



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-02544
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Charles C. Hale, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. Clearance is denied.

**Statement of the Case**

On October 21, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish his continued eligibility for a security clearance.

On January 12, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified at the hearing and the exhibits offered by the parties at hearing and post-hearing were admitted into the administrative record without objection. (Government Exhibits 1 – 5 and Applicant’s Exhibits A – Q.) The transcript (Tr.) was received on January 19, 2017, and the record closed on February 10, 2017.<sup>2</sup>

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

<sup>2</sup> Prehearing correspondence and the notice of hearing were marked Appellate Exhibits I and II.

## Findings of Fact

Applicant, 51, is married and has two adult-age children. He served in the U.S. military from 1984 to 2000, deploying overseas several times. For a time, he held a top secret clearance as part of a prestigious military unit directly supporting the executive branch. He filled out the paperwork to reenlist and continue his military career, but due to an administrative error the paperwork was not forwarded and he was discharged upon completion of his last enlistment contract. He received an honorable discharge for his 16 years of service. He recently started receiving VA benefits for a service-connected disability. (Tr. 24-25, 39-40)

Applicant is an aircraft mechanic and has been with his current employer since about 2002. He submitted a security clearance application (SCA) in 2012 in connection with a periodic reinvestigation of his clearance. His job position requires that he maintain a clearance. (Tr. 36)

Applicant started having difficulty paying his bills in the early 2000s. He did not have a sufficient amount in taxes withheld from his paycheck and was unable to pay the taxes that he owed. He entered into successive installment agreements with the IRS to satisfy his back taxes, but the resulting decrease in disposable income left him unable to pay other household debts. His pay was garnished by at least one of his creditors. He also incurred increased expenses helping one of his children pay their college-related expenses and for a short time in 2016 was the sole wage earner in the family. He presented documentation post-hearing confirming the installment agreements he entered into with the IRS and the payments he has made over the years to satisfy back taxes for tax years 2004 – 2007, 2013, and 2015. He also presented documentation showing that his wages were garnished in 2010 to satisfy a \$4,700 delinquent credit card account.<sup>3</sup> (Tr. 25-28, 40-41, 46-47; Exhibit 2; Exhibits A – Q)

The SOR lists six delinquent consumer-related debts totaling about \$18,000.<sup>4</sup> Applicant owes nearly half of this amount for two charged-off credit card accounts. (SOR 1.a and 1.c) He stopped paying on these accounts in either 2002 or 2003. During his clearance interview in February 2013, Applicant stated that his plan was to contact the creditor for both accounts and set up a payment plan. He expected to start making payments the following month. As of the hearing, Applicant had not contacted the creditor for these two accounts and had not settled, paid, or otherwise resolved these debts. (Tr. 29-30, 42-45, Exhibit 2 at 3; Exhibits 3 - 4)

The other major debt listed in the SOR is for a deficiency balance of approximately \$7,500 that Applicant owes for his former car. (SOR 1.b) The car was repossessed in

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<sup>3</sup> The tax-related financial problems and past garnishment were not alleged and, thus, were not considered as a disqualifying matter. They were only considered in the context of Applicant's explanation as to the circumstances that led to his present financial circumstances.

<sup>4</sup> The three medical debts referenced in SOR 1.g – 1.i, totaling about \$150, are immaterial in assessing Applicant's security clearance eligibility and are resolved in his favor.

approximately 2013, and subsequently the creditor secured a judgment against Applicant. Applicant testified that the creditor had agreed to let him pay the judgment through a payment plan, but he has not heard from the creditor in three to four years. He provided no documentation to corroborate this aspect of his testimony. (Tr. 30-32, 42-45; Exhibit 1; Exhibit 2 at 2-3; Exhibit 3 - Exhibit 5)

The other three relatively minor consumer debts listed in the SOR total less than \$700. (SOR 1.d – 1.f) Applicant acknowledges he owes these delinquent debts and claimed at hearing that he or his wife had paid at least one of them. He provided no documentation showing that he had addressed these three debts or that they had otherwise been resolved. (Tr. 32-33, 42-45; Exhibit 3 - Exhibit 4)

Applicant's current bi-weekly net salary is between \$1,200 and \$1,600. His wife works as a manager at a retail clothing store and earns approximately \$265 - \$300 a week. Applicant estimates that, after paying recurring monthly expenses, he has about \$400 or \$500 in disposable income each month to pay debts and address unexpected household expenses. He has not received financial or credit counseling. He is unaware whether his employer provides such counseling through an employee assistance program. He blames his own "pride and ignorance" for not seeking professional advice in how to better manage his finances. (Tr. 37-38, 42)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative

judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

## **Analysis**

### **Guideline F, Financial Considerations**

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.

As stated in the relevant portion of AG ¶ 18 quoted above, the security concern at issue is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt cast doubt upon a person’s judgment, self-control, and other qualities essential to protecting classified information.<sup>5</sup>

In assessing Applicant’s case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

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;

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<sup>5</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant defaulted on two of the SOR debts over ten years ago. He has continued to accrue delinquent debt to the present day.<sup>6</sup> He promised during his February 2013 clearance interview to address some of the SOR debts, but took no action. He has been aware since at least October 2015, when he received the SOR, that his delinquent debts, including the three minor SOR debts totaling less than \$700, raised a security concern. He again took no action to address these debts. Applicant recognizes that he needs to obtain professional financial or credit counseling, but has yet to do so.<sup>7</sup> AG ¶¶ 19(a) and (c) apply. None of the mitigating conditions fully apply.

Individuals applying for a security clearance are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.<sup>8</sup> Applicant failed to meet his burden.

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<sup>6</sup> Applicant is likely no longer legally liable for the two credit card debts referenced in SOR 1.a and 1.c. However, the Guideline F concern is not dependent on whether or not a debt remains legally enforceable. Instead, a judge examines the circumstances under which the debt arose and Applicant's response to it in assessing whether a security concern presently exists. Here, Applicant's failure to address the six SOR debts at 1.a – 1.f and lack of evidence that his financial situation is under control raise serious concerns about his eligibility for continued access to classified information. *Contrast with* ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017), where the Board cited to favorable evidence showing that the applicant took responsible action vis-à-vis his debt and the debts unenforceability in remanding an unfavorable decision.

<sup>7</sup> ISCR Case No. 14-04926 at 2 (App. Bd. Dec. 20, 2016) ("A person who fails repeatedly to fulfill legal obligations, such as . . . addressing other debts in a reasonable manner, does not demonstrate the high degree of reliability required of those granted access to classified information.").

<sup>8</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

## **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the whole-person factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant has held a security clearance for many years and honorably served in the military. I found him credible and sincere in his desire to resolve his delinquent accounts. However, he has yet to take the necessary responsible steps to put his financial house in order despite being aware for some time that his delinquent accounts placed his security clearance eligibility (and continued employment that is dependent on maintaining a clearance) in jeopardy. Applicant may in the future be able to re-establish his security clearance eligibility by showing that he is responsibly managing his personal finances in the manner expected of all clearance holders. At present, however, the questions and doubts about his eligibility, which were raised by his financial situation, remain.

## **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 (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraphs 1.g – 1.i:	For Applicant

## **Conclusion**

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

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Francisco Mendez  
Administrative Judge