



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



In the matter of: )  
)  
) ISCR Case No. 11-04936  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: Terry McCracken, Personal Representative

01/24/2013

**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. Between January and September 2006, Applicant incurred over \$1.2 million in debt to provide a luxurious lifestyle for his wife. The 30 accounts alleged in the SOR, totaling \$172,000, remain unresolved. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and Department of Defense (DoD) Directive,<sup>1</sup> on May 30, 2012, DoD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DoD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue

<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's security clearance and recommended 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 in June 2012 and requested a hearing. Between July and October 2012, the Government made several efforts to schedule a hearing by video teleconference (VTC) near his overseas duty station, but Applicant did not have access to any VTC facilities. The case was assigned to me on October 2, 2012. I have appended to the record as Hearing Exhibit (HE) 1 the correspondence related to the scheduling of this case. At the hearing convened on December 7, 2012, I admitted Government's Exhibits (GE) 1 through 6, without objection. Applicant did not submit any documents. I received the transcript (Tr.) on December 19, 2012.

## **Procedural Issues**

### **Notice Issue**

At the hearing, Applicant's personal representative indicated that he did not have sufficient time to prepare because he did not receive the Notice of Hearing until December 6, 2012, the day before the hearing. I took the personal representative's statements as raising a notice issue under Directive ¶ E.3.1.8.<sup>2</sup>

After difficulty scheduling Applicant's hearing between July and October 2012, I contacted his facility security officer (FSO) on October 4, 2012 to request help securing Applicant's appearance at an in-person hearing. The same day, I sent an e-mail to Applicant and his FSO indicating I scheduled the hearing for December 7, 2012.<sup>3</sup>

The DOHA Hearing Office issued, by e-mail, the Notice of Hearing and the Pre-Hearing Guidance memorandum on November 19, 2012. Applicant responded to the e-mail, acknowledging receipt of the documents and indicated that he would be present at the December 7, 2012 hearing. He did not forward these e-mails to his personal representative, whom he had asked in June 2012 to accompany him to his future hearing. The Government learned about the personal representative minutes before the hearing. Applicant received the hard copy of the Notice of Hearing, mailed to his employer on November 19, 2012, when he returned to the United States on December 6, 2012.<sup>4</sup>

Based on these facts, I find that Applicant received proper notice of the date, time, and place of the hearing, as required. Applicant failed to give his personal representative proper time to prepare. Without objection from Department Counsel, I left

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<sup>2</sup> Tr. 14.

<sup>3</sup> HE 1.

<sup>4</sup> Tr. 16-18; HE 1.

the record open until January 4, 2013 to allow Applicant to submit any documentation he wished me to consider. Applicant did not submit any documentation.<sup>5</sup>

## **SOR Amendments**

Without objection from Applicant, I granted Department Counsel's motion at hearing to withdraw SOR ¶¶ 1.n<sup>6</sup> and 1.o.<sup>7</sup>

## **Findings of Fact**

Applicant, 53, has worked as an employee of a federal contractor since February 2010. This is first application for a security clearance. Currently, he is a field service engineer. He has worked overseas continuously since November 2011, earning an annual salary of \$150,000.<sup>8</sup>

The SOR alleges and Applicant admits that he filed petitions for Chapter 7 and Chapter 13 bankruptcy protection in March 2006 and September 2006, respectively. The court dismissed both petitions. The SOR also alleges that Applicant is indebted to 30 creditors for approximately \$172,000, including \$85,000 in state and federal tax liens. He denies the tax liens, claiming that they were levied against him in error. He also denies all of the other alleged debts with the exception of four accounts, which total approximately \$71,000. He claims that the majority of the SOR debts were incurred by his ex-wife. She divorced Applicant in September 2011.<sup>9</sup>

Applicant met his ex-wife in the fall of 2005. The two decided to marry shortly thereafter. In January 2006, Applicant, who was earning \$70,000 annually, agreed to purchase a home for his wife-to-be. With only a \$500 down payment, he purchased a \$1,000,000 home, knowing he could not afford it. His fiancée, who earned between \$120,000 and \$240,000 annually as a loan officer, convinced Applicant they could afford the house together. Applicant's fiancée was unable to qualify for the mortgage loan. Just before the wedding, Applicant bought her a \$64,000 luxury sports utility vehicle (SUV). The couple married in a small ceremony on February 2006 and took a \$28,000 honeymoon to Bora Bora. Applicant paid for the trip using a credit card. Soon after the wedding, Applicant's wife lost her job. Applicant depleted his savings and retirement accounts to pay his financial obligations. Soon, he began using credit cards to pay the household bills.<sup>10</sup>

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<sup>5</sup> Tr. 18-19; HE 1.

<sup>6</sup> The account is a duplicate of the account alleged in ¶ 1.q.

<sup>7</sup> The account is a duplicate of the account alleged in ¶ 1.r.

<sup>8</sup> Tr. 50-52, 103; GE 1.

<sup>9</sup> Tr. 52-53, 93; Answer.

<sup>10</sup> Tr. 54, 60-70, 15.

Applicant filed for Chapter 7 bankruptcy protection in March 2006, claiming over \$1,000,000 in secured debt and \$119,000 in unsecured debt. The secured debt included the home Applicant purchased as well as three vehicles: his wife's SUV, a Mercedes he had purchased for his mother, and a car that he co-signed for his wife's daughter. The court granted Applicant's motion to dismiss the petition because he was unable to file a proper credit counseling certificate. He also failed to attend the creditors meeting. Six months later, in September 2006, Applicant filed a petition for Chapter 13 bankruptcy protection. He claimed \$290,000 in unsecured debt, which included the debts alleged in the Chapter 7 petition and a \$170,000 personal loan from a family member. In April 2009, the court dismissed the Chapter 13 petition for failure to make plan payments. Applicant paid \$22,000 under the plan, but claims that his wife stopped making payments while he was working overseas. He filed a motion asking the court to reinstate the plan, but he withdrew the motion in July 2009.<sup>11</sup>

Citing the difficulties associated with working overseas in remote areas and his infrequent trips home, Applicant testified that he has tried, unsuccessfully, to resolve his delinquent debts with the help of an attorney and the tax liens with the help of an accountant. He provided no documentation to corroborate these claims. Before the marriage, Applicant says he maintained a positive credit history, never accumulating more than \$10,000 in debt on his two credit cards. He never paid bills late or allowed them to become delinquent. After their marriage, Applicant claims that his wife opened credit accounts in his name, without his knowledge while he worked overseas.<sup>12</sup> In his April 2011 response to DoD interrogatories, Applicant explained:

I am a victim of marrying an untrustworthy women [sic] who married me for my money and the credit that I had. This[,] coupled with my going overseas to work to feed her habit of spending my money was the downfall of my creditworthiness. . . .Since all of this has occurred[,] I am legally divorced and all the appropriate steps have been taken to clear up this array [sic] of one time indebtedness.<sup>13</sup>

In his Answer to the SOR, Applicant reiterates:

I got married . . . to someone who destroyed my life and my credit for a short period of time. That is over . . . .

The couple remarried in May 2012. Because he has few expenses while working overseas, Applicant sends his wife, who has been unemployed since 2006, \$9,500 each month. None of the debts alleged in the SOR have been resolved.<sup>14</sup>

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<sup>11</sup> Tr. 74-80; GE 5-6.

<sup>12</sup> Tr. 83, 89-93; Answer.

<sup>13</sup> GE 2.

<sup>14</sup> Tr. 87-88, 94, 96-97.

## 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 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>15</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

Applicant’s indebtedness was caused by frivolous and irresponsible spending, with no possible ability to repay the massive amount of debt he incurred.<sup>16</sup> In order to please his wife, Applicant used credit to create a lifestyle he knew he could not afford. He consistently spent beyond his means.<sup>17</sup> According to Applicant’s timeline, he incurred over \$1,000,000 in secured debt and \$290,000 in unsecured debt in less than six months while earning \$70,000 annually. He incurred the overwhelming majority of the debt to obtain luxury items. Despite having the means to do, Applicant has not resolved a single delinquent debt alleged in the SOR, thus demonstrating his “unwillingness to satisfy his debts”<sup>18</sup> and a “history of not meeting his financial obligations.”<sup>19</sup>

Applicant correctly points out that his wife’s spending habits are problematic; however, the lion’s share of responsibility falls squarely on his shoulders. He is a victim of his own bad choices. He has failed to take control of his finances and continues to enable his wife’s financially-destructive behavior towards him. While living in a war-torn country with sporadic access to the internet and infrequent trips home are understandable hurdles in resolving financial issues, Applicant has used his circumstances as an insurmountable obstacle to doing so. This is no excuse for the lack of action Applicant has taken to resolve his financial issues given his significant amount of disposable income. Accordingly, none of the financial considerations mitigating conditions apply.

The evidence as a whole justifies current doubts about Applicant’s judgment, reliability, and trustworthiness. Following *Egan*<sup>20</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion,

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<sup>15</sup> AG ¶ 18.

<sup>16</sup> AG ¶ 19(b).

<sup>17</sup> AG ¶ 19(e).

<sup>18</sup> AG ¶ 19(a).

<sup>19</sup> AG ¶ 19(c).

<sup>20</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

I gave due consideration to the whole-person concept. Instead of paying his legitimate debts, Applicant sends \$9,500 each month to his wife, the same person he claims destroyed his life. Applicant has shown that he either does not understand the security concerns raised by his delinquent debt and history of poor judgment or that he does not care. Either way, a person who does not satisfy his financial obligations does not possess the good judgment or reliability required of persons who have access to classified information. Clearance is denied.

### **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.hh:	Against Applicant
Subparagraphs 1.n. and 1.o:	Withdrawn

### **Conclusion**

In light of all of the circumstances presented, 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