



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03980
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

09/03/2014

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**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), and Applicant's Response, I conclude that Applicant has mitigated the security concerns raised under the financial considerations guideline. Accordingly, his request to retain his security clearance is granted.

**Statement of the Case**

On March 20, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline F (financial considerations) of the AG. In his April 15, 2014 Answer to the SOR, Applicant admitted the two debts listed in the SOR, and requested a decision without a hearing. (Item 3)

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a presentation of the Government's case in a FORM dated June 25, 2014.<sup>1</sup> It contained the Government's argument and seven documents (Items 1-7) in support of its preliminary decision to deny Applicant's request for a security clearance. Applicant received the FORM on July 29, 2014. He submitted a timely response (Response) and five additional documents (Items 8-12).<sup>2</sup> The case was assigned to me on September 10, 2014.

### **Findings of Fact**

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

Applicant, 57 years old, was born in Vietnam. In 1975, when he was 19, he and his family came to the United States under a Government-sponsored program that relocated former South Vietnamese military personnel and their families. They were granted refugee status in the United States. Applicant did not serve in a foreign military. His parents are deceased and it is unclear from the file if he qualified for the program through them. He became a U.S. citizen in March 1982, and completed his bachelor's degree in 1983. He has been married since 2001, and has two children 12 and 20 years of age. He is an engineer for a defense contractor, and has worked for the company since 1990. He has held a security clearance since the mid-1984. (Items 3, 4, 7)

Between 2003 and 2006, Applicant contracted with home renovators to remodel his family residence. They did not perform the contracted work as expected, and he incurred significant unexpected expenses. However, he was able to pay on these debts and meet his other financial obligations. Applicant stated in his security interview that his parents lived with him for about two years before they died. In April 2007, his father contracted lung cancer and died in January 2008. Applicant's mother was diagnosed with bone cancer, and died in July 2008. During this period and subsequently, Applicant accrued expenses for his parents' medical needs, home health care, and funerals. At about the same time, the national economic recession occurred, and Applicant's 401(k) savings plan suffered significant losses. In his Answer to the SOR, Applicant stated, "I could not borrow against my saving plan to pay for the debts, and therefore were [sic] delinquent on the existing debts on or about August 2008." (Items 1, 3, 4, 7)

Starting in 2008, 14 accounts became delinquent. Applicant paid what he could afford, and contacted the lenders. On some accounts, he negotiated settlements for less than the balance owed. He also closed accounts to stop interest accrual and late fees, and set up repayment plans with lenders who would agree. However, some creditors rejected his offers, charged off accounts, and sold them to collection agencies.

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<sup>1</sup> See Directive, Enclosure 3, Section E3.1.7.

<sup>2</sup> Applicant marked his documents as Attachments 1-5. They are remarked here as Items 8 through 12.

When Applicant completed his security clearance application, he listed his delinquencies and his efforts to resolve them. (Items 3, 4, 7)

In 2011, Applicant's 401(k) had recovered sufficiently to enable him to borrow from it. He submitted a 401(k) statement showing he borrowed \$36,985 in June 2011 to help resolve his past-due debts. He also provided his April 8, 2014 credit report, and documentation from the creditors, showing that he paid or settled seven accounts at that time. He has been repaying on the 401(k) loan consistently. Applicant's April 2014 credit report shows ten open accounts, all of which are in current status. It also lists two that were settled for less than the full balance, and other accounts that are currently closed, but were paid satisfactorily. (Items 3, 5, 6, 7)

The two debts alleged in the SOR appear in Applicant's November 2011, July 2013, and April 2014 credit reports. The debt alleged at SOR ¶1.a is a line-of-credit loan with a delinquent balance of \$39,922. It was opened in 2006, and became delinquent in 2009. Applicant contacted the collections department of the bank in 2011 to set up a payment plan. He was informed the debt had been sold to another company, but the original creditor did not provide any other information about the purchaser. Between 2011 and 2014, he did not receive information, calls, or correspondence from the new creditor. (Items 3, 5, 6, 7, 8)

SOR ¶1.b alleges a delinquent auto loan debt of \$1,970. Applicant obtained an auto loan in about 2003. It became delinquent in 2008, when he was unable to continue the payments. He attempted to negotiate a payment plan with the creditor without success. The car was repossessed, and Applicant was informed the remaining balance was \$3,797. In 2009, Applicant paid \$1,827, but disputed the remaining balance of \$1,970. Applicant provided documentation showing that he received notice of a class-action against the creditor by persons whose cars were repossessed by this creditor. He is awaiting the outcome of the lawsuit. (Items 3, 5, 6, 7, 8)

Applicant stated in his April 2014 Answer to the SOR that he expected to have his 401(k) loan paid in full in 2014. He submitted an August 2014, 401(k) statement showing the loan is fully repaid. It also showed that \$35,973 is available to borrow. He noted in his Answer that these funds are “. . . available today for borrowing to pay for the unpaid debts . . .” (Items 3, 10) He stated,

This plan is similar as in 2011 when I borrowed \$36,985 against the [401(k)] plan to pay off and settle other debts, and ever since have successfully continued to repay to the plan under my bi-weekly payroll deduction. (Item 3)

Applicant's pay statement of August 2014 shows a gross annual salary of more than \$150,000, and monthly net pay of approximately \$7,000. In his August 2013 personal financial statement, he estimated a monthly net remainder of \$1,862. His assets, including real estate, savings, and investments, totaled \$644,000. (Items 7, 9)

Applicant provided performance evaluations covering the years 2008 to 2012. He has been consistently rated as “exceeds performance requirements,” with some aspects of his performance rated as “far exceeds.” In 2012, his manager commented that Applicant “has done an outstanding job,” and has “[b]rought together a superstar team which has performed exceedingly well for the program. [Applicant] is very conscientious and proactive.” (Item 12)

## 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 factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. 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 case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve 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 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 interests as his or her 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>

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

<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*; Adjudicative Guidelines, ¶ 2(b).

## 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 had a substantial amount of unpaid debt between 2008 and 2011. AG ¶ 19(c) (*a history of not meeting financial obligations*) applies. Due to several events that affected his finances, he was unable to resolve the debts. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) applies. The record contains no evidence that Applicant's debts stem from gambling, alcohol abuse, drug abuse, or frivolous spending.

Under AG ¶ 20, the following conditions can mitigate security concerns:

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

It is unclear from the record how much of Applicant's debt is related to his problems with "bad contractors" who worked on his home remodeling. His decision to remodel his home was not an event beyond his control and is not mitigating. However, other events that affected his ability to pay occurred around the same time, including the medical and home health care costs and funeral costs of his parents' cancer diagnoses and subsequent deaths. In addition, the economic recession that started in about 2008

caused a decline in Applicant's 401(k) account for several years. These events were unforeseen and beyond his control, and limited his resources for debt payment. Applicant acted responsibly by keeping in touch with creditors and working out settlements and payment plans. Starting in 2011, he paid off the bulk of his delinquencies. AG ¶ 20(b) applies in part.

Applicant has made substantial efforts since his 401(k) account recovered in 2011 to resolve his past-due debts, and has been successful. He made good faith efforts by working with the creditors, arranging payment plans, taking a loan from his 401(k) account to pay settled debts, and making payments on his payment plans. He has paid back the 401(k) loan in full. Of 14 delinquent debts, he has succeeded in paying all but the two debts that are listed in the SOR. He has a substantial monthly net remainder. He also has \$35,000 in his 401(k), which he noted he plans to use to pay the largest remaining debt when he is able to locate the creditor. His plan is credible, based on his success over the past three years using this method. His financial situation is under control. AG ¶¶ 20(c) and (d) apply.

Applicant paid more than half of the balance on the debt at SOR allegation 1.b, and disputed the relatively small amount remaining. He has a reasonable basis to dispute the debt, because he has been notified of a class-action suit against the creditor in cases such as his. The case is pending, and Applicant intends to await further information on the suit. AG ¶20 (e) applies.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

Applicant is a mature, educated man with a stable home and work life. He showed character by caring for his parents' needs in their final years. He has supported the government through decades of employment with a defense contractor. He has held a security clearance for 30 years without incident.

After suffering financial setbacks during the economic recession, Applicant's situation improved by 2011, and he took action. He succeeded in paying the bulk of the 14 debts that had become delinquent. He is willing and able to pay the one undisputed debt, as his past actions have shown, and has a plan to do so. He has a substantial monthly net remainder, as well as his 401(k) funds, to pay it. He is not subject to coercion based on his finances.

The Appeal Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.”<sup>7</sup> Applicant has demonstrated significant debt reduction. Moreover, a security clearance adjudication is not a debt collection procedure: It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.<sup>8</sup> Applicant's actions have demonstrated that he is has sound judgment, and is responsible and trustworthy.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant 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
Subparagraphs 1.a – 1.b	For Applicant

### **Conclusion**

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

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RITA C. O'BRIEN  
Administrative Judge

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<sup>7</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)

<sup>8</sup> ISCR Case No. 09-02160 (App. Bd. June 21, 2010).