



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



In the matter of:

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ISCR Case No. 15-02033

Applicant for Security Clearance

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Thomas Albin, Esq.

08/17/2016

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant struggled financially to support his family of eight on his income. The mortgage on his marital home and some of his credit cards became seriously delinquent in 2011. Paying child support took priority over addressing the debts, and the mortgage loan was foreclosed. A February 2016 Chapter 7 bankruptcy discharge has relieved the financial stress, and Applicant is handling his current finances responsibly. Clearance is granted.

**Statement of the Case**

On September 29, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On October 13, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 16, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On January 18, 2016, I scheduled a hearing for February 8, 2016. Applicant retained legal counsel, who was unavailable on that date. On January 20, 2016, I rescheduled the hearing for February 12, 2016.

I convened the hearing as rescheduled. Six Government exhibits (GEs 1-6) and eight Applicant exhibits (AEs A-H) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his closing argument was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. Applicant and one of his co-workers testified, as reflected in a transcript (Tr.) received on February 22, 2016.

### **Findings of Fact**

The SOR alleges under Guideline F that Applicant owed collection debts of \$57, \$444, \$8,222, and \$1,114 (SOR ¶¶ 1.a-1.c, 1.g); charged-off credit card debts of \$5,000 and \$6,882 (SOR ¶¶ 1.e-1.f); and a \$170,732 mortgage balance in foreclosure (SOR ¶ 1.d). When he answered the SOR allegations, Applicant admitted the debts in SOR ¶¶ 1.a-1.f, which he attributed to a lengthy and difficult divorce. He explained that he had been unable to pay the debts because of his child support obligation. In a separate email of November 17, 2015, Applicant admitted owing the debt in SOR ¶ 1.g as well. His admissions are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 35-year-old machinist who has worked for a defense contractor since November 2002. (GE 1; Tr. 37.) Accepted into a four-year apprenticeship program, Applicant's starting wage was around \$13 an hour. Two years into the program, he was awarded pay as a first-class machinist, although he did not officially attain first-class status until he completed the program. (Tr. 45.) On his graduation from the apprenticeship, he was certified by the state as a journeyman. (Tr. 39-41.) Applicant seeks to retain the secret security clearance that he has held throughout his employment. (GE 1.)

Applicant and his ex-wife were married from March 2000 to September 2012. They have six children, who range in age from 8 to 19. (GEs 1-2; Tr. 64.) During their marriage, Applicant was the primary income provider for the family, but she handled the household bills. (Tr. 63.) His ex-wife worked inconsistently, resigning from jobs after only a few months. On average, she worked no more than two or three months a year and only part time. (Tr. 73.) She had no credit of her own but used Applicant's credit cards for routine household purchases. (GE 6.)

In July 2001, Applicant and his ex-wife purchased their first home with a mortgage of \$85,200. In February 2004, Applicant and his spouse obtained a new mortgage of \$112,850, which they then paid off when they bought a new home in August 2004 with a

mortgage for \$157,325. One year later, they moved to another residence mortgaged for \$168,700. In December 2006, that loan was paid off through a refinancing with an \$180,000 "piggyback" mortgage. (GEs 1, 5; Tr. 75.)

By 2011, Applicant and his ex-wife were having marital problems. He filed for divorce in part due to her marital infidelity, but they lived together while trying to reconcile. (Tr. 81.) Unbeknownst to Applicant at the time, his ex-wife stopped making payments on some accounts. A credit card account, opened by Applicant with a credit union in July 2005 but used by his ex-wife, first became delinquent in June 2011. Applicant's ex-wife made no payments after October 2011, and it was placed for collection for \$5,000. The debt was sold to the creditor in SOR ¶ 1.f, who then charged off a \$6,897 balance. (GEs 1, 3; AE A; Tr. 83.) Another credit card account, opened by Applicant in January 2005, became delinquent in April 2011 and was charged off around February 2012 for \$5,380 (SOR ¶ 1.e). Another credit card account (SOR ¶ 1.c) was assigned for collection after no payment since November 2011. It was transferred for collection in February 2012 to an assignee reporting a \$7,416 balance in September 2012. In May 2013, the debt was acquired by its current assignee. (GEs 3-6.)

Applicant's ex-wife stopped paying their mortgage in June 2011. (GEs 3-6; AE D.) In late 2011, Applicant learned that their mortgage was behind when he received by certified mail a notice of delinquency from their mortgage company. He checked his credit cards and discovered several credit charges, which his ex-wife had incurred. He had no success obtaining a debt consolidation loan from a credit union to address his financial problems. Applicant also inquired about a modification of their home loan, but the creditor would not work with him. (GE 6; Tr. 64, 79-82, 96.) In April 2012, Applicant's ex-wife and children moved into an apartment. His ex-wife decided to move before their mortgage lender posted a foreclosure sign on the property. Applicant paid his ex-wife's rent until their divorce was final in September 2012. (Tr. 97-98.)

As of September 2012, the mortgage was \$24,399 past due. (GE 5.) There was no equity in their home. (Tr. 96.) A telecommunications provider placed a \$1,114 debt in collection in September 2012 (SOR ¶ 1.g) after no payments since April 2012. (GEs 3-6.) In October 2012, Applicant moved in with his mother. He could not afford a place of his own or to address his past-due debts because he was paying \$450 per week in child support to his ex-wife. He contacted a bankruptcy attorney, who advised him that he was a good candidate for bankruptcy and to make no payments toward his past-due accounts. (GE 6.)

To renew his security clearance eligibility, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on October 9, 2012. In response to inquiries concerning any delinquency involving routine accounts, Applicant disclosed that he owed delinquent credit card debt of \$6,900 (SOR ¶ 1.e), \$6,700 (SOR ¶ 1.c), and \$5,000 (SOR ¶ 1.f); approximately \$170,000 in past-due mortgage debt (SOR ¶ 1.d); and about \$800 to a cable television provider (SOR ¶ 1.g). Applicant explained that the accounts became delinquent and remained unpaid because of marital problems, a single income, a large family, and medical issues. About actions taken to resolve these

debts, Applicant stated that he had no success in obtaining a loan modification or refinance of his mortgage because his debt-to-income ratio was too high and because of his child support payments. He indicated that he was looking into filing for bankruptcy. (GE 1.)

On January 23, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He admitted owing the credit card, mortgage, and cable television delinquencies. He expressed his intent to use his income tax refund to pay his bankruptcy attorney and to obtain a financial fresh start by filing for bankruptcy in the spring. (GE 6.) Applicant used his income tax refund instead to pay moving costs of \$4,000 for his spouse and children in 2013. Their lease had ended at their previous apartment and the landlord would not return their security deposit. (Tr. 91-92.)

Applicant married his current spouse in June 2013. (Tr. 66.) They began cohabiting in March 2013. (Tr. 84.) She has two children (ages 9 and 13 as of November 2015) from a prior marriage, who reside with her and Applicant. (AE A; Tr. 65.) Applicant and his spouse were expecting their child in June 2016. (Tr. 65.)

In July 2014, Applicant's and his ex-wife's mortgage (SOR ¶ 1.d) was foreclosed for default of the \$1,167 monthly payments. (GE 3.) As of February 2015, Applicant had three previously unreported delinquencies on his credit record. A credit card account opened in June 2011 had been charged off for \$6,882 and closed in March 2012 (SOR ¶ 1.f). In addition, a \$57 medical debt from January 2013 (SOR ¶ 1.a), and \$444 in fees from 2012 owed the debt collector for the cable company (SOR ¶ 1.b), were placed for collection in July 2013 and June 2014. (GE 4.)

In November 2014, Applicant was in a car accident and had to purchase another vehicle. (AE A; Tr. 94.) He borrowed approximately \$5,000 from his 401(k) loan in 2015 to replace his automobile. (Tr. 89.) He spent the first four months of 2015 working out of state on a temporary duty assignment (TDY) for his employer, which further delayed his plan to file for bankruptcy. (Tr. 94.) Some of his income tax refund of \$7,000 to \$8,000 received in 2015 went to his ex-wife to pay some of her bills. The rest went toward car repairs, tools needed for work, and his household expenses, including a home heating bill. His current spouse's income was low, and he had lost time at work because of some medical issues. (Tr. 95.)

As of September 2015, Applicant had made no progress toward resolving any of the debts in the SOR. The mortgage loan with a \$170,732 balance had been foreclosed. His credit card debts in SOR ¶¶ 1.c, 1.e, and 1.f had accrued to \$8,222, \$5,000, and \$6,882. (GE 3; AEs D, F.) He became first aware of the \$57 medical debt in collection (SOR ¶ 1.a) when he received the SOR in October 2015. On the advice of his bankruptcy attorney, Applicant included the medical debt in his bankruptcy. (Tr. 53, 57-58, 86.)

In October 2015, Applicant completed credit counseling required for his bankruptcy filing. He paid his attorney's fee of \$1,685, and on November 2, 2015, he filed a Chapter 7 bankruptcy petition, listing \$197,377 in unsecured nonpriority claims, \$170,732 of which was the mortgage balance (SOR ¶ 1.d) on his previous home he had shared with his ex-

wife. He included the debts in the SOR in his bankruptcy. He listed the \$6,882 credit card balance in SOR ¶ 1.f but also reported a separate \$4,869 credit card debt with the credit union. (AE A.) At his hearing, he testified discrepantly that they are the same accounts. (Tr. 83.) Applicant listed a contingent bodily injury claim of \$33,975 because of the motor vehicle accident in November 2014. When he filed for bankruptcy, Applicant reported annual income of \$57,420 in 2013, \$54,263 in 2014, and \$54,212 in 2015. He was paying \$1,440 per month in child support from his monthly gross income of \$5,074. Applicant reported that his spouse grosses only \$107 per month as part-time caregiver. After paying monthly expenses, Applicant reported a negative cash flow of almost \$344. (AE A.) Applicant was granted a Chapter 7 discharge on February 3, 2016. (AEs B, C.)

Applicant is still paying child support for his six children, even though his oldest child is no longer a minor and his ex-wife has been working at a casino for over a year. (Tr. 94.) He agreed to pay support for an extra three years at the time of the divorce to give his ex-wife time to complete a certificate program and find suitable employment. (Tr. 68.) On the birth of his and his spouse's child in June 2016, Applicant plans to seek a reduction in his child support. (Tr. 104.)

As of February 2016, Applicant and his spouse's monthly net household income was \$4,913, which included \$580 per month in child support income for her two children. His spouse handles the family's finances. (Tr. 65.) She began her current job around the time of his bankruptcy filing, and she nets \$1,213 per month. Their \$3,802 in reported monthly expenses include \$1,300 for rent, \$1,480 in child support, \$175 for electricity service, \$170 for cable and telephone service, \$500 for groceries, \$75 for car insurance, \$90 for wireless phones, and \$12 for renters insurance. They reported \$1,110 in discretionary income for other expenses, such as gasoline and oil. (AE H; Tr. 85-86.) Applicant admitted that after paying for clothing, school supplies, field trips, and other expenses for his children, he has little left over. (Tr. 86.) Applicant had \$300 in checking account deposits and about \$700 in savings as of February 2016. (Tr. 90.)

Applicant has obtained four or five loans from his 401(k) over the years. He paid almost \$8,000 in fees to his divorce attorney, in part with funds borrowed from his 401(k). He used his income tax refund to pay the rest. (Tr. 88-89.) As of February 2016, Applicant was still repaying two loans from his 401(k) of \$3,000-\$4,000 and \$5,000. (Tr. 89.)

### **Character references**

Applicant excelled in an apprenticeship program at work and then progressed to the highest skill rate in his department. He handled classified information appropriately over the years. Applicant has earned the trust of his supervisors, co-workers, and his local union president, some of whom have known him throughout his employment. (AEs E, G.) The union's president/chief steward attests to Applicant's willingness to work long hours and on weekends to provide for his family. (AE E.)

The union's vice president testified in person. He served as Applicant's work leader during a four-month temporary duty assignment and found Applicant's work to be of

excellent quality. He does not work alongside Applicant currently, but they see each other daily at work. (Tr. 14-20.) No negative issues involving Applicant have been brought to his attention. (Tr. 21.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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.

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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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

The security concerns about financial considerations are set forth in 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 and his ex-wife had six children together. They took on larger mortgages as they moved to accommodate their growing family. In August 2004, they acquired a mortgage of \$157,325. One year later, they moved to another residence mortgaged for \$168,700. In December 2006, that loan was paid off through a refinancing with an \$180,000 "piggyback" mortgage. There is no record of financial delinquency before 2011, when Applicant filed for divorce. He continued to live in the home hoping to reconcile with his ex-wife for their children's sake. In the fall of 2011, he learned that his ex-wife had not made their mortgage payments for several months, and that his ex-wife was not making any credit card payments. As of their divorce in September 2012, Applicant and his ex-wife were \$24,399 past due in their mortgage payments. Additionally, he owed a collection balance of \$1,114 to a cable television provider and \$444 in fees to its collection agent. Three of his credit card accounts were in collection, as alleged in SOR ¶¶ 1.c, 1.e, and 1.f. A \$57 medical debt, which Applicant overlooked, was subsequently placed for collection in July 2013. Two disqualifying conditions, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Mitigating condition 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," applies in that the delinquencies were incurred by Applicant's ex-wife, from whom he has been divorced since September 2012. However, work obligations do not completely excuse Applicant from his obligation to exercise oversight with regard to the household finances during his first marriage. With the exception of the medical debt, Applicant had known about the delinquencies for three to four years as of September 2015. He made little effort to address them after early attempts to modify the mortgage and obtain a debt consolidation loan proved unsuccessful.

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," applies in that the accounts were mismanaged by his ex-wife without his knowledge. Additionally, his divorce, which was caused by his ex-wife's infidelity and handling of their mortgage and his credit card accounts, was an unforeseen

circumstance that compromised his ability to repay the delinquencies. Applicant incurred costs to move his ex-wife and children to another residence in April 2012. He has also had a heavy child support obligation of at least \$1,440 per month since September 2012 on wage earnings of \$57,420 in 2013, \$54,263 in 2014, and \$54,212 in 2015.

AG ¶ 20(b) also requires that an applicant act responsibly to address his financial difficulties. In that regard, after initially trying to modify his delinquent mortgage and obtain a loan to consolidate his past-due credit card debts, Applicant did little to address his debts before he received the SOR. He told an OPM investigator in January 2013 that he intended to file for bankruptcy in the spring of 2013 when he received his income tax refund. He did not file until November 2, 2015. A car accident in November 2014 and his absence from the area while on TDY for the first four months of 2015 do not explain his inaction on the accounts for 2013 and much of 2014. Applicant testified that some of his income tax refund of \$7,000 to \$8,000 went to his ex-wife for her bills. He spent some of his refund on car repairs and tools for his job. Yet, it is difficult to find that Applicant acted fully responsibly without some documentation of those expenses which he submits prevented him from filing for bankruptcy earlier.

While a Chapter 7 bankruptcy is a legal means to address debts, it does not satisfy AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Creditors covered by the bankruptcy are left without a legal remedy. 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,” is implicated in that Applicant received financial counseling in the bankruptcy, and his recent discharge alleviated the financial burden of having to repay the debts in the SOR. However, unlike a track record of timely debt payments, a recent bankruptcy discharge does not carry indicia of financial stability.

In light of the bankruptcy discharge, the issue becomes whether Applicant can be counted on to meet his financial obligations going forward. In his favor, there is no evidence that he is making purchases on credit that could compromise his financial situation in the future. Some concern arises because of his history of borrowing from his 401(k). He paid some of his divorce attorney’s fees of almost \$8,000 with a loan from his 401(k). He is currently repaying two loans from his 401(k) of between \$3,000 and \$5,000, including one loan taken out in 2015 to replace his vehicle. Some of his \$7,000 to \$8,000 income tax refund for 2014 went to catch up on his household bills.

Applicant reported \$1,110 available for expenses each month with his spouse’s new job and \$580 per month in child support his spouse receives. However, he testified that he has little left over after paying for parking, gasoline, and his children’s expenses. He had only \$300 in checking and \$700 in savings deposits as of February 2016. With his spouse expecting their first child in June 2016, their expenses can reasonably be expected to increase somewhat, although he planned to seek a modification of his child support, given his oldest son is no longer a minor. While their household income could suffer if his spouse is unable to maintain her hours because of the birth or childcare responsibilities, the record



evidence suggests that Applicant and his spouse live within their means and address unexpected expenses responsibly.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>1</sup> The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has held a DOD security clearance since 2002, and by all accounts, he has handled his security responsibilities appropriately. Co-workers familiar with Applicant's work performance for the past 13 years, including those years when Applicant was facing the dissolution of his first marriage and foreclosure of his home, consider Applicant to be reliable and trustworthy.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). At the same time, a determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Applicant is not seen as likely to jeopardize his longtime employment and the income that he needs to support his children, especially where his marital and financial situations have stabilized. After considering all the facts and circumstances, it is clearly consistent with the national interest to continue his security clearance eligibility.

### **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.g:	For Applicant

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<sup>1</sup> The factors under AG ¶ 2(a) are as follows:

(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.

## **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge