sup>8</sup>

With his salary, retirement, and disability income totaling approximately \$3,800 each month, Applicant is able to pay the recurring household expenses. However, with only \$80 in disposable income each month, he is unable to address the delinquent accounts alleged in the SOR. His student loan accounts, which total \$70,000, are currently in forbearance. To date, Applicant has only resolved SOR ¶ 1.j (\$295). The other debts alleged in the SOR remain unresolved. Six of the debts alleged in the SOR (¶¶ 1.c, 1.d, 1.f, 1.i, 1.j, and 1.m) predate Applicant's retirement from the military. These accounts, totaling \$11,200, were opened between 2004 and 2007. The remaining seven debts alleged in the SOR became delinquent between February 2010 and June 2011.<sup>9</sup>

Despite being unable to address his delinquent accounts, Applicant has taken other steps to rehabilitate his finances. In hopes of buying a home, Applicant and his wife attended financial counseling classes in August 2014 and February 2015. He is actively working to reduce his recurring household expenses. Applicant believes the

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<sup>6</sup> Tr. 24-27, 59, 63-68; GE 3.

<sup>7</sup> Tr. 27-28, 59-60, 62; GE 1.

<sup>8</sup> Tr. 31-34, 47, 50-51, 71-72; AE A.

<sup>9</sup> Tr. 37, 54-56; GE 2, 4-6; AE B, E.

proposed changes to his budget will yield an additional \$250 in monthly disposable income. He plans to use the expected surplus to make payments of \$100 each on SOR ¶¶ 1.k (\$1,156) and 1.l (\$1,068) beginning in May 2015. He plans to make additional payments as he is able and hopes that when his wife returns to work, they can apply her income to the resolution of their delinquent accounts.<sup>10</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

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." 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 protect 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 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**

### **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

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<sup>10</sup> Tr. 52, 74-76; AE E.

information.”<sup>11</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant owes \$21,600 on 13 delinquent accounts. The allegations are supported by the record, establishing 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>12</sup> Applicant blames his financial problems on his unexpected medical retirement from the Air Force in 2007 and his subsequent history of underemployment and unemployment while having to support his family of four. While Applicant’s financial problems may have been exacerbated by his medical retirement, the record shows that his financial problems began well before that event. The record also shows that between 2010 and 2011, despite having steady employment, he began to accumulate delinquent debt again.

Applicant receives credit for the steps he is taking rehabilitate his finances; however, it is not enough to mitigate the financial considerations security concerns. Despite going to financial counseling, Applicant’s finances are not under control. He has not established a track record of debt repayment or reduction. Applicant has been able to resolve only one of the alleged SOR debts, ¶ 1.j, and has made only one payment toward the debt alleged in ¶ 1.a. Although the debts alleged in SOR ¶¶ 1.d through 1.h, do not appear on the most recent credit report in the record, it is because they are uncollectible due the passage of time, not because of any good-faith efforts made by Applicant to repay his creditors. Currently, Applicant does not have the ability to repay his delinquent accounts. Applicant has stated his intentions to pay his debts in the future. However, this promise, no matter how genuine, does not mitigate the security concern. None of the financial considerations mitigating conditions apply.

## **Personal Conduct**

An applicant’s personal conduct becomes a concern when his actions show questionable judgment, an unwillingness to comply with rules or regulations, or raises questions about his ability to protect classified information.<sup>13</sup> The SOR alleges that in 2009, Applicant made statement tending to support domestic terrorism (SOR ¶ 2.a). The basis of this allegation, a tip provided to the FBI, on its own, is not sufficient to support a negative whole-person assessment indicating that Applicant may not properly handle or safeguard classified information. Without corroborating evidence, the tip is not reliable evidence that Applicant made any questionable statements. Furthermore, there is nothing in the record to suggest that the FBI considered the tip credible or actionable. There is no evidence that the tip resulted in an investigation; or, that the FBI reached any adverse conclusion about Applicant. However, the allegation that Applicant

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<sup>11</sup> AG ¶ 18.

<sup>12</sup> AG ¶¶ 19(a) and (c).

<sup>13</sup> See AG ¶15.

deliberately failed to disclose the 2009 incident on his security clearance application (SOR ¶ 2.b) does raise questions about Applicant's current security worthiness.

An applicant's failure to provide truthful and candid answers during the security clearance process raises issues about his reliability and trustworthiness that ultimately calls into question his ability to protect classified information.<sup>14</sup> Applicant denies having any intent to deceive or mislead the government; however, his explanation is not credible.

Applicant, after making statements about a failed terrorist attack that his co-worker deemed so offensive that she reported Applicant to management, was given the opportunity to resign or be fired. These circumstances cannot be described as anything other than unfavorable. With its clear and unambiguous language, a reasonable person would have disclosed the 2009 resignation as leaving a job under unfavorable conditions. Applicant, on the other hand, had motivation to omit the information from his security clearance application. He wanted a job earning more money. Disclosing adverse information involving allegations that he supported domestic terrorism may have negatively impacted the likelihood of his getting the job he desired and his being granted access to classified information. This motive provides sufficient circumstantial evidence of Applicant's intent to withhold information from the government.<sup>15</sup> The falsification is not mitigated by the fact that the underlying incident does not negatively impact his current security worthiness. An applicant is expected to provide full, frank, and candid answers throughout the investigative process. Anything less provides a rational basis for a finding against an applicant's security worthiness. None of the personal conduct mitigating conditions apply.

### **Whole-Person Concept**

I have significant reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. The concerns raised by Applicant's finances and his deliberate falsification of his June 2011 security clearance application remain and must be resolved in favor of the Government.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.i, 1.k – 1.m:	Against Applicant
Subparagraph 1.j:	For Applicant

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<sup>14</sup> See AG ¶ 15.

<sup>15</sup> AG ¶ 16(a).

Paragraph 2, Personal Conduct: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge