



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



In the matter of: )  
)  
) ISCR Case No. 14-02070  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, 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. Although Applicant’s financial problems were caused by events beyond his control that occurred between 2011 and 2014, he has not taken any steps to resolve his \$42,000 in outstanding delinquent debt. Clearance is denied.

**Statement of the Case**

On September 5, 2014, the 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 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. The Government submitted its written case on October 29, 2014. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on November 17, 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) 1-7 without objection.

### **Findings of Fact**

Applicant, 52, is an employee of a federal contractor. On his January 2014 security clearance application, Applicant disclosed derogatory financial information. The ensuing investigation revealed that Applicant is indebted to five creditors<sup>2</sup> for approximately \$42,000.<sup>3</sup>

Applicant claims that he incurred the delinquent debt during two periods of unemployment between March 2011 and January 2014, lasting 16 months and 9 months, respectively. He also blames the dissolution of his 27-year marriage in December 2011. Applicant remarried in December 2013. Although Applicant admits owing each debt, he has not taken any steps to resolve any of his delinquent accounts.<sup>4</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.

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<sup>2</sup> SOR ¶ 1.d alleges that Applicant is indebted to a creditor for a \$2,606 collection account. Although Applicant admits to owing the debt, there is nothing in the record to suggest a good-faith basis for the allegation. Applicant did not disclose the debt on his security clearance application nor does the debt appear on either of the two credit reports in the record (GE 5-6). Accordingly, I find in Applicant's favor on this allegation.

<sup>3</sup> GE 5-6.

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

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 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>5</sup> The Government does not have to prove that an applicant poses a clear and present danger to national security,<sup>6</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>7</sup>

The SOR alleges and Applicant admits that he owes approximately \$42,000 in delinquent debt. Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>8</sup> Although Applicant’s financial problems may have been caused by a significant period of unemployment and the dissolution of his first marriage, he has not provided any evidence to show that he has acted responsibly in light of his circumstances, that he is making a good-faith effort to address his delinquent debt, or that his finances are otherwise under control. Accordingly, none of the financial mitigating conditions apply.

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.

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<sup>5</sup> AG ¶ 18.

<sup>6</sup> See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

<sup>7</sup> See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989).

<sup>8</sup> AG ¶¶ 19(a) and (c).

The security concerns raised in the SOR remain. Following *Egan*<sup>9</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.c, 1.e-1.f:         | Against Applicant |
| Subparagraph 1.d:                      | For 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>9</sup> *Navy v. Egan*, 484 U.S. 518 (1988).