



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



In the matter of: )  
 )  
 ) ISCR Case No. 10-02574  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Phillip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

May 23, 2011

**Decision**

Noel, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems or difficulties that remain unresolved. Applicant did not present any evidence to rebut, explain, extenuate, or mitigate the security concerns stemming from his history of financial problems. Accordingly, as explained below, this case is decided against Applicant.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on January 5, 2011, the Defense Office of Hearings and Appeals (the Agency) issued a statement of

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<sup>1</sup> This case is adjudicated under Executive Order 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 contained in Enclosure 2 to the Directive.

reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR and requested a hearing. The case was assigned to me April 4, 2011. Initially, this case was scheduled for April 11, 2011, but had to be rescheduled because of the impending government shutdown. The hearing was rescheduled and conducted on April 20, 2011. Appellant waived the 15-day notice requirement under Directive ¶ E3.1.8. Department Counsel offered exhibits 1 through 4 on behalf of the Government, which were admitted without objection. Applicant offered exhibits A and B, which were also admitted without objection. The transcript (Tr.) was received April 26, 2011.

At the end of the hearing, I held the record open until May 9, 2011, to allow Applicant to submit additional evidence regarding delinquents debts he claims to have paid. He did not submit any additional documentation.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since 2009. Married with one child, Applicant has been estranged from his wife since 1996. His child, now 18, was raised by Applicant's mother without financial support from Applicant. He currently resides with his girlfriend and her two adult children for whom he provides financial support.<sup>2</sup>

Applicant's financial problems began after he graduated from high school in 1992. Between 1992 and 2000, Appellant's underemployment caused him to accumulate delinquent debt. Periods of unemployment between 2007 and 2009 contributed to Applicant's financial problems. The SOR alleges that Applicant is indebted to 14 creditors for approximately \$36,645. He admits responsibility for all debts except for 1.a, 1.j, 1.k, 1.m, and 1.t, which he claims to have paid. Applicant also claims that for the past ten months he has been in a rehabilitation program for the student loan alleged in paragraph 1.s. He provided no documentation to verify his testimony about the debts he claims to have paid or about the student loan rehabilitation program. He admits that he has not made payments toward any of the other debts.<sup>3</sup>

He also admits that he has not been very responsible in handling his finances or resolving his delinquent debt. He has, however, expressed a desire to repay his debt. He plans to rehabilitate his student loan to current status and then place the loan in forbearance, a status of non-payment granted on the basis of financial hardship. Once

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<sup>2</sup> Tr, 23, 25-26, 62.

<sup>3</sup> Tr. 29-62, 65, 77.

he does not have to pay the monthly loan payment, he thinks he can address his delinquent debt.<sup>4</sup>

Applicant has not received any financial counseling. Nor has he sought advice from his girlfriend, who volunteered for over six years as a budget counselor for the Navy-Marine Corps Relief Society. Applicant does not want her help to resolve his financial problems. He has also dismissed the idea of filing for bankruptcy protection. He wants to resolve his financial issues on his own.<sup>5</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.

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

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<sup>4</sup> Tr. 27, 75-76.

<sup>5</sup> Tr. 72-74.

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**

The security concern for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s financial problems have persisted since his graduation from high school almost 20 years ago. Since then he has accumulated a number of delinquent debts and has been unable or unwilling to pay his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Of the six mitigating conditions potentially available under AG ¶ 20<sup>6</sup>, none apply. Because his financial problems are recent and did not occur under unusual circumstances AG ¶ 20(a) does not apply. AG ¶ 20(b) does not apply because he has not acted responsibly to resolve any of his debts. Because he provided no evidence that he has reformed his financial habits or that he has received financial counseling, I cannot apply AG ¶ 20(c). Applicant testified that he has paid five of the alleged debts. However, he failed to provide any documentation showing the debts had actually been paid. An applicant is reasonably expected to have or to get documentation concerning his finances.<sup>7</sup> Absent this documentation, I cannot apply AG ¶ 20(d). Mitigating Conditions AG ¶¶ 20(e) and (f) are not raised by facts of this case.

To conclude, the evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*<sup>8</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

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<sup>6</sup> 20(a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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;

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;

20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

20(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

20(f) The affluence resulted from a legal source of income.

<sup>7</sup> See ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

<sup>8</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

### **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:                      AGAINST APPLICANT

Subparagraphs 1.a-1.t:                      Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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