



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



In the matter of: )  
)  
) ISCR Case No. 14-02291  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

01/14/2015

**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. He is making a good-faith effort to resolve his delinquent accounts. Clearance is granted.

**Statement of the Case**

On July 28, 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 November 19, 2014, I admitted Government's Exhibits (GE) 1 through 5, without objection. After the hearing, Applicant submitted Applicant's Exhibits (AE) A through H, which were also admitted without objection.<sup>3</sup> I received the transcript (Tr.) on December 2, 2014.

### **Findings of Fact**

Applicant, 35, has worked for a federal contractor since July 2008. On his security clearance application, dated February 5, 2013, he disclosed several delinquent debts. The ensuing investigation revealed that Applicant is indebted to five creditors for approximately \$38,000, which are alleged in the SOR.<sup>4</sup> Applicant admits responsibility for each debt.<sup>5</sup>

Applicant's financial problems began with the dissolution of his marriage. In 2004, Applicant married his longtime girlfriend. At the time the couple had one child. Between 1998 and November 2005, Applicant worked for a car dealership earning approximately \$70,000 annually. After the birth of their second child in December 2004, Applicant's job, which required a two-and-a-half hour daily commute, began to create tensions in the marriage. Acting in what he considered in the best interest of his family, Applicant decided to take a job closer to home. In doing so, he accepted a \$40,000 decrease in pay. However, the marriage continued to deteriorate and the couple separated in 2006.<sup>6</sup>

According to their divorce settlement, Applicant did not leave his marriage with any assets or financial benefits. His ex-wife retained all of the retirement savings, approximately \$40,000, accumulated in her name during the marriage. Despite having joint custody of the children, she also retained the right to claim all federal and state tax dependency exemptions. Applicant also agreed to relinquish his interest in the marital home. Applicant left the marriage with: \$33,000 in car loans for two vehicles; \$3,000 in marital debt on two credit cards; \$12,000 in personal debt accumulated during the marriage (SOR ¶¶ 1.c, 1.d, and 1.g); and a \$567 monthly child support obligation. After the divorce was finalized in 2008, Applicant struggled to meet his financial obligations.

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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> The SOR alleges that Applicant is indebted to seven creditors. However, GE 4 establishes that the accounts alleged in ¶¶ 1.b and 1.f are duplicates of the accounts alleged in ¶¶ 1.d and 1.c, respectively. Accordingly ¶¶ 1.b and 1.f are decided in Applicant's favor.

<sup>5</sup> Tr. 15-16; GE 1, 4.

<sup>6</sup> Tr. 18, 23, 30-34; GE 1; AE D.

Although he began working with his current employer in July 2008, he still earned an annual salary of \$30,000. Between 2008 and 2011, Applicant often worked two jobs to make ends meet. In 2010, Applicant opened two consumer credit accounts, accumulating an additional \$25,000 in debt (SOR ¶¶ 1.a and 1.e). Soon, he became overwhelmed and he allowed some of his accounts to become delinquent.<sup>7</sup>

In 2012, Applicant received a promotion and now earns \$44,000 annually. With his increase in salary Applicant has started to address his delinquent debts. Currently, 16% of Applicant's taxable income goes to child support. Another 18% is dedicated to the resolution of his delinquent debt. Applicant is participating in payment plans for the debts alleged in SOR ¶¶ 1.a and 1.c for \$100 per month and \$50 per month, respectively. He is also paying \$141 bi-weekly through a wage garnishment toward the satisfaction of a judgment. Applicant claims that the judgment relates to SOR ¶ 1.g, but there is no evidence in the record to substantiate that claim. After Applicant satisfies these debts, he plans to enter into payment plans to resolve the remaining SOR debts.<sup>8</sup>

Applicant is current on his recurring financial obligations. Although, Applicant has not taken any financial counseling classes, he regularly reads about financial management and seeks advice from family and friends. Applicant believes that his interest in the marital home would have been enough to pay all of his outstanding debts. However, he thought it in the best interest of his children to remain in the marital home. Applicant does not regret his decision. The children, now 14 and 9, are excelling in their academic and extra-curricular pursuits.<sup>9</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 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.

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<sup>7</sup> Tr. 17-18, 25-27; GE 4; AE D.

<sup>8</sup> Tr. 29, 36-42, 44; AE A-C, H.

<sup>9</sup> Tr. 19-23.

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>10</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant admits that he is indebted to five creditors for approximately \$38,000. He also admits that after his divorce he fell behind on his financial obligations. Applicant’s 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>11</sup> However,

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<sup>10</sup> AG ¶ 18.

<sup>11</sup> AG ¶¶ 19(a) and (c).

Applicant has submitted sufficient information to mitigate the security concerns raised by his finances.

Although Applicant's financial problems were not totally beyond his control, they did not occur under circumstances that negatively reflect on his current security worthiness. Applicant's financial problems are the consequences of decisions he believed that were in the best interest of his family during his marriage and of his children after his divorce. They are not the result of any irresponsible, reckless, or negligent behavior that indicates a lack of self-control or an unwillingness to follow rules or regulations. Applicant has demonstrated a good-faith effort to resolve his delinquent debts. He is participating in payment plans to resolve the debts alleged in SOR ¶¶ 1.a and 1.c, as well as having his pay garnished to resolve a judgment that is not alleged in the SOR. Although some of the SOR debts remain unresolved, Applicant has articulated a plan to resolve his remaining delinquent accounts.<sup>12</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). 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 responsibly given her 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>13</sup> Applicant has done so. 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.g:	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>12</sup> AG ¶¶ 20(a) and (d).

<sup>13</sup> See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).