



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01664

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

10/05/2016

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has made little progress toward resolving more than \$33,000 in delinquent debt. The financial considerations concerns are not adequately mitigated. Clearance is denied.

**Statement of the Case**

On September 30, 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 26, 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 15, 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 11, 2016.

I convened the hearing as scheduled. Before the introduction of any evidence, the Government stipulated that five of the alleged debts were duplicated in the SOR. Five Government exhibits (GEs 1-5) 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 testified, as reflected in a transcript (Tr.) received on February 22, 2016.

I held the record open, initially until March 11, 2016, for documentary submissions from Applicant. At Applicant's request, I extended the deadline to April 1, 2016. On April 15, 2016, Applicant submitted two exhibits, which were accepted into the record as Applicant exhibits (AEs A-B), despite their late submission. Department Counsel filed no objections by the April 29, 2016 deadline for comment, and the record closed on that date.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of September 30, 2015, Applicant owed delinquent debt totaling \$59,672 (SOR ¶¶ 1.a-1.s). In his Answer, he admitted all the debts without explanation. However, Department Counsel stipulated at the hearing that five debts were duplicated in the SOR (SOR ¶ 1.a same as ¶ 1.s, ¶ 1.d same as ¶ 1.p, ¶ 1.f same as 1.r, ¶ 1.g same as ¶ 1.o, and ¶ 1.l same as ¶ 1.n), so his delinquent debt totaled approximately \$33,000. After considering the pleadings, exhibits, and transcript, I find three other likely duplications: SOR ¶¶ 1.b and 1.q, 1.h and 1.k, and 1.i and 1.m. My findings of fact are as follows.

Applicant is 34 years old. He dropped out of high school in the middle of his junior year. In March 2015, Applicant married his longtime cohabitant girlfriend. They have three children, ages 15, 10, and 4. Applicant and his family currently live on the third floor of his mother's home. They had previously occupied the first floor. His mother lives on the second floor and rents out the first floor to Applicant's cousin. (GEs 1, 4; Tr. 32-33, 38, 46.) Applicant gives his mother money for rent on occasion. He takes care of maintenance on the property for her in lieu of paying rent on a regular basis. (Tr. 38, 65-66.) He pays his own electric utility, home heating, water, telephone, and cable television costs. (Tr. 38.)

Applicant has been employed by a defense contractor since September 2012. (Tr. 36.) He worked as a machine operator from February 2001 to December 2003, when his employer shut down, and he was laid off. (GE 1.) He collected unemployment compensation until April 2004, when he secured another job as a machine operator. In April 2006, he resigned for a warehouse position with another employer. His take-home pay was approximately \$800 a week. While Applicant was working for that employer, his family lived in an apartment for 13 to 14 months at one point after he had an argument with his mother. He paid \$800-\$850 per month in rent. (Tr. 57-58.) In late January 2010, he was

fired from his job for violating the company's sexual harassment policy. (Tr. 33-35.) Already struggling financially and ineligible for unemployment compensation, his financial problems got worse over the next eight months when they had only his now spouse's income. (GE 4; Tr. 40.) Applicant then worked as a machine operator from September 2010 to August 2012. (GE 1.) His pay averaged \$350 to \$400 a week, about half of his income in his previous job. (Tr. 35.)

On August 21, 2012, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for his present employment. Applicant responded negatively to all the financial record inquiries, including those pertaining to any delinquency involving routine accounts. (GE 1.)

A check of Applicant's credit on August 29, 2012, revealed several past-due accounts, as follows.

SOR ¶ 1.a – \$12,405 debt (same debt as SOR ¶ 1.s for \$11,770)

Applicant and his significant other (now spouse) bought a timeshare at a resort in October 2008, obtaining a mortgage of \$12,405. They made no payments on the loan after May 2010, and in September 2010 the lender closed the account and transferred it for collection. As of July 2012, the collection balance was \$11,770. (GEs 2, 3; Tr. 42.)

SOR ¶ 1.b – \$1,973 debt (same debt as SOR ¶ 1.q for \$1,973)

As of February 2012, Applicant was past due \$1,973 on his electric bill. As of May 2012, the unpaid balance was in collection. In February 2013, it was acquired by the creditor in SOR ¶ 1.b. (GEs 2, 3.) Applicant has not attempted to repay the debt. (Tr. 44, 46.)

SOR ¶ 1.c – \$1,432 debt

Applicant opened an account with a telecommunications company in September 2009. He made no payment after June 2013, and his account was placed in collection for \$1,432. (GE 2.) The creditor recently called him to establish a repayment arrangement. He had yet to respond as of his security clearance hearing. (Tr. 84.)

SOR ¶ 1.d – \$878 debt (same debt as SOR ¶ 1.p for \$878)

A delinquent debt with a wireless phone company was placed for collection in January 2012 for \$878. (GEs 2, 3.) He received at least one collection notice about the debt but had so many bills that he was confused about what he owed, so he ignored it. (Tr. 48.) He has made no attempt to address the delinquency. (Tr. 49.)

SOR ¶ 1.e – \$521 debt

Applicant opened a credit card account in April 2008 which was charged off around March 2011 for \$400. As of September 2011, the collection balance was \$521. (GEs 2, 3.) He has made no payments on the debt. (Tr. 49.)

SOR ¶ 1.f – \$191 debt (same debt as SOR ¶ 1.r for \$191)

In June 2010, Applicant opened an account with the creditor in SOR ¶ 1.r. The debt was apparently for a cable television box that he never returned. In May 2011, the creditor in SOR ¶ 1.f acquired the debt in collection for \$191. (GEs 2-4.) Applicant does not currently recall specifics about the debt. He has made no payments to resolve it. (Tr. 52.)

SOR ¶ 1.g – \$920 debt (same debt as SOR ¶ 1.o for \$920)

Applicant opened a revolving charge account with a retailer in February 2003, which had a \$3,300 credit limit. High credit on the account reached \$5,883. He had reached “a deal” with the creditor and made some payments until he could no longer afford to continue. (Tr. 53.) In June 2012, the creditor in SOR ¶ 1.g placed a \$920 charged-off balance for collection with the creditor in SOR 1.o. (GEs 2, 3.) With a final payment of \$61 in August 2013, Applicant settled the debt for less than its full balance. (GE 5.)

SOR ¶ 1.h – \$4,980 debt (same debt as SOR ¶ 1.k for \$4,980)

Applicant opened a VISA account with the creditor in SOR ¶ 1.k in March 2005. Applicant made no payment after August 2007, and the account was charged off in December 2008 and placed for collection for \$7,000. In April 2010, a \$4,980 judgment was awarded against Applicant. (GEs 2, 3, 5; Tr. 54-55.) Applicant's August 2012 credit report has a separate listing for an \$8,500 balance placed for collection, which had been paid as of February 2009. Applicant expressed his belief that the debt in SOR ¶ 1.h has been paid (Tr. 56), but the evidence showing an April 2010 judgment leads me to conclude that the debt in SOR ¶ 1.h is a separate debt.

SOR ¶ i – \$303 debt (same debt as SOR ¶ 1.m for \$303)

In July 2011, a cable services company placed a \$303 balance for collection with the company in SOR ¶ 1.i. In June 2012, the creditor in SOR ¶ 1.m acquired the debt. Applicant has made no effort to pay the debt. (Tr. 60.)

SOR ¶ 1.j – \$5,535 debt

Applicant incurred a \$3,934 debt with a retailer for a television and some car accessories. The debt was acquired for collection by the creditor in SOR ¶ 1.j around December 2009. As of August 2012, the past-due balance was \$5,535. (GEs 3, 4; Tr. 61-62.) Applicant has not made any recent payments on the debt. (Tr. 63.)

SOR ¶ 1.l – \$4,610 debt (same debt as SOR ¶ 1.n for \$4,909)

In February 2009, a \$4,909 debt from August 2007 was referred for collection. In January 2010, the collection agency obtained a \$5,484 judgment. The judgment was satisfied in September 2012. (GEs 2, 3, 5; AE A.)

Applicant's credit report also showed that he and his now spouse had obtained a car loan of \$16,483 in October 2010. They were consistently late 30 days in their payments in 2012. As of July 2012, their loan was \$369 (one payment) past due on a balance of \$14,179. (GE 3.)

On December 10, 2012, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that his existing financial problems worsened and he fell behind on his utilities while he was unemployed from late January 2010 to September 2010. Yet, when discussing the financial record inquiries on his SF 86, Applicant discrepantly confirmed his negative responses. At the end of his interview, he was confronted about the delinquencies on his credit record. Applicant agreed with the accounts, but indicated that he was unable to provide any details for most of the debts, including when they were opened, when they became delinquent, and what he owed. About the resort debt, he recalled buying a timeshare in his name only and that he made six to eight \$200 monthly payments before he stopped paying on the loan. He recalled that the debt in SOR ¶ 1.j was for a television and some accessories for his car. He expressed his belief that the debt in SOR ¶ 1.d (same debt in ¶ 1.p) was medical in nature. Applicant expressed his intention to resolve the delinquencies through debt consolidation once he regained his financial footing. He reported no financial counseling but he had attempted debt consolidation in the past. He made only one or two payments of \$192 per month on the repayment plan. (GE 4; Tr. 74.)

In September 2015, a \$105 medical debt was placed for collection for nonpayment since August 2014. As of late November 2015, the unpaid balance was \$107. As of late December 2015, Applicant was making timely payments of \$155 per month toward a \$5,613 debt for furniture incurred in November 2014. (Tr. 76.) He had been 30 days late in his car payments eight times between November 2013 and February 2015, but he had been current in his payments since then. The debts in SOR ¶ 1.c (\$1,432), ¶ 1.f (\$191, same debt in ¶ 1.r), and ¶ 1.e (\$521) were still on his credit record as outstanding delinquencies. (GE 5.)

On April 1, 2016, a debt servicer for the creditor holding the promissory note for the timeshare offered to waive their \$17,523 delinquent balance and consider their account current on receipt of two \$454 payments by April 30, 2016, followed by six consecutive monthly payments in that amount by automatic payments. Alternatively, the creditor agreed to accept a one-time payment of \$8,827 in full satisfaction of their loan. Applicant and his spouse could also settle their \$11,770 principal balance by a one-time payment of \$2,942 submitted with a deed in lieu of foreclosure. (AE B.) It is unclear if Applicant made any effort to settle the debt.

Applicant began his employment with the defense contractor at \$14.14 an hour. (Tr. 66.) He learned his trade in an apprenticeship program at work. (Tr. 75.) He now earns \$21.56 an hour. (Tr. 66.) Applicant takes home on average \$400 to \$450 per week. (Tr. 35.) Overtime opportunities are rare for him. He works on third shift. (Tr. 51.) Applicant's spouse is employed as a quality control manager. (Tr. 36.) She has worked for the same employer for about eight years and is now salaried. Since September or October 2015, her weekly take-home income has been \$589 per week. (Tr. 79.) Her previous wage netted her \$400 plus per week. (Tr. 79.) Applicant's spouse was out of work for four or five months on short-term disability when she had their youngest child. Her disability income was less than her employment income. (Tr. 39.) She handles the household bills. (Tr. 78.)

Applicant gives his mother-in-law about \$200 a month to care for their youngest child when he and his spouse are at work. (Tr. 37, 65.) Apart from contributing \$300 to \$400 to cover his grandmother's funeral in December 2014, Applicant has not had any unexpected financial expenses. (Tr. 40-41.)

Applicant consulted with a lawyer about a possible bankruptcy in early 2015, but he did not want to compromise his chances of buying a home for his family. Applicant has saved about \$600 for a down payment. (Tr. 70-71.) The lawyer advised him to pay the smallest debt first. Applicant did not feel that he could afford to make payments toward his delinquencies. (Tr. 72.)

Applicant and his spouse received an income tax refund of almost \$4,000 for tax year 2014. He paid some debts, helped out his mother with some of the money, and bought clothing and other items for his children. (Tr. 67-68.) He has about \$13,000 in his 401(k) at work. He has two loans from his 401(k) obtained in 2012 for \$3,300 to cover some utility bills (Tr. 69-70, 83) and in 2014 for \$1,400 or \$1,500 to pay his spouse's car taxes. (Tr. 83.) He is repaying the loans at \$33 and \$19 per week. (Tr. 80-81.) He no longer has any active credit-card accounts. He tries to avoid using credit because "[he] made so many mistakes with it." (Tr. 86.) He described his household budget as "pretty tight." (Tr. 87.) Since the beginning of the year, they have had a little bit of extra money, but they are still trying to catch up on their expenses. (Tr. 87.) He and his spouse have \$150 in their checking account and no savings apart from the \$600 set aside for a house. (Tr. 80.)

## **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.

The evidence establishes that Applicant fell behind on 11 accounts totaling approximately \$33,987, a significant amount, but less than the \$59,672 alleged in the SOR. Applicant's record of delinquency raises security concerns under AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial

obligations.” Additionally, a bank placed an \$8,500 personal-loan debt for collection, which was paid through attachment of Applicant’s and his mother’s assets. That debt cannot provide a basis for disqualification since it was not alleged, but it shows the extent to which Applicant mismanaged his personal credit.

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, but only to the debts in in SOR ¶ 1.g (duplicated in ¶ 1.o) and the debt in SOR ¶ 1.l (duplicated in ¶ 1.n), which were respectively satisfied in August 2013 and September 2012, well before the SOR was issued. Applicant has not made any payments on the other debts, despite his full-time employment since September 2012.

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,” has little applicability in this case. Applicant stopped paying on the accounts in SOR ¶¶ 1.h, 1.j, and 1.l before he became unemployed in late January 2010. His eight months of unemployment further compromised the household finances, but AG ¶ 20(b) does not apply because he was terminated for cause. His spouse’s short-term disability status around the birth of their youngest child in July 2012 mitigates his failure to make payments on his delinquent accounts around that time. However, Applicant’s hourly wage has incrementally increased to where he is now earning \$21.56 an hour. Around September or October 2015, his spouse was given a salaried position with an increase in her wages. Despite the stabilization of their household income, Applicant has made no payments on his delinquent debts since he satisfied the credit card debt in SOR ¶ 1.g in August 2013. Applicant has not acted fully responsibly toward his creditors.

Applicant’s satisfaction of the \$5,484 judgment (SOR ¶ 1.l) in September 2012, and his settlement, albeit for less than its full balance, of the \$920 credit card debt in SOR ¶ 1.g, warrant some consideration of 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.” Applicant also showed good faith when he attempted a debt consolidation sometime before his December 2012 OPM interview. However, he made only a couple of \$192 payments. He has not made enough progress toward resolving his delinquencies to fully mitigate the financial concerns under either AG ¶ 20(c) or AG ¶ 20(d).

Applicant has made a favorable change in his financial habits by no longer relying on credit cards for purchases. He brought his car loan current in March 2015. However, as of his hearing, he was still playing catch-up on household expenses. He had to borrow from his 401(k) at work to pay his spouse’s car taxes and to pay his utilities. He had no plan established to address his past-due debt, which even after paying the debts in SOR ¶¶ 1.g and 1.l exceeds \$33,000 because of the interest on the timeshare debt. He expressed an intention to consolidate his debts at some future date, but the DOHA Appeal Board has



long held that promises to pay debts are not a substitute for a track record of timely payments. See ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). Despite paying only occasional rent to his mother, Applicant had only \$150 in checking deposits and no savings apart from the \$600 set aside to buy a house when he can afford to do so. It is unclear that he has the financial means or wherewithal to address his delinquent debt in the near future. The financial considerations concerns are not fully mitigated.

### **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.

The DOHA Appeal Board has held that an applicant is not required to establish that he has paid each debt in the SOR, or even that the first debts paid be those in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. See ISCR 07-06482 (App. Bd. May 21, 2008). Applicant has not been sufficiently proactive about resolving the issues of concern to the DOD. He has not presented a household budget from which I could conclude that his financial situation is sufficiently stable to where he could be counted on to make payments on his delinquent debts. 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). After considering all the facts and circumstances, it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

### **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

Subparagraphs 1.a-1.f:           Against 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.

Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraphs 1.k-1.s:	For Applicant <sup>2</sup>

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge

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<sup>2</sup> SOR ¶ 1.l is found for Applicant because it has been paid. SOR ¶¶ 1.k and 1.m–1.s are duplicate listings and do not represent additional debts.