



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



In the matter of: )  
)  
) ISCR Case No. 10-10469  
)  
Applicant for Security Clearance )

**Appearances**

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

04/30/2012

**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 owes nine creditors approximately \$65,000 in delinquent debt. Applicant has resolved five of the accounts and is currently participating in payment plans for two of the accounts. He has made a good-faith effort to reduce his indebtedness. As such, he has mitigated the security concerns raised by his recent financial problems. Clearance is granted.

## Statement of the Case

Acting under the relevant Executive Order (EO) and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on September 15, 2011, notifying Applicant that it was unable to find that it is clearly consistent with the national interest to continue his access to classified information and recommended that his case be submitted to an administrative judge for a determination whether to revoke his clearance. The SOR detailed the reasons for the action under Guideline F (financial considerations).

Applicant answered the SOR and requested a hearing. The case was assigned to me on December 21, 2011. The hearing proceeded as scheduled on February 22, 2012. Department Counsel offered Government's Exhibits (GE) 1 through 6, which were admitted without objection. Applicant's Exhibits (AE) A through G were also admitted without objection. I left the record open after the hearing to allow Applicant to submit additional documentation regarding his finances. He timely submitted AE H through R, which were admitted without objection.<sup>2</sup> I received the transcript (Tr.) on February 28, 2012.

## Findings of Fact

Applicant is a 57-year-old employee of a federal contractor. Married 35 years, he is the father of three adult daughters and has six grandchildren. He retired from the U.S. Army after 18 years of service obtaining the rank of sergeant first class. Although he has been employed as a federal contractor since his retirement, he has worked for his current employer since 2006. Applicant has held a security clearance, without issue, at various levels, including access to sensitive compartmented information and special access programs, throughout his careers in the military and as a federal contractor. The SOR raises concerns about Applicant's recent history of financial problems; specifically, that he is indebted to nine creditors for approximately \$65,998.<sup>3</sup> (GE 1, Tr.94, 96)

Applicant's financial problems began in 2008. Before then, Applicant and his wife earned a joint income in excess of \$160,000. They were able to easily meet their financial obligations. Because they were financially secure, other family members often leaned on them for support during difficult times. The couple enjoyed a favorable credit

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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.

<sup>2</sup> Applicant submitted a number of repetitive documents. They are appended to the record as Hearing Exhibit A.

<sup>3</sup> Tr. 94, 96; GE 1; AE H, S.

history and had purchased at least three homes since Applicant retired from the military.<sup>4</sup>

In 2003, Applicant and his wife purchased their last home with an adjustable rate mortgage (ARM). In 2006, the mortgage adjusted twice raising Applicant's mortgage payment significantly. He refinanced the home in 2007, in doing so he neglected to establish an escrow account for his property taxes. As a result, he did not pay property taxes for 2007 and 2008. He learned of his error in April 2008 when the state garnished his wages for \$3,500 to recover the outstanding tax liability (SOR ¶ 1.j.). Soon after, Applicant and his wife were audited by the IRS and assessed an additional federal tax liability. The IRS garnished Applicant's wages to collect the outstanding federal taxes. As a result of the garnishments, Applicant did not receive a paycheck between April and June 2008 and was unable to pay his mortgage and other expenses. He made his last mortgage payment in August 2008 and three months later the couple moved into an apartment. As Applicant experienced a temporary loss of income, his wife's real estate business began to decline. Between 2006 and 2008, her income decreased from approximately \$60,000 annually to approximately \$15,000. She sold her last home in September 2008 and has been unemployed since.<sup>5</sup>

After trying, unsuccessfully, to negotiate a modification of his mortgage, Applicant lost his home to foreclosure in January 2009. The house was sold at a foreclosure sale, leaving a \$16,237 deficiency balance on the mortgage (SOR ¶ 1.b.). After the foreclosure, Applicant's financial situation and personal life continued to worsen. In May 2009, the government contract that Applicant had been supporting ended. To maintain his employment status, Applicant used his vacation leave, at half time, for income. He did this until August 2010. The financial problems began to take toll on Applicant and his marriage. He lapsed into depression, and in September 2009, his wife left him. During their separation, which lasted ten months, Applicant agreed to give his wife \$1,500 each month for her living expenses. While his wife maintained a separate residence, Applicant took in his oldest daughter and her two children after her husband was deported.<sup>6</sup>

In November 2009 one of Applicant's creditors, secured a \$15,000 judgment against him for a personal loan he had taken to help expand his wife's then growing real estate business (SOR ¶ 1.a.). The creditor enforced the judgment through a garnishment against Applicant's already reduced wages for over \$960 each pay period. Given his reduced income caused by the spousal support, the wage garnishment, and the expense of taking in his daughter and two grandchildren, Applicant continued to fall behind on his bills. In April 2010, his car was repossessed leaving a \$7,118 deficiency balance on the loan (SOR ¶ 1.g.).<sup>7</sup>

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<sup>4</sup> Tr. 39, 80-82, 95, 110.

<sup>5</sup> Tr. 33-25, 40-41, 118-119; GE 2.

<sup>6</sup> Tr. 35-36, 89-90, 116-118, 129-132, 143-145; AE O.

<sup>7</sup> Tr. 35, 43, 72-74; AE R.

Applicant returned to full-time work in August 2010. In doing so, he accepted a position that requires a two-hour commute from his home. Around the same time, he and his wife reconciled. The couple decided to work together to rehabilitate their relationship and their finances. In September 2011, the creditor, holding the debt alleged in SOR ¶ 1.a., released the garnishment and negotiated a payment plan with Applicant for the outstanding balance. Applicant completed the payment program that debt was satisfied in January 2012. With the judgment satisfied, Applicant now has the funds available to address his other delinquent debts. To date, he has paid the delinquent accounts alleged in SOR ¶¶ 1.c., 1.f., 1.h. and 1.i. He has entered into a payment plan for the debts alleged in SOR ¶¶ 1.e. and 1.g. In addition, Applicant has entered into a payment plan for an \$18,500 non-SOR debt. Currently, two of the delinquent accounts in the SOR remain unresolved, SOR ¶¶ 1.b. and 1.d. Applicant's plan is to resolve his smaller debts first, making cash available for the payment of his larger debts.<sup>8</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.

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<sup>8</sup> Tr. 44, 119, 146-147; AE B, E,H-K, M, P-Q.

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**

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.

Beginning in 2008, Applicant experienced financial and personal troubles that greatly reduced his income and his ability to pay his bills for the next four years. As a result, he accumulated over \$65,000 in delinquent debt.

Of the mitigating conditions available under AG ¶ 20, three are potentially applicable to this case:

- (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;

(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; and

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

A financial mistake, failure to establish an escrow account for his property taxes, marked the beginning of a series of financial and personal calamities that caused Applicant's finances problems. This series of events, and the rapid succession with which they occurred, are not likely to happen again and do not diminish Applicant's current trustworthiness, reliability, or good judgment. Some of the incidents resulted from Applicant's negligence or were the foreseeable consequences of his actions; however, Applicant's financial problems were complicated by events beyond his control, specifically the termination of his government contract in May 2009 that caused an almost 50 percent decrease in his income for over a year, his ten-month estrangement from his wife, and taking in his eldest daughter and her two children. Applicant acted responsibly under these circumstances by living within the financial constraints of his situation. He did not incur additional delinquent debt or open any new consumer credit accounts.

The evidence also supports a finding that Applicant has made a good-faith effort to resolve his delinquent debt. Applicant's ability to repay his delinquent debt was significantly hindered by the garnishment of his wages between November 2009 and September 2011, as well as his payment of spousal support between August 2009 and July, 2010. However, since the garnishment has been released, Appellant has paid five of the ten debts alleged in the SOR, ¶¶ 1.a., 1.c., 1.f., 1.h., 1.i. He has entered into a payment plan for two of the alleged SOR debts, ¶¶ 1.e. and 1.g., as well as a large non-SOR debt.

Applicant has articulated a reasonable plan for resolving his delinquent debt and has put that plan into action. The Appeal Board has held that, "an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his 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>9</sup> Applicant has done so, as a result, the unresolved status of SOR ¶¶ 1.b. and 1.d. are of limited security concern and do not outweigh the mitigating evidence.

### **Whole- Person Concept**

Given the evidence in this case, I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect classified

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<sup>9</sup> See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).

information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances.<sup>10</sup> Applicant's past conduct reveals that he has held a security clearance, without incident, for approximately 32 years; and that he maintained a positive financial history until 2008. His recent financial problems were not caused by behaviors that indicate a lack of control, lack of judgment, or unwillingness to abide by rules and regulations. Since regaining income stability, Applicant has been working toward the resolution of his delinquent debt. His four years of financial difficulty appear to be isolated and are not an indication that Applicant may be at risk or mishandling classified information or that he lacks the high degree of judgment, reliability, or trustworthiness required of persons handling classified information.<sup>11</sup>

### **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.j.	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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>10</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988).

<sup>11</sup> See, e.g., ISCR Case No. 98-0188 (April 29, 1999) at p. 4.