



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



In the matter of: )  
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 REDACTED ) ISCR Case No. 12-02765  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

01/17/2014

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant accumulated over \$55,000 in unpaid, delinquent debt. After his security clearance hearing, he filed for bankruptcy to resolve his debts. Applicant's belated effort to resolve his financial situation is insufficient to mitigate the security concerns arising from his finances. Clearance is denied.

**Statement of the Case**

On August 8, 2013, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On September 6, 2013, Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

On October 25, 2013, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing for November 14, 2013.<sup>1</sup> At hearing, Government Exhibits (Gx.) 1 – 6 and Applicant's Exhibit (Ax.) A were admitted into evidence without

<sup>1</sup> Applicant confirmed that he received at least 15 days notice of the hearing. (Tr. at 6-8)

objection. Applicant called his fiancée as a character witness, testified, and requested additional time post-hearing to submit matters in support of his case. I granted his request and he timely submitted Ax. B – E, which were also admitted without objection. The hearing transcript (Tr.) was received on November 22, 2013, and the record closed on December 12, 2013.

### **Findings of Fact**

Applicant, 49, is married but has been separated from his wife since 2007. He has five children. He is required to pay child support for three of his children. After graduating from high school in 1982, Applicant secured a job as a federal contractor. He has been continuously employed as a federal contractor for the past 31 years, and has held a clearance for over 20 years. He recently went back to school and is being considered for a supervisory position. (Tr. at 26-30, 47-49; Gx. 1) His supervisor considers Applicant to be his most experienced and knowledgeable worker, and opines that his potential loss would have a negative effect. (Ax. C)

Applicant's SOR lists 26 delinquent debts, totaling over \$60,000. Several of the debts have been reduced to judgments, including a \$132 judgment from 2008 that remains unpaid.<sup>2</sup> Applicant admits all the debts listed in the SOR. He submitted evidence of having made payments towards satisfaction of a 2011 judgment listed in SOR ¶ 1.y. He has reduced the amount owed from over \$10,000 to less than \$5,000. His pay has been garnished to satisfy other judgments listed in the SOR. Applicant's delinquent debts total over \$55,000. (Tr. at 27, 50-54, 64-66; Gx. 3-6; Ax. A)

Applicant admits that his financial trouble is primarily the result of reckless spending. For instance, he cosigned for the purchase of a luxury vehicle for his estranged wife, they defaulted on the loan, and a judgment was issued against him for nearly \$11,000 in 2008. The debt remains unpaid. His financial trouble was exacerbated by his medical condition, which left him unable to work. He was out of work for nearly a year, his pay was reduced in half, and his disability payments were inconsistent. He has been back to work fulltime since 2011, and has been receiving overtime pay on a consistent basis since 2012. (Tr. at 23-24, 27-28, 32-40, 49, 54-56,

Applicant has made no voluntary payments towards the resolution of any of the SOR debts, except for the judgment listed in ¶ 1.y. (Tr. at 66) In late 2011 or early 2012, he attempted to consolidate and resolve his delinquent debts with the assistance of his credit union. However, after getting the flu and being out of work for three to four days, he never followed up with his nascent debt resolution efforts. (Tr. at 55-56) He promised to resolve his financial trouble during his recent security clearance background interview. (Gx. 2) Yet, as of the hearing, he had not resolved any of the SOR debts, to include a delinquent \$30 medical bill.<sup>3</sup> (Tr. at 30)

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<sup>2</sup> See SOR 1.a – 1.f

<sup>3</sup> SOR 1.n. See also SOR 1.i – 1.k, 1.q – 1.r, 1.t – 1.u (SOR debts for less than \$100).

Applicant's financial problem is not limited to the delinquent debts alleged in the SOR. His recent federal tax return was intercepted to pay approximately \$2,000 in back child support. His state tax return was intercepted to pay a delinquent municipal bill. As of the hearing, he was \$1,600 in arrears on his child support obligation.<sup>4</sup> (Tr. at 60-64) After the hearing, he filed for Chapter 7 bankruptcy to resolve his debts. (Ax. B, D – E)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.<sup>5</sup>

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions

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<sup>4</sup> Applicant's delinquent child support was not alleged in the SOR and is only being considered in assessing his mitigation case.

<sup>5</sup> See also, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) ("Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.") (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991)).

entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.<sup>6</sup>

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The potential security concern regarding an applicant with financial problems is explained at 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.

Applicant’s accumulation of over \$55,000 in delinquent debt raises this concern. The record evidence also establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts,

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(e): consistent spending beyond one’s means, which may be indicated by excessive indebtedness . . .

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

AG ¶ 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;

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<sup>6</sup> See ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments). See also, *Kaplan v. Conyers, et al.*, 2013 U.S. App. LEXIS 17278 at \*\* 23-24, 40-51 (Fed. Cir. Aug. 20, 2013) (federal courts will generally defer to such predictive judgments).

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;

AG ¶ 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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of the mitigating conditions apply. Applicant's debts are numerous, substantial, and ongoing.<sup>7</sup> Although his financial situation is in part due to medical problems that left him unable to work and resulted in a decrease in income, he did not deal with his debts in a responsible manner. He has been working fulltime and earning overtime pay for the past two years, and has only started to repay those debts that were reduced to judgment. Payment of an overdue debt under such circumstances does not constitute a good-faith effort to resolve a debt, nor does it demonstrate responsible action under the circumstances because the creditor was forced to seek a judgment to receive payment.<sup>8</sup>

Furthermore, Applicant's financial situation is not under control, as evidenced by his failure to pay his court-mandated child support. His recent decision to file for bankruptcy is a legal, viable avenue through which he can resolve his longstanding debts. However, such belated action does not mitigate the security concerns arising from his long track record of financial irresponsibility. His history of financial irresponsibility raises doubt as to his ability to responsibly discharge his security obligations. Accordingly, notwithstanding Applicant's recent bankruptcy filing, his financial situation continues to raise a security concern.<sup>9</sup>

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>10</sup>

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<sup>7</sup> ISCR Case No. 12-01212 at 3 (App. Bd. Nov. 6, 2013) ("Unpaid, delinquent debts constitute a continuing course of conduct . . .").

<sup>8</sup> See *generally* ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

<sup>9</sup> ISCR Case No. 10-06975 (App. Bd. April 19, 2012) (bankruptcy discharge insufficient to mitigate security concerns arising from applicant's history of financial irresponsibility).

<sup>10</sup> The non-exhaustive list of adjudicative factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3)

Applicant has worked for the U.S. military as a contractor for over 30 years and held a security clearance for over two decades. He works long hours to support his family and has never had an issue at work. However, this favorable evidence is insufficient to mitigate the concerns arising from his history of financial irresponsibility, namely, that he may similarly fail to discharge his security obligations in a responsible fashion.<sup>11</sup> Consequently, Applicant's financial situation raises doubts about his continued eligibility for a security clearance.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):      **AGAINST APPLICANT**

Subparagraphs 1.a – 1.y:      **Against Applicant**

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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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.

<sup>11</sup> ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) (“[e]ven years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt.”).