



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



In the matter of: )  
)  
) ISCR Case No. 14-05082  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2016

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Although Applicant has demonstrated a desire and willingness to repair his finances, he has not demonstrated a sufficient track record of rehabilitation or debt repayment to mitigate the financial considerations concerns. Clearance is denied.

**Statement of the Case**

On December 5, 2014, the 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 that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

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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.

Applicant timely answered the SOR and requested a hearing. On April 4, 2016, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>2</sup> Department Counsel submitted documents by the April 15, 2016 deadline. At the hearing, which proceeded as scheduled on April 27, 2016, I admitted Government's Exhibits (GE) 1 through 4, Applicant's Exhibits (AE) A through E, and Hearing Exhibits I – III, without objection. The record remained open until June 15, 2016 to allow Applicant to submit additional information about his finances. The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on May 10, 2016. Applicant submitted AE F through L, which are also admitted without objection.<sup>3</sup>

### **Findings of Fact**

Applicant, 48, works as an information technology professional for a federal contractor. He began working for his employer in May 1989 in the mail room. Over the years, Applicant worked his way up the ranks. In 2000, he transitioned into a low-level management position, supervising several employees. In 2006, Applicant earned an associate's degree in computer science. He financed his education with \$23,000 in student loans. In September 2013, Applicant completed a security clearance application. The ensuing investigation revealed Applicant's history of financial problems. The SOR alleges that Applicant is indebted to five creditors for approximately \$25,800.<sup>4</sup>

Applicant's financial problems began in 2000. His then wife, whom he married in 2000, helped him rehabilitate his finances. They were able to buy a home and Applicant obtained a personal loan to improve the property. Applicant's marriage ended in divorce in 2002. To expedite divorce, the couple agreed to leave the marriage with the debts each held in their names. They sold the marital home by short sale. Although, Applicant carried the majority of the marital debt in his name, he was able to manage his finances until 2006. Applicant's roommate became engaged and moved out, leaving Applicant to cover the rent on his own. Applicant could not afford to do so. He allowed his student loans and other credit obligations to become delinquent in an effort to focus on his living expenses.<sup>5</sup>

In November 2015, Applicant contacted the company's Employee Assistance Program (EAP) for help resolving his delinquent accounts. The EAP referred Applicant to a debt consolidation service. He enrolled in a debt consolidation plan in April 2016. The service helped Applicant develop a budget and helped him arrange payment plans for the debts alleged in SOR ¶ 1.b (\$436) and 1.d (\$387). Payments under the plan were scheduled to begin in May 2016. The service advised Applicant to address the accounts in SOR ¶¶ 1.c (\$169) and 1.e (\$2,145) outside of the plan. At hearing,

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<sup>2</sup> The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> HE IV.

<sup>4</sup> Tr. 22-24, 33; GE 1-3.

<sup>5</sup> Tr. 24, 27-33.

Applicant testified that he planned to pay off SOR ¶ 1.c and that he is in the process of negotiating a payment plan for SOR ¶ 1.e. Applicant has also been in contact with his student loan provider. After requesting repayment options on an income-based plan, the student loan provider reviewed Applicant's finances and determined that Applicant could not afford to make payments. The provider placed the loans in forbearance status from April 2016 until September 2016. When the forbearance period ends, the student loan provider will reevaluate Applicant's finances to determine his new payments. However, his loan is currently considered to be in good standing. According to the budget Applicant developed with the help of the debt consolidation service, Applicant has less than \$200 in disposable income. He believes that he will be able to afford any future student loan payment.<sup>6</sup>

In addition to the debts alleged in the SOR, the most recent credit report in the record, dated February 2016, shows that Applicant owes \$30,449 in federal taxes and \$10,148 in state taxes. These amounts include penalties and interest. Liens were filed against Applicant in January 2014 and November 2015, respectively. Applicant explained that for a number of years he was not having enough federal tax withheld from his pay. In October 2014, the IRS sent a "lock-in" letter to Applicant's employer, ordering them to adjust Applicant's filing status to single and his exemptions to zero. In March 2016, the IRS contacted Applicant directly about his outstanding tax liability. After reviewing Applicant's financial information, the IRS determined that Applicant could not afford to make any additional payments toward his tax debts, which are from the years 2008 through 2014. Applicant, who earns \$52,000 annually, plans to reduce his tax debt by relying on his federal tax withholdings from his pay. At the current rate of withholdings, Applicant believes he will be entitled to a refund each year, which will be captured by the IRS and applied to his outstanding tax balance. Applicant has not incurred any additional tax debt since the receiving the lock-in letter in 2014. He is reducing his state tax liability through a \$190 bi-weekly garnishment.<sup>7</sup>

Applicant admits that he has struggled to manage his finances in the past. However, he believes that through the counseling he has received through the credit consolidation company that he is learning to develop better money management skills.

### **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

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<sup>6</sup> Tr. 25-27, 34-37; AE A-E; I, L.

<sup>7</sup>Tr. 38-44; GE 3; AE H, J-K.

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.

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**

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>8</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges and Applicant admits that he owes approximately \$25,800 in delinquent debts. Applicant admits that he has a history of not paying his financial

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<sup>8</sup> AG ¶ 18.

obligations and that for many years he has had an inability to do so.<sup>9</sup> While a large portion of Applicant's financial problems were caused by his poor financial management habits, his finances were also impacted by events beyond his control, his 2002 divorce, and a change in living situation in 2006 that left him unable to maintain his living expenses and his debt obligations. Applicant has acted responsibly by seeking help to address his financial issues.<sup>10</sup>

Through the debt consolidation service, Applicant is being counseled on rehabilitating his poor financial habits. With the help of the service, Applicant has developed a working budget and received advice on how to resolve his delinquent accounts. Although he presented evidence of repayment plans for SOR ¶¶ 1.b and 1.d, Applicant has not presented an actual record of repayment. Even though Applicant's student loan is in good standing, it is unclear if he has the ability to make the student loan payments once the loan is returned to active status.

Though not alleged, the status of Applicant's 2014 federal and 2015 state tax liens are also relevant to a determination of his security worthiness. While the existence of the tax liens may not be used as an independent basis for denying Applicant's application for a security clearance, they can be considered for the limited purpose of assessing an applicant's credibility; to evaluating evidence of extenuation, mitigation, or changed circumstances; to considering whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis.<sup>11</sup> While the tax liens are further evidence of Applicant's long history of financial problems, it is worth noting that he is not ignoring the issue. The state tax lien is being addressed through a garnishment. Applicant has been in contact with the IRS about his federal tax lien. Because he cannot afford to make payments on the federal tax debt, the outstanding balance will be resolved through the capture of any future refunds to which Applicant may be entitled. However, the existence of the liens undercuts total mitigation of the financial considerations concerns. At this time, the record does not support a finding that Applicant's finances are under control.

After reviewing the record, doubts remain about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant has a long history of financial problems, dating back to at least 2000. While Applicant has demonstrated a strong desire to repair his credit and is taking steps to do so, he has not demonstrated a sufficient period of financial reform and rehabilitation, nor has he established a track record of debt repayment sufficient to mitigate the overall financial concern. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not

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<sup>9</sup> AG ¶¶ 19(a) and (c).

<sup>10</sup> AG ¶ 20(b).

<sup>11</sup> ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

granted due to Applicant's current circumstances. However, in the future, he may well demonstrate persuasive evidence of his security worthiness.

### **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:	AGAINST APPLICANT
Subparagraph 1.a – 1.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge