



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



In the matter of: )  
)  
) ISCR Case No. 11-11550  
)  
Applicant for Security Clearance )

**Appearances**

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

08/16/2013

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant admits he owes approximately \$38,697 in unresolved delinquent debt. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order DOD Directive,<sup>1</sup> on January 9, 2013, the 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 Applicant’s security clearance

<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 DOD 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.

and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted its written case on May 15, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 24, 2013. Applicant did not respond to the FORM; accordingly, the items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 8. The case was assigned to me on July 24, 2013.

### **Findings of Fact**

Applicant, 36, is employed by a federal contractor as a site safety manager. This is his first application for a security clearance.<sup>2</sup>

Applicant admits that he is indebted to 30 creditors for approximately \$38,697. He attributes his financial problems to two periods of unemployment from November 2002 to November 2003 and June 2009 to August 2009, as well as his 2011 divorce. Although Applicant does not elaborate on the issue, a serious medical condition may have also exacerbated his financial problems. Applicant, who has a net remainder of \$200 after paying his recurring monthly obligations, cannot afford to repay his creditors at this time. He tried to enroll in a debt consolidation program, but could not afford the payments. He has not contacted any of his creditors to negotiate or establish payment plans. The delinquent accounts reflecting zero balances on Applicant's credit reports are not evidence that he paid or otherwise resolved the accounts, but rather the creditors' decision to charge off the outstanding balances.<sup>3</sup>

Even though Applicant is unable to address his delinquent debt, he is current on his child support obligation and he no longer uses consumer credit.<sup>4</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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."

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<sup>2</sup> GE 4.

<sup>3</sup> GE 4-8; Answer.

<sup>4</sup> GE 4-5.

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.

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.

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

### Financial Considerations

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”<sup>5</sup> Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.<sup>6</sup> The Government does not have to prove that an applicant poses a clear and present danger to national security,<sup>7</sup> or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.<sup>8</sup>

Applicant admits he owes over \$38,600 in delinquent debt. The allegations are supported by the record, establishing the Government’s *prima facie* case.<sup>9</sup> Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>10</sup>

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<sup>5</sup> AG ¶ 18.

<sup>6</sup> ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

<sup>7</sup> See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

<sup>8</sup> See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

<sup>9</sup> GE 6-8; Answer.

<sup>10</sup> AG ¶¶ 19(a) and (c).

While events beyond Applicant's control (e.g. periods of unemployment, a divorce, and medical issues) may have contributed to his financial problems, he has presented no evidence to warrant the application of any of the financial considerations mitigating conditions. Absent evidence to the contrary, I find that his financial problems are recent and ongoing. Also, I am unable to determine that Applicant's financial problems are unlikely to recur. Consequently, Applicant's unresolved delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant failed to meet his burdens of production and persuasion. At a minimum, an applicant is expected to provide information, orally or documentary, regarding his finances.<sup>11</sup> Without this evidence, the record cannot support a finding of financial rehabilitation. Following *Egan*<sup>12</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

### **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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.dd:	Against Applicant

### **Conclusion**

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge

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<sup>11</sup> See ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

<sup>12</sup> *Navy v. Egan*, 484 U.S. 518 (1988).