



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



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 11-08429

**Appearances**

For Government: Stephanie Hess, Esq., Department Counsel  
For Applicant: *Pro se*

07/17/2013

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**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. His request for a security clearance is granted.

**Statement of the Case**

On August 27, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) citing security concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).<sup>1</sup> In his Answer to the SOR, Applicant admitted the single allegation, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 17, 2013, and I convened the hearing as scheduled on June 13, 2013. I admitted 6 Government exhibits (GE 1-6), and 13 exhibits offered by the Applicant (AE A-M). DOHA received the transcript on June 3, 2013.

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<sup>1</sup> Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

## Findings of Fact

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 55 years old, married, and has five children. His four adult children are self-supporting, and Applicant supports his 13-year-old son. He earned a bachelor's degree in physics in 1980. He has worked as an engineer for federal contractors for decades, and received his first security clearance in 1981. He has held it continuously since that time. Since 2008, he has worked for a defense contractor as a senior acoustic measurement engineer. (GE 1; Tr. 50-51)

Applicant handled the family's finances until about 2006, when he had a heart attack, and his wife began handling them. She was unhappy in their marriage, and ran up their credit cards beyond their ability to pay. Applicant was unaware of her overspending. In addition, their monthly mortgage payment for the house in state A was \$3,500. They became delinquent on the mortgage, as well as taxes, car payments, and other debts. They attended credit counseling, and created a payment plan for their debts. However, in January 2007, before starting the payments, Applicant's wife used their cash funds to move to state B, with the children. She filed for divorce. In July 2007, Applicant was court-ordered to pay \$2,000 in monthly child support, which he did for several months. However, he was unable to continue paying the mortgage, living expenses, and the child support. In November 2007, Applicant and his wife reconciled, and Applicant moved to state B. (GE 1, 3; Tr. 32-33, 46-49)

In September 2009, while living in state B, Applicant and his wife were advised by an attorney to file a Chapter 13 bankruptcy petition. Their assets were \$30,497 and their liabilities were \$620,830. The liabilities included the mortgage, auto loans, credit card debts, state and federal taxes, medical debts, and a student loan for one of Applicant's children. At the time of the bankruptcy, he was informed he should stop making payments, even on debts that were current, because all of his debts would be included in the bankruptcy. (GE 1, 3, 6; Tr. 29, 31)

Most of the liability in Applicant's petition relates to his house in state A. When Applicant's mortgage payments became delinquent, he sought advice from the lender. After he was ordered to pay child support in mid-2007, he informed the lender that he could not meet the mortgage payments. He talked with realtors about selling the house, but its value had dropped, and he was told that it would not sell for a price sufficient to repay his mortgage loan. (GE 4-6; Tr. 28-30)

The lender foreclosed on the house in state A. it was short-sold, leaving a deficiency balance of \$190,000. Applicant stated in his security clearance application and at the hearing that the deficiency is included in the bankruptcy. Applicant's May 2012 and April 2013 credit reports show the deficiency balance as included in the

bankruptcy. His bankruptcy petition shows the mortgage holder's claim for the full loan amount of \$466,474. (GE 1, 3, 4-6; Tr. 26-31)

Applicant has been making regular payments on his 60-month bankruptcy plan since 2009. However, the monthly payment amount has changed several times. One month after the petition was filed, Applicant's attorney filed a request to amend the payments to \$682 per month for payments 1 through 10, and \$780 per month for payments 11 through 60. (AE E).<sup>2</sup> In March 2010, his attorney had filed a "Second Amended Chapter 13 Plan" requesting that his plan be changed to \$666 for the first 10 payments, and \$684 for payments 11 through 60. The same month, Applicant and his family moved from state B to state A. (AE D-F; Tr. 16-19)

Applicant provided documentation showing he had paid \$682 per month from November 2009 through August 2010. It appears that sometime after Applicant and his family moved back to state A, the trustee moved to increase Applicant's payment to \$1,466 per month. However, Applicant and his wife were not notified. Because of the deficiency between Applicant's payments and the new higher payment, the trustee filed a Motion to Dismiss for Failure to Maintain Timely Plan Payments on September 9, 2010. It stated Applicant was delinquent \$2,240, plus \$1,466 for September 2010, for a total delinquency of \$3,706. Applicant was unable to pay the higher payment. (GE 6 at 19; AE G; Tr. 16-18, 22-24)

On October 14, 2010, Applicant's attorney moved to modify the plan based on Applicant's decreased income due to unemployment and job relocation to state A. Under the modified plan, Applicant would pay \$1,220 per month, and the payments would decrease until they reached \$561 for the final 23 payments. Applicant continued making payments, sometimes more than required. Applicant was paid twice per month, and usually could not afford to pay \$1,220 from one paycheck; in that case, he paid twice per month (\$520 and \$700). Sometimes the second half of the monthly payment was paid at the beginning of the following month. He made the following payments:

\$1,220 in November 2010;	\$700 in April;
\$700 in December;	\$1,220 in May;
\$520 in January 2011;	\$3,182 in June;
\$1,920 in February;	\$641 in July;
\$1,740 in March;	\$1,220 in August through November 2011; and
	\$885 in December 2011 and January 2012.

(AE F, H; Tr. 18, 23-24)

In October 2011, the trustee filed another Motion to Dismiss for Failure to Maintain Timely Plan Payments. It stated Applicant was \$1,900 delinquent through

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<sup>2</sup> The evidence is unclear as to the amount of Applicant's initial payments. The account ledger in Applicant's bankruptcy petition (GE 6 at 20) shows his payments from November 2009 to August 2010 as \$682. However, the payment list of January 2012, shows payments of \$666 from November 2009 to May 2010, followed by three payments of \$1,466 June through August 2010. (GE 6 at 20, 27)

October 2011, plus \$885 unpaid for November 2011, with a total delinquency of \$2,785. The discrepancy arose because the trustee believed Applicant was paying less than he had been ordered to pay. The court granted the motion on December 20, 2011. Applicant contacted his attorney about the error, because he had been making the payments he believed he was required to make. His attorney moved to reinstate, and on February 24, 2012, the motion to reinstate the case was granted. (GE 6; AE I-K; Tr. 18-20)

In February 2012, Applicant began paying \$900 per month. On March 13, 2012, Applicant's attorney submitted a Motion to Modify Confirmed Plan, to reduce Applicant's payments. Applicant's monthly payments were reduced to \$660, beginning in November 2012. As of June 11, 2013, Applicant had 16 payments remaining on his five-year payment plan. He has paid \$41,265 into his plan, of the \$49,463 to be paid. (AE A, F, L; Tr. 20-21)

Applicant's July 2012 personal financial statement (PFS) showed a gross annual income of \$93,000, and net monthly income of \$7,815. His expenses and debt payments totaled \$5,667, leaving a monthly net remainder (MNR) of \$2,148. He was paying his bankruptcy trustee \$900 per month at that time. He was also current on his payments for an auto loan, bank card, and a student loan. His credit reports do not show any new delinquencies. Applicant's current PFS, when adjusted for lower car insurance and the lower bankruptcy payment, shows an MNR of \$1,900. He expects to begin a new job shortly, with a \$10,000 salary increase. (GE 2, 4, 5; AE M; Tr. 43, 51)

Applicant submitted six character references. The president of Applicant's company, who has known him for more than 30 years, noted Applicant's exceptional job performance, and his reliability and good judgment. His pastor described Applicant's activities with his church, and commented on his "high integrity," character, trustworthiness, and dedication to his family. Applicant has received a team achievement award for his work, and an individual Certificate of Excellence recognizing his contributions. Several co-workers noted Applicant's three decades of service to the U.S. Navy. (AE B, C)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>3</sup> Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this

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<sup>3</sup> Directive. 6.3.

case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>5</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interest as her or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>6</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . . .

Applicant's debts became delinquent after he suffered a heart attack and his wife assumed control of the family finances. She was unhappy with the marriage and spent more than they could afford. Ultimately, they filed for Chapter 13 bankruptcy protection. AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and ¶19 (c) (*a history of not meeting financial obligations*) apply. The record contains no evidence of debts related to alcoholism, gambling, or deceptive practices.

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Administrative Guidelines, ¶ 2(b).

I considered the following mitigating factors under AG ¶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; and

(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.

In about 2006, Applicant had a heart attack, and his wife took over the family's finances. Their marriage was failing, and she was overspending without Applicant's knowledge. They enrolled in financial counseling, and set up a payment plan. Before it could be initiated, they separated. Applicant's wife used their savings to move to state B. A few months later, Applicant was court-ordered to pay substantial monthly child support and could no longer pay his mortgage. At the same time, the real estate market crash had occurred, which devalued their home. This sequence of events was not foreseeable or within Applicant's control. Applicant tried to work with the lender, and also contacted realtors regarding selling the house, but the loan was "under water." He obtained legal counsel, who advised him to file a Chapter 13 bankruptcy petition. Applicant acted responsibly when he set up a payment plan for his debts, worked with the mortgage lender, sought advice about selling the house, and sought legal advice about how to resolve his indebtedness. All of his debts are included in his bankruptcy petition. He has been making his payments consistently since 2009, and has paid more than \$41,000, or 83% of the total plan amount. He has 16 remaining payments on the 60-payment plan. Applicant has a substantial MNR which provides him with the ability to meet his payments. His finances are under control. AG ¶20 (b) and (c) apply.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge evaluates the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances, and the nine adjudicative process factors listed at AG ¶ 2(a):

(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 changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's delinquencies did not result from irresponsible actions, but from a confluence of events, including health problems that prevented him from controlling the family finances, and his wife's discontent and resulting overspending. Based on legal advice, he filed a Chapter 13 bankruptcy petition. Applicant's plan has been in place since 2009. I find that the motions to dismiss his case were due to miscommunications that were resolved. Applicant has been diligent in making his payments for more than three years. This demonstrated commitment to resolving his financial obligations weighs in his favor. Given his persistence in meeting his payments, I conclude he will complete the plan. Applicant has provided service to the military for more than 30 years, and has held a security clearance continuously since 1981 without incident.

A commonsense assessment of the information shows Applicant satisfied the doubts raised about his suitability for a security clearance. I conclude he has mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge