



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-02309

**Appearances**

For Government: Nicole Smith, Esq., Department Counsel

For Applicant: *Pro se*

09/20/2016

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility to access classified information is granted.

**Statement of Case**

On November 6, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865 (E.O. 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 (AGs) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on December 7, 2015, and requested a hearing. The case was assigned to me on April 1, 2016, and scheduled for hearing on May 26,

2016. At the hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on four witnesses (including himself) and six exhibits (AEs A-F). The transcript (Tr.) was received on June 6, 2016.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with updated debt clarifications on his student loans and medical debts. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded ten days to respond. Within the time permitted, Applicant supplemented the record with documented clarifications of his student loan accounts. Applicant's submissions were admitted without objection as AE G.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated six delinquent debts exceeding \$20,000. Allegedly, each of the debts remain delinquent.

In his response to the SOR, Applicant admitted each of the alleged delinquent debts with explanations. He claimed he set up a payment plan of \$281 a month (beginning in November 2015) and has brought his account with creditor 1.a into current status. He claimed his two medical debts (creditors 1.b and 1.c) resulted from his father needing a kidney transplant, and has set up a payment plan of \$500 a month. He claimed he contacted creditor 1.d about the \$24 debt covered by subparagraph and was told the account could not be located. He claimed he paid the creditor 1.e and 1.f debts in full. And he claimed he would have paid more on his past-due debts but ran out of money.

### **Findings of Fact**

Applicant is a 37-year-old inspector of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted are incorporated herein. Additional findings will follow.

### **Background**

Applicant has never married and has no children. He attended electronics engineering classes at a technical institute between December 2009 and March 2012 but has not to date obtained a degree or diploma. (GE 1; Tr. 71-72) He is currently taking classes to complete his Associate's degree. (Tr. 72) He claimed no military service. Applicant currently resides with his parents. (Tr. 38)

Applicant has worked for his current employer since March 2014 as a forklift operator. (GE 1; Tr. 39) He worked for assorted employers between June 2005 and November 2013. He reported recurrent periods of unemployment between January 2004 and March 2014. (GE 1; Tr. 37, 40) During these unemployment periods, he survived on monies earned from low-paying odd jobs. (Tr. 37, 40-41)

## **Applicant's finances**

Applicant accumulated a number of delinquent debts between 2012 and 2014 while partially employed. (GEs 1-4) Altogether, Applicant accumulated six delinquent debts exceeding \$20,000. Most of these debts represented delinquent student loans totaling \$14,129 (creditor 1.a) and medical debts totaling \$6,750 (creditors 1.b and 1.c). (GEs 2-4 and AEs A, C, and G; Tr. 43)

Applicant's student loans with creditor 1.a were dispensed between December 2009 and March 2012, and are comprised of 13 individual student loans totaling \$28,156 (loans 1-13). Each of these 13 student loans were Government-subsidized in whole or in part with Pell Grants and are documented with payment histories. (AEs C and G; Tr. 43-44) The parts of the loans that were not subsidized (totaling \$9,234) remained Applicant's personal responsibility and accrued annual interest at varying rates. For the first two years of their creation, the loans were deferred. (Tr. 47) By 2015, his deferments had ended, and he became responsible for making monthly payments on the loans. (Tr. 47) In December 2015, he completed a payment plan with creditor 1.a covering the individual loans. Under the terms of his payment plan, he pays a total of \$281 a month on two separate consolidated loans. (AEs C and G; Tr. 48-49, 61-63)

Applicant's two medical debts were incurred between January 2011 and January 2012. (GEs 3-4) He attributed the debts to medical expenses associated with his 2013 testing for kidney transplant compatibility with his father. (Tr. 64-67) His father was diagnosed with diabetes in the mid-2000s that required treatment for kidney disease. (Tr. GE 2; Tr. 33) His father's treatments included dialysis which was not fully covered by insurance and placed ensuing financial strains on his entire family. (Tr. 33-35) While his father eventually received a kidney transplant after spending six years on the waiting list, Applicant did not provide a good match and was not accepted as a kidney donor. (Tr. 34-36)

Applicant could not recall receiving any hospital billings following his testing procedures. (Tr. 64-65) Initially, he understood that the medical procedures performed on him to ascertain his suitability as a kidney donor were covered by his father's medical insurance. (Tr. 58) He later learned in his 2014 interview with an agent of the Office of Personnel Management (OPM) that his testing procedures were not covered. (Tr. 58) In his attempted checks with his father's transplant coordinators following his OPM interview, he never received any follow-up response. (Tr. 63) So, at this point, it remains unclear whether (a) Applicant's medical testing procedures were covered by insurance, and (b) whether the medical bills belong to Applicant or his father with the same name. (GEs 3-4; Tr. 60-61)

Relying on only odd jobs between 2007 and 2013, Applicant encountered difficulties covering the medical expenses as the only working member in his family able to assume his father's accrued medical debts. (Tr. 36-37) The accrued expenses totaled \$6,750 and are covered by creditors 1.b and 1.c. (GEs 1-2; Tr. 61-62) Applicant's

remaining debts entail a small school debt of \$24 that the creditor (creditor 1.d) could not locate (GEs 2-4 and AE D) and two utility bills for \$543 and \$275, respectively, that are covered by subparagraphs 1.e and 1.f. (GEs 2-4; Tr. 51-52) Credit reports reveal that these utility accounts were created in 2012 (creditor 1.f) and 2014 (creditor 1.e).

Full satisfaction of Applicant's student loan debts are documented by his evidentiary submissions. (AEs C and G) His medical debt history reflects payments totaling approximately \$1,922 between December 2015 and May 2016, leaving a balance due of \$5,125 as of May 6, 2016. (AE B) Under his repayment agreement, Applicant is committed to making \$500 monthly payments to the collection agent of creditors 1.b and 1.c between May 2016 and February 2017 to discharge both debts. (AE B; Tr. 61-63) Applicant also documented payment of his utility bills that no longer appear on his credit report. (AEs A and E-F) These remaining debts are fully satisfied.

### **Character References**

Applicant is well-regarded by his employer's facility security officer (FSO) who is familiar with Applicant's financial issues. She credited him with doing all he could do to resolve his debts and stabilize his finances. (Tr. 76-81) Other colleagues describe Applicant as a responsible professional who has seized responsibility for his debts. (Tr. 85-95) His sister extolled his efforts to pay the listed debts associated with his father's pursuit of a kidney transplant. And she praised his financial commitments to his family to support their personal needs with the \$1,200 monthly remainder he retains. (Tr. 79-80)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and any of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather,

the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of E. O. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant’s history of accruing delinquent accounts between 2010 and 2015. His debts consist primarily of delinquent student loans and medical debts associated with testing procedures designed to determine his donor suitability. His history of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant attributed his delinquent debts to recurrent periods of unemployment, low-paying jobs, and misunderstandings over payment responsibility for the testing procedures arranged to ascertain Applicant’s suitability as a kidney donor for his father. His problems merit application of MC ¶ 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.” His financial affairs have improved considerably in the past two years with his income increases from his current employment, which have enabled him to fully address his listed debts.

Over the course of the last two years, Applicant has reached out to his listed creditors and addressed his debts with both pay-offs and payment plans. His efforts reflect responsible payment efforts under all of the circumstances considered and enable him to apply the full benefits of MC ¶ 20(b). His repayment efforts also enable him to invoke MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” to the facts of his case. Prospects for his fulfilling the payment conditions of his payment agreement with creditors 1.b and 1.c are good.

Based on the evidence presented, Applicant is able to demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's considerable efforts taken to pay or otherwise resolve his listed debts with the resources available to him enable him to meet the Appeal Board's requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant provided character references from his FSO, co-workers, and sister who know him and vouch for his dependability and trustworthiness. Applicant's documented payment efforts are substantial and enable him to demonstrate the level of trustworthiness, reliability, and good judgment required to meet minimum security clearance eligibility criteria.

Considering all of the circumstances surrounding Applicant's delinquent debt accruals and his substantial repayment efforts, his actions to date in addressing his finances are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.f of Guideline F.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT**

Subparas. 1.a-1.f:

For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge





