



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-06429

**Appearances**

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

01/12/2016

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On May 11, 2015, Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR (undated), and requested a hearing. The case was assigned to me on July 22, 2015, and was scheduled for hearing on August 7, 2015. At the hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and two exhibits (AEs A-B). The transcript (Tr.) was received on August 12, 2015.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented payments to individual creditors and determine whether any deficiency balance exists in connection with Applicant's home foreclosure sale. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with a brief explanation of his unsuccessful efforts to obtain documented payment summaries, lease and payment documentation, and updates on the status of his foreclosure. Applicant's post-hearing submission is admitted as AE C.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accumulated 17 delinquent debts exceeding \$168,000 and (b) incurred a mortgage loan foreclosure in September 2012 with no indication of any deficiency balance after public sale of the property.

In his response to the SOR, Applicant admitted 10 debts and denied 11 debts. He claimed he paid (creditors 1.a-1.b, 1.e, 1.j-1.k, and 1.p), disputed the amounts alleged in subparagraphs in 1.m and 1.r (duplication), and in 1.t, set up payment plans with creditors 1.d, 1.m, and 1.s, and plans to set up a payment plan with creditor 1.f.

### **Findings of Fact**

Applicant is a 53-year-old software engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in July 1999 and has a child and two stepchildren from this marriage. (GE 1; Tr. 47) He attended college between September 1979 and May 1984 and earned a bachelor's degree in geology in May 1984. (GE 1) He returned to college in September 2011 and earned a master's degree in computer science in May 2013. (GE 1; Tr. 50, 52) Applicant claimed no military service.

Applicant has worked for his current employer since November 2013 as a software engineer. (GE 1) Between May 2013 and November 2013, he was unemployed. (GEs 1 and 4; Tr. 51) He worked part-time for a state government agency between September 2012 and May 2013. Between August 2011 and August 2012 he was unemployed and

with little income while enrolled in graduate school. (GE 1; Tr. 33) And prior to his return to graduate school, he worked as a petroleum analyst (from March 2007 to July 2011).

### **Applicant's finances**

Applicant admitted some of his debts and denied others. He has since satisfied some of the listed debts by payment in full, others with payment plans, and three of his student loan defaults by a consolidation agreement with the U.S. Department of Education (DOE). Applicant attributes his debt deficiencies to income shortages resulting from his returning to school and his wife's disability that prevented her from working. (GEs 1 and 4; Tr. 29-33)

Records show that Applicant and his wife purchased their home in September 2008 for around \$125,000 and financed their purchase with a \$118,000 first mortgage with creditor 1.c. (GEs 2-3; Tr. 45) At the time, Applicant was fully employed as a petroleum analyst (i.e., March 2007-July 2011). (GE 1; Tr. 33) His finances changed considerably after he left his employment for graduate school in September 2011. (GE 1; Tr. 50-51) Once he returned to school, he could no longer afford the mortgage payments, and his wife could not make the payments while out of work. (GE 4; Tr. 42) After Applicant defaulted on the loan and failed to enlist creditor 1.c's short sale approval without meeting the lender's back payment demands, creditor 1.c foreclosed on the residence in September 2012. (GEs 2-4; Tr. 43, 48-49)

Credit reports do not reflect any deficiency from the public sale of Applicant's residence, which Applicant indicated produced around \$30,000 in sales proceeds. (Tr. Applicant assured he has heard nothing from creditor 1.c about any owed deficiency balance. (Tr. 39) With home values generally in retreat nationally between 2008 and 2010, it is questionable whether creditor 1.c was able to recoup its loan investment from the sale of the property alone in 2012. But to date, both credit records and Applicant's accounts do not reflect any deficiency demands on Applicant. With no demands placed on Applicant for the payment of a deficiency, none can be attributed to Applicant

To finance his undergraduate education, Applicant obtained federally guaranteed student loans. (GEs 2-4) Credit records reveal that Applicant secured student loans with creditor 1.g for \$23,352; with creditor 1.h for \$29,803; and with creditor 1.i for \$29,314. (GEs 2-3) Applicant was successful with consolidating his loans with DOE in June 2015, but only to August 7, 2015. (AE A; Tr. 51-57) Repayment was scheduled to begin immediately following the expiration of the last forbearance unless Applicant was able to obtain additional forbearance relief. (AE A) Monthly repayment terms were set at \$611 a month. (AE A) Applicant provided no evidence of his obtaining any further forbearance relief or making payments under the terms of his last forbearance. Applicant's consolidated student loans with creditors 1.g-1.i remain unresolved.

In June 2011, Applicant purchased a vehicle from creditor 1.j for \$8,089. (GEs 2-4) While in school with little income, he involuntarily returned the vehicle to the lender. (Tr. 36-37) A deficiency remained after the sale of the vehicle in the amount of \$8,398. (GEs

2-4) Creditor 1.j later filed a garnishment suit against Applicant and enforced its suit with four to five involuntary payments. (AE H; Tr. 38-39) Applicant documented his resolution of the garnishment suit with creditor 1.j in March 2015 by satisfaction of the balance owed with funds from his employment bonus. (Tr. 39) Thereafter, the creditor dismissed its garnishment suit. (AE H; Tr. 30-31, 37-38)

Of the remaining listed debts, Applicant documented his payments of the following debts: creditor 1.a with a \$250 payment; creditor 1.b with a \$70 payment; creditor 1.e with a \$305 payment; creditor 1.k with a \$74 payment; creditor 1.p with a \$189 payment; and creditor 1.s with \$595 payment plan. (AE A; Tr. 31, 40-41, 53, and 69-70) Applicant settled another debt with a payment plan with creditor 1.d on an \$857 balance and a documented \$100 first payment. (AE A; Tr. 52-53, 59)

Applicant disputed two of the listed debts in the SOR. He disputed the listed debts with creditors 1.m and 1.r on a \$1,415 balance over a claimed duplication. (GEs 2-4; Tr. 60-61) His duplication dispute is a reasonable one made in good faith and is accepted. Applicant also disputed the listed debt with creditor 1.q (a \$2,281 debt with his landlord), claiming he did not owe the landlord any money. Afforded an opportunity to document his lease agreement and payments made, Applicant did not do so. Without more evidence to verify Applicant's claims, Applicant's dispute with this creditor is too incomplete to validate.

Finally, Applicant disputed the debt covered by subparagraph 1.t (a \$3,134 alleged debt) He disputed this debt on age grounds but provided no documentation of making his dispute known to the credit bureaus or the creditor. (GEs 2-3) The account was reported in Applicant's May 2014 credit report (GE 2) as 180 days past due April 2014. Without more evidence from Applicant, the debt does not appear too aged to be barred by Applicant's State's pertinent statute of limitations. Based on the evidence provided, Applicant's dispute of the creditor 1.t debt is not well supported by the evidence.

The remaining debts listed in the SOR are unresolved and outstanding. Debts owed to creditors 1.f (\$1,117); 1.l (a \$55,286, student loan co-signed by Applicant for his daughter); 1.m (\$1,114); 1.o (\$993), and 1.q (\$2,281) remain outstanding and unresolved. (GEs 2-4) Any deficiency balance that may be owed to creditor 1.c is not documented and cannot be attributed to Applicant on the basis of the evidence presented. (GEs 2-4; Tr. 35-36, 60)

To date, Applicant has paid or resolved debts with creditors holding approximately \$10,740 in delinquent accounts and is credited with good-faith disputes on two of his accounts (creditors 1.c and 1.r). This leaves over \$63,000 in unpaid debts that he is legally responsible for out of the \$165,000 allegedly owed to the creditors alleged in the SOR. His federally guaranteed student loans (creditors 1.g, 1.h, and 1.i) are in forbearance through August 7, 2015, and are exposed to likely to default as well after August 7, 2015, and add an additional \$55,000 to Applicant's accrual of unresolved delinquent debts.. To date, he has not pursued any financial counseling or set up any budgets for administering to his debts.

Afforded a post-hearing opportunity to obtain a forbearance extension to carry him past the expiration date of August 7, 2015, Applicant did not provide any documented proof of an extension. Without an extension, his scheduled \$611 monthly payments were due to commence in August 2015. (AE A) Applicant furnished no documentation either of any payments on his consolidated student loan, and is now past due, or close to past-due status in his loan payments. His scheduled loan payments currently total in excess of \$74,634. (AE A) Combined with his other unpaid debts, Applicant's outstanding debts exceed \$137,000. Should Applicant be unable to obtain any further forbearance of his student plans, he will not have the income to make his scheduled \$611 monthly payments and will need to renegotiate his student loan payments with the creditor. (Tr. 76)

### **Endorsements**

Applicant is well regarded by his software managers. (AE B) He is recognized by his program managers as his department's lead software manager responsible for assuring the handling and development of classified hardware. Applicant is credited with a high level of responsibility in producing and ensuring that classified software and documentation is handled correctly. (AE B) Applicant's direct supervisor considers Applicant to be a valuable asset to the firm's programs under DOD contracts. (AE B)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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 chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## **Analysis**

Security concerns are raised over Applicant’s history of delinquent debts. His delinquent debts include his defaulted student loans and his delinquent medical and consumer debts. While some of the listed debts have been paid, or otherwise resolved, some have not and remain outstanding.

Applicant’s student loan and other listed delinquent obligations accumulated obligations over a four-year period (2010-2015) warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations,” apply to Applicant’s situation.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant’s accumulation of delinquent debts, inclusive of matured student loan obligations, medical, and consumer debts merit application of MC ¶ 20(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.” Financial hardships associated with his periods of recurrent unemployment since returning to school in 2011, (partially associated with the economic downturn) and his corresponding loss of income are extenuating with respect to the debts he incurred during periods of income contraction. His recurrent hardships account for his continuing to accumulate tax and consumer debt delinquencies while fully employed.

Based on the evidence presented, Applicant has made some gains in addressing his delinquent debts, satisfying his outstanding debts, and undertaking efforts to stabilize his finances. His debt repayment and settlement efforts over this past year have produced over \$10,000 in payoffs, payment plans, and opportunities to work with

his student loan lenders in structuring a payment plan on his consolidated student loan that he can handle with his current income sources. At the present time, though, Applicant's repayment efforts entitle him to few mitigating benefits of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." For to date, he has provided no evidence of any forbearance extensions, workable repayment plans, or documented monthly payments on his student loans. Debt reductions on his student loans have been negligible so far, and the balances are large: over \$74,000 on his own loans and over \$55,000 on the loans he co-signed on his parent-plus loan for his daughter.

Prospects for Applicant's establishing and maintaining student loan payment plans with his student loan lenders are uncertain. Between the \$74,000 owing on his own student loan and the more than \$55,000 owing on his co-signed parent-plus loan for his daughter, Applicant still holds more than \$129,000 in delinquent student debts. Without evidence of financial counseling and workable repayment plans, Applicant's chances for stabilizing his finances are uncertain at best. Under these circumstances, application of MC ¶ 20(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," is not available to Applicant .

With his shortage of available income, Applicant is not able to demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

Establishing a meaningful track record of debt reduction does not require the satisfaction of every listed debt in the SOR. But it does require an established plan, or plan, for resolving his debts and taking significant steps to implement that plan, or plans. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) This, Applicant has not been able to achieve to date with his payment efforts.

From a whole-person perspective, Applicant's demonstrated repayment efforts are not substantial enough to overcome security concerns associated with his history of financial instability, dating to 2011, when he returned to school and was unemployed. Applicant's struggles with unemployment and corresponding reduced income are extenuating to a point. His efforts to repay his creditors through direct payments and repayment agreements are somewhat encouraging, but insufficient to restore his finances to stable levels consistent with meeting minimum requirements for holding a security clearance.

Considering all of the circumstances surrounding Applicant's accumulation of delinquent debts (student loan, medical, and consumer debts), and his insufficient demonstration of repayment initiatives with payoffs and workable repayment plans, his corrective efforts are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to



some of the allegations covered by Guideline F. Applicant is entitled to favorable conclusions on others.

**Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

**GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparas. 1.f-1.i, and 1.l-1.o, 1.q, and 1.t:	Against Applicant
Subparas. 1.a-1.e, 1.j-1.k, 1.p, and 1.r-1.s:	For Applicant

**Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

