



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-02386
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia Esq., Department Counsel  
For Applicant: *Pro se*

06/07/2017

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**Decision**

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 29, 2012. On October 21, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 24, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 7, 2016 and sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 6. He was given an opportunity to file objections and submit material to refute, extenuate, or

mitigate the Government's evidence. He received the FORM on April 26, 2016, and timely submitted his response on May 20, 2016, to which the Government did not object. Applicant included seven attachments with his FORM response that I have marked as Applicant Exhibits (AX) 1 through 7. Items 1 and 2 are the pleadings in the case. Items 3 through 6 and AX 1 through 7 are admitted into evidence. The case was assigned to me on March 20, 2017. On May 17, 2017, I emailed the parties to reopen the record in order to afford Applicant the opportunity to provide an updated FORM response. That email has been marked as Appellate Exhibit I. Applicant timely submitted additional information and documents that I admitted into evidence, without objection, as AX 8 through 14.

### **Findings of Fact<sup>1</sup>**

Applicant is 41 years old. He has never been married and has no children. He received a Bachelor of Arts degree in 1997. Applicant began experiencing financial difficulties in 2008. He attributes his delinquent debts to periods of either unemployment or underemployment that affected his ability to pay his mortgage and other debts.

From 2004 through 2009, Applicant worked as a security guard for federal contractors. In 2009, he transitioned to the information-technology field where he has worked primarily for federal contractors. Applicant reported the following periods of unemployment in his 2012 SCA: July 2009 through November 2009; September 2010 through October 2010; March 2011 through May 2011; and February 2012 through July 2012. Applicant was fired in July 2009 and March 2011. He denies any wrongdoing in each instance.

In November 2012, Applicant was unemployed and receiving employment benefits, but had a pending offer of employment contingent on obtaining a security clearance. He remains sponsored by that federal contractor. The record is silent as to his employment status from that point through approximately March 2017. Since at least March 2017, Applicant has been employed by two other employers. The DOD previously granted Applicant security clearances in approximately 2003 and 2010.<sup>2</sup>

The SOR alleges that Applicant failed to file and pay federal income taxes, as required, in tax year 2011 (SOR ¶ 1.a), and that he filed a Chapter 13 bankruptcy petition in 2014 (SOR ¶ 1.i.). It also alleges 11 delinquent debts, including mortgage and state tax debt, totaling \$176,518 (SOR ¶¶ 1.b – 1.h, 1.j – 1.m).<sup>3</sup> Applicant denied each

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<sup>1</sup> These facts are extracted from Applicant's SOR answer (Item 2), his SCA (Item 3), and the summary of his clearance interview (Item 4). I considered that Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 4. Applicant was also informed that he was entitled to object to consideration of Item 4 on the ground that it was not authenticated. Applicant did neither in his response to the FORM, or his supplemental FORM submission.

<sup>2</sup> See also AX 11 through 13.

<sup>3</sup> Items 5 and 6.

of the 13 SOR allegations on the basis that the debts were either resolved or being resolved.

Because he did not have the funds to pay the taxes that he owed, Applicant did not timely file his 2010 state income tax returns or his 2011 federal and state income tax returns. On an unspecified date prior to November 2012, he filed his 2010 and 2011 state returns, and paid the \$65 that he owed for both years. In 2013, he filed his 2011 federal return and received a refund of \$412 from the Internal Revenue Service (IRS).<sup>4</sup>

Although not alleged in the SOR, Applicant incurred additional federal income tax debt totaling \$3,225 from tax years 2012 through 2014, and state tax debt totaling \$6,200 for delinquent income and property tax debt from an unspecified period after tax year 2011.<sup>5</sup> In April 2016, he established installment agreements to pay both debts: the IRS \$50 per month beginning June 2016, and the state \$88 per month beginning May 2016.<sup>6</sup>

The 2016 IRS agreement never went into effect because Applicant failed to submit a form that he says the IRS never provided to him.<sup>7</sup> In March 2017, Applicant established another installment agreement to pay the IRS \$50 per month for tax year 2014, without addressing the status of his 2012 balance, if any.<sup>8</sup> Applicant paid \$500 to the IRS on May 22, 2017,<sup>9</sup> and stated that the IRS applied his federal income tax refund of \$929 to pay his IRS tax debt.<sup>10</sup> He made at least two payments of \$116 each to the state, one in March 2017 and the other in April 2017, and stated that he has otherwise been timely with his payments pursuant to the 2016 state agreement.<sup>11</sup>

Applicant completed a seven-month certification program at a university in November 2006. He also took classes at another university from August 2005 through November 2011. He took out student loans for both. The record is not entirely clear as to the total amount of his outstanding student loans, including those in deferment status.

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<sup>4</sup> See also AX 2. I considered that Applicant *estimated* that he owed state and federal taxes for tax years 2010 and 2011 totaling approximately \$4,700 on his September 2012 eQIP, which apparently served as the basis for the allegation in SOR ¶ 1.b. However, during his November 2012 clearance interview, he provided the *actual* amounts. He paid a total of \$65 for his 2010 and 2011 state taxes, and received a \$412 refund of his 2011 federal taxes.

<sup>5</sup> AX 4 and 5. Since these debts were not alleged in the SOR, I will consider them only to evaluate mitigation and whole person.

<sup>6</sup> AX 3, 4, and 5.

<sup>7</sup> AX 13.

<sup>8</sup> AX 12.

<sup>9</sup> AX 14.

<sup>10</sup> AX 13.

<sup>11</sup> AX 11 and 13.

However, at least two of them became delinquent in the total approximate amount of \$4,090 (SOR ¶ 1.g and 1.j).

In March 2016, Applicant was accepted into a rehabilitation program to pay the student loan alleged in SOR ¶ 1.g (\$1,958).<sup>12</sup> He met the obligations of that program in January 2017.<sup>13</sup> In March 2017, Applicant enrolled in an auto-pay program with a new lender to pay \$30 per month to satisfy the debt alleged in SOR ¶ 1.g, which he timely paid in March and April 2017.<sup>14</sup> Applicant stated that he made payment arrangements to pay the debt alleged in SOR ¶ 1.j (\$2,132) as of November 2015. However, he did not provide documents corroborating either the agreement or any payments made.

Applicant purchased a condominium in June 2007 for \$304,600, which he financed with a mortgage loan. Due to unemployment, Applicant fell behind in his mortgage payments. By October 2012, his lender had initiated foreclosure proceedings.<sup>15</sup> As of February 2015, Applicant had been 120 days or more past due on his monthly payments in the approximate amount of \$148,093 (SOR ¶ 1.c), with a remaining loan balance of \$298,476.<sup>16</sup> Applicant attempted unsuccessfully to modify his mortgage loan on at least ten occasions. Applicant also fell behind on paying his condominium association fees, for which his creditor obtained three judgments against him in 2010, 2013, and 2014 totaling \$12,679 (SOR ¶¶ 1.d through 1.f).<sup>17</sup>

Applicant was delinquent in his payments for two credit-card accounts totaling \$6,359 (SOR ¶¶ 1.h and 1.i), a \$257 medical account (SOR ¶ 1.k), and a \$340 gym-membership account (SOR ¶ 1.m). His medical debt resulted from charges not covered by his health insurance.

On a date not specified in the record, Applicant filed a chapter 13 bankruptcy petition to avoid a foreclosure action on his condominium and address his other delinquent debts. Because it was not feasible, on another date not specified in the record, the case was converted to a chapter 7 bankruptcy.<sup>18</sup> His bankruptcy debts,

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<sup>12</sup> AX 6.

<sup>13</sup> AX 10.

<sup>14</sup> AX 9 and 11.

<sup>15</sup> See also AX 5.

<sup>16</sup> See also Item 6.

<sup>17</sup> See also AX 13.

<sup>18</sup> AX 1 and 7. I considered that AX 1 contains a copy of an unsigned Chapter 7 bankruptcy petition dated November 2015, while AX 7 contains a discharge order dated September 2015. Both documents contain the same case number. AX 7 also contains a copy of a November 2015 letter prepared by Applicant's bankruptcy attorney confirming the discharge. I do not find that the discrepancy as to the date of the petition materially alters the relevant facts, as the petition was likely printed by the attorney along with the letter he prepared.

including those alleged in SOR ¶¶ 1.c through 1.f, 1.h, and 1.k through 1.m, were discharged in September 2015. His tax and student loan debts were not discharged.

As of April 2017, there remained a balance of \$4,653 in Applicant's checking account; and \$4,867, as of May 2017.<sup>19</sup> Applicant has not incurred any new delinquent debt since 2014. While the record does specifically address it, I conclude that Applicant likely completed the financial counseling typically required during the course of his bankruptcy.

## **Policies**

"[N]o one has a 'right' to a security clearance."<sup>20</sup> As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information."<sup>21</sup> The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>22</sup>

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>23</sup> Thus, a decision to deny a security clearance is merely an indication the applicant has not met

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<sup>19</sup> AX 11.

<sup>20</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>21</sup> *Egan* at 527.

<sup>22</sup> EO 10865 § 2.

<sup>23</sup> EO 10865 § 7.

the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.<sup>24</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>25</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>26</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>27</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>28</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>29</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>30</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline is set out 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified

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<sup>24</sup> See *Egan*, 484 U.S. at 531.

<sup>25</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>26</sup> See ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993).

<sup>27</sup> Directive ¶ E3.1.15.

<sup>28</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>29</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>30</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>31</sup>

Applicant's admissions, corroborated by his credit bureau reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

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;

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.

The SOR alleges that Applicant failed to file and pay federal income taxes, as required, in tax year 2011 (SOR ¶ 1.a), and owed state taxes of \$4,700 for tax years 2010 through 2011 (SOR ¶ 1.b). Prior to issuance of the SOR, the Applicant received a refund after he filed his 2011 federal tax returns late, and paid his 2010 and 2011 state taxes late in an amount that totaled \$65 and not \$4,700. Moreover, Applicant incurred state and federal tax debts for additional tax years not alleged.

Whether or not Applicant could afford to pay his federal and state taxes, he was required to timely file his federal and state tax returns. Therefore, his failure to timely file his 2010 state return and his 2011 state and federal returns and to timely pay any associated taxes owed raise potential concerns about his judgment, reliability, and trustworthiness. Before his November 2012 clearance interview, he filed and paid his 2010 and 2011 state returns and taxes. Before the issuance of his October 2015 SOR, he received a refund after filing his 2011 federal return in 2013. He incurred additional federal and state tax debts for years after 2011 that were not alleged in the SOR. Applicant not only resolved his 2010 and 2011 tax issues well before issuance of the

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<sup>31</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

SOR, but he has now also established a reasonable plan to pay his unalleged federal and state tax debts. Considering the facts and the circumstances under which the tax debts occurred and the fact that they have now been or are being resolved, I conclude that Applicant has mitigated the concerns raised in SOR ¶¶ 1.a and 1.b. Moreover, his unalleged tax debts do not pose any additional security concerns.

Applicant resolved the debts alleged in SOR ¶¶ 1.c – 1.f, 1.h, and 1.k – 1.m through bankruptcy, which is an acceptable form of debt resolution. He is in the process of resolving the debts alleged in SOR ¶¶ 1.g and 1.j. Accordingly, I conclude that Applicant has mitigated the concerns alleged in SOR ¶¶ 1.c through 1.m.

AG ¶ 20(a) is established. Applicant made substantial progress in addressing his delinquent debts. While he is not currently debt-free, his finances do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>32</sup>

AG ¶ 20(b) is established. Applicant's loss of employment and underemployment were circumstances that were unexpected and beyond his control. Since then, he has acted responsibly to address his delinquent debts.

AG ¶ 20(c) is established. Applicant likely received financial counseling during his bankruptcy proceedings. He is in the process of resolving his student loan debts and his unalleged state and federal tax debts. Given the circumstances under which he incurred them and the reasonable steps that he has taken to pay or otherwise resolve them, I conclude that his financial problems are now under control. Applicant's actions, both before and after the issuance of his SOR, demonstrate that he will follow through with the agreements that he established to pay his remaining delinquent debts.

AG ¶ 20(d) is established. Applicant has made good-faith efforts to address his SOR debt and his unalleged tax debts. Before the SOR was issued, after numerous unsuccessful attempts to work with his lender to modify his home mortgage loan, Applicant resolved eight of the 11 debts alleged in the SOR (including his home mortgage loan) through a bankruptcy discharge. Applicant not only established payment agreements to pay his unalleged state and federal tax debts and the student loan debts alleged in SOR ¶¶ 1.g, but also made payments to each creditor. I find that Applicant articulated a reasonable plan to resolve the debt alleged in SOR ¶ 1.j despite his failure to produce a copy of the agreement or payments made pursuant thereto.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-

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<sup>32</sup> ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).



person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his financial indebtedness, and by his failure to timely file his income tax returns and pay his income taxes. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.m: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine  
Administrative Judge