



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



In the matter of: )  
)  
) ISCR Case No. 12-03290  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

01/26/2014

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**Decision**

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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 has demonstrated financial rehabilitation and reform, mitigating the security concerns raised by his history of financial problems. Clearance is granted.

**Statement of the Case**

On July 3, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended

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<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.

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 and requested a hearing. At the hearing convened on December 12, 2013, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through N, without objection. After the hearing, Applicant submitted AE O through S, which I admitted without objection.<sup>2</sup> I received the transcript (Tr.) on January 2, 2014.

### **Procedural Issues**

Applicant received less than 15 days written notice of the time and place of the hearing as required under Directive ¶ E.3.1.8. Applicant waived the notice requirement, electing to proceed with the hearing as scheduled.<sup>3</sup>

### **Findings of Fact**

Applicant, 31, has worked as an electronics technician for a federal contractor since December 2008. Since then, his annual salary has increased from \$50,000 to \$70,000.<sup>4</sup>

The SOR alleges that Applicant is indebted to nine creditors for approximately \$33,400.<sup>5</sup> Applicant admits all but two of the alleged debts. Applicant's financial problems began after his honorable discharge from the Air Force in January 2008. In the 12 months that followed, Applicant was unemployed or underemployed. He also blames his immaturity for his financial woes. In June 2008, believing that he had secured permanent employment, Applicant engaged a debt-consolidation company to help him address his delinquent debts. Applicant withdrew from the program when he lost his job three months later.<sup>6</sup>

After Applicant secured his current job, he began to tackle his debts. In 2010 he repaid debt alleged in ¶ 1.a with help from his parents.<sup>7</sup> In June 2013, Applicant re-engaged the debt-consolidation company. The debt-consolidation plan includes six of the SOR debts: ¶¶ 1.b, 1.c, 1.e, 1.f, 1.h, and 1.i. The plan requires a \$281 monthly payment, which Applicant voluntarily increased to \$350. In addition to the monthly

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<sup>2</sup> Department Counsel's e-mail regarding the admissibility of the AE F is included in the record as Hearing Exhibits (HE) 1 and 2.

<sup>3</sup> Tr. 5-6.

<sup>4</sup> Tr. 20-21, 29; GE 1.

<sup>5</sup> The debts alleged in SOR ¶¶ 1.d and 1.h. are duplicate accounts. (Tr. 32)

<sup>6</sup> Tr. 21-22, 25-27, 33.

<sup>7</sup> Because Applicant paid this debt almost two-and-a-half years before the issuance of the SOR, he denied the allegation.

payment, Applicant has made additional payments to hasten the resolution of his delinquent accounts. So far, the debts alleged in ¶¶ 1.b, 1.f, and 1.i have been resolved through the plan. The debt-consolidation company is actively negotiating settlements for the debt alleged in ¶ 1.c, which should be resolved by March 2014. Under the terms of Applicant's plan, all six debts should be resolved by 2017.<sup>8</sup>

Applicant has also taken steps to address the SOR debts ¶¶ 1.g and 1.j. The creditor alleged in ¶ 1.g declined to participate in Applicant's debt-consolidation plan. He has contacted the creditor separately to establish a payment plan, which began December 2013. Applicant initially denied the debt alleged in ¶ 1.j because he was unable to identify the creditor and the account did not appear on his credit report. After conducting some research, Applicant learned the creditor's identity and discovered that the creditor issued an IRS Form 1099-C cancelling the debt in 2011. Applicant did not receive the form because the creditor did not have a correct address for him. Applicant plans to refile his 2011 income taxes to reflect the debt cancellation. In addition to the SOR debts, Applicant has resolved several non-SOR debts. Taking the advice of a financial counselor, Applicant liquidated the \$16,000 in his retirement savings in addition to his cash savings to pay several non-SOR debts, including a pay-day loan, a car loan, and an overpayment of education benefits from the Department of Veterans Affairs.<sup>9</sup>

Applicant lives within his means and he has no open consumer credit accounts. He is current on recurring bills and has taken on a roommate to help reduce his monthly expenses. Applicant considers his current finances comfortable with plenty of disposable income to apply toward the continued resolution of his delinquent debt.<sup>10</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.

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<sup>8</sup> Tr. 27-36, 40, 46; Answer; AEs J, L, P, K.

<sup>9</sup> Tr. 30, 36-38, 40, 43; AEs E-I, O.

<sup>10</sup> Tr. 41-42, 45; GE 2; AE N.

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>11</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant is indebted to nine creditors for approximately \$33,400. The debts are also substantiated by Applicant’s credit reports.<sup>12</sup> The record supports a finding that Applicant has a history of financial problems resulting in

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<sup>11</sup> AG ¶ 18.

<sup>12</sup> GE 3 – 4.

unresolved delinquent debts.<sup>13</sup> He also demonstrated an inability to pay his debts.<sup>14</sup> However, Applicant has submitted sufficient information to mitigate the security concerns raised by his finances. Applicant has demonstrated a good-faith effort to resolve his delinquent debts by participating in a debt-consolidation plan, as well as directing his savings and disposable income toward the resolution of his SOR and non-SOR debts.<sup>15</sup> Although some of the SOR debts remain unresolved, Applicant's track record of repayment lends credibility to his promises to repay the accounts. Applicant has also demonstrated that his finances are under control and has shown maturity with the steps he has taken to reduce his monthly expenses.

After reviewing the record, I have no doubts about his suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). The Appeal Board has held that, "an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her 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>16</sup> Applicant has done so. Accordingly, his request for access to classified information is granted.

### **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, 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>13</sup> AG ¶ 19(a).

<sup>14</sup> AG ¶ 19(c).

<sup>15</sup> See, AG ¶¶ 20(c) and (d).

<sup>16</sup> See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).