



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



In the matter of: )  
)  
) ISCR Case No. 15-02643  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

04/24/2017

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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. He resolved over \$43,000 in debt through Chapter 7 bankruptcy before the Government issued the Statement of Reasons (SOR). The record does not contain any evidence of ongoing financial problems. Clearance is granted.

**Statement of the Case**

On September 29, 2015, the DOD issued a 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 Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

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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 answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on February 2, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on February 11, 2016, and did not respond. The case was assigned to me on May 24, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 3, and 5 through 8, without objection. GE 4 is excluded as explained below.

### **Procedural Matters**

GE 4 is a report of investigation (ROI) summarizing the interview Applicant had with an investigator during his October 2014 background investigation. The interview, which contains adverse information, is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions him that if he fails to object to the admission of the interview summary in his response to the FORM that his failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM does not demonstrate that he understands the concepts of authentication, waiver, and admissibility. It also does not establish that he understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 4 is inadmissible and I have not considered it.

### **Findings of Fact**

Applicant, 33, has worked for his current employer since 2014. He completed a security clearance application, his first, in August 2014. Applicant disclosed that he planned to file for Chapter 7 bankruptcy protection. He filed the petition in February 2015, seeking relief from \$43,189 in debt. According to the bankruptcy petition, \$18,000 of that amount may have been for a duplicate account. The bankruptcy court discharged Applicant's debts in May 2015. The record does not contain any information about Applicant's finances after the discharge.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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.

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<sup>2</sup> GE 3.

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.

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.

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>3</sup>

The SOR contains one allegation, that Applicant filed for and received bankruptcy protection in 2015. The act of filing for bankruptcy protection may suggest that an application has financial problems that raise a security concern. Here, Applicant sought relief from \$43,000 of debt he incurred over nine years. This indicates that Applicant experienced a history of financial problems that resulted in an inability to pay his creditors, which is disqualifying.<sup>4</sup> Applicant filed for bankruptcy protection as a legitimate method of resolving his debt, which were discharged five months before the SOR issued. Applicant’s financial problems are resolved and the related security concerns mitigated.<sup>5</sup>

Based on the written record, I have no doubts 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). The record does not contain any evidence to suggest that Applicant has ongoing financial problems or habits that reflect negatively on his current security worthiness.

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<sup>3</sup> AG ¶ 18.

<sup>4</sup> AG ¶¶ 19(a) and (c).

<sup>5</sup> AG ¶ 20(c).

### **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, Financial Considerations:                      FOR APPLICANT

Subparagraph 1.a:    For Applicant

### **Conclusion**

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge