



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-02886  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Forman, Esq., Department Counsel  
For Applicant: *Pro se*

03/17/2017

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**Decision**

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CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86) on June 29, 2012. On November 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>1</sup>

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<sup>1</sup> The action was taken under Executive Order (Exec. Or.) 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 responded to the SOR on November 30, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on February 18, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 4, 2016 and submitted AE A and B, each with enclosures. He did not assert any objections to the Government's evidence. The Government's exhibits included in the FORM (Items 1 to 10) and Applicant's exhibits are admitted into evidence. The case was assigned to me on February 6, 2017.

### **Findings of Fact**

The SOR alleges a Chapter 13 Bankruptcy case that has liabilities totaling \$603,559, including delinquent federal and state taxes, student loans, and credit accounts. In addition, the SOR alleges three delinquent debts totaling approximately \$8,500. Applicant admitted all the allegations in the SOR, and provided explanations for each allegation.

Applicant is 50 years old and is employed by a defense contractor. He was awarded a bachelor's degree in 2004, an associate's degree in 2002, and various certifications from 2009 to 2011. He has been married since 1993, and previously married in 1986 and divorced in 1988. He has no children. His last reported job title was "information assurance." He served in the U.S. Navy, retiring in 2005, and has consistently held federal contracting jobs since 2005.<sup>2</sup> He has held a security clearance the entire time.

Applicant filed a Chapter 7 Bankruptcy case in 1990, which included all of his debts. The bankruptcy was discharged in 1991. He claimed his ex-spouse mismanaged his finances, which resulted in his need to file bankruptcy. After closing the bankruptcy, Applicant remarried in 1993 and his new spouse was employed full-time. He continued to accumulate consumer credit debts. In 1999, he enlisted the help of a financial service company to consolidate and pay his debts at the time.

Applicant claimed his recent inability to pay debts resulted from his spouse's loss of income in September 2009. She was discharged from her credit union position, and was out of work for three to four months. The state denied her application for unemployment benefits because she was discharged because of cash shortages. She successfully challenged that determination and was awarded unemployment benefits, beginning in December 2009 to early 2011. She also obtained a part-time job in January 2010, which supplemented her unemployment benefits, and a full-time job in October 2011. By 2011, his spouse earned \$538 per month less than she did in 2009 while working

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<sup>2</sup> Item 3.

for the credit union. Applicant also increased his income by applying for “Post-911 GI Bill” benefits that paid a monthly housing allowance while he was enrolled in school. During this time, Applicant and his spouse used credit cards and a line of credit to pay monthly expenses they could not cover with their income. Applicant entered into a federal tax repayment plan for unpaid 2009 and 2010 taxes. By 2011, his creditors were seeking payments and his deferred student loans were becoming due. Applicant filed a Chapter 13 Bankruptcy case in February 2012.<sup>3</sup>

The Chapter 13 petition listed \$603,558 in liabilities, including secured creditors for a mortgage, timeshare, and four vehicles to include a 2007 Saturn Aura purchased in 2007, a 2008 motorcycle purchased in 2008, a 2008 Ford Mustang purchased in 2009, and a 2008 Nissan Frontier purchased in 2009. Unsecured priority claims included \$278 owed for 2011 state income taxes, and \$17,164 for three years of unpaid federal income taxes. Unsecured nonpriority claims totaled \$321,678, including \$170,133 in student loans and about \$145,000 in consumer credit debt. Applicant began making payments according to the Chapter 13 plan in March 2012, and has been making consistent monthly payments of \$1,662.50 toward the plan. He expects to complete the plan in 2017.<sup>4</sup>

Applicant remains responsible for a large portion of his student loans and his mortgage after the bankruptcy is concluded. The bankruptcy trustee is making payments for interest and penalties owed to federal tax authorities, and he arranged a repayment plan with the Internal Revenue Service (IRS) before filing bankruptcy. IRS account transcripts for tax year 2008 show he had an adjusted gross income of \$111,492; for 2009, \$122,739; and for 2011, \$119,018. He reported an income of \$118,654 in his 2012 bankruptcy filing.

The state tax debt was included in the Chapter 13 Bankruptcy, which Applicant claims is paid-in-full. A small medical debt alleged in SOR ¶ 1.b was paid. Applicant challenges another medical debt, SOR ¶ 1.d for \$2,884, as misreported on his credit report. The debt is supported by a March 2015 credit bureau report (CBR), and there is insufficient evidence that Applicant successfully disputed the debt with the credit bureaus or creditor. Another credit account for \$4,683 alleged in the SOR (¶ 1.c) was included in the bankruptcy.

Applicant completed mandatory credit counseling to file a bankruptcy petition, but there is no documentary evidence of credit counseling or budgeting assistance before filing Chapter 13. I was unable to further inquire into specific reasons for his debts, his current financial status, and the likelihood of future financial difficulties since he elected to have his case decided without a hearing.

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<sup>3</sup> When questioned by the Office of Personnel Management (OPM) investigator in October 2012 about his delinquent debts, Applicant was generally unaware of specifics details.

<sup>4</sup> No evidence of completion or his current financial status has been submitted.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, 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(a), 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.

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 clearance decision.<sup>5</sup> In *Department of Navy v. Egan*<sup>6</sup>, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>7</sup>

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.<sup>8</sup>

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive and classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or

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<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

<sup>6</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>7</sup> *Egan*, 484 U.S. at 531.

<sup>8</sup> *Egan*, 484 U.S. at 531.

inadvertently fail to safeguard sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive or classified information.

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**

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

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems and unsettled delinquent debts, including federal tax delinquencies. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:<sup>9</sup>

- (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;
- (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;

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<sup>9</sup> AG ¶ 20.f is not applicable.

(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;

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

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant has a history of financial overextension that led to two bankruptcies. Although the Chapter 7 Bankruptcy occurred some time ago and purportedly resulted from his divorce, it is instructive as to his propensity to accumulate debts that he is unable to satisfy when faced with a short-term financial obstacle. Despite a substantial income since at least 2009,<sup>10</sup> he has exhibited a willingness to use credit cards to pay living expenses rather than cut spending to conform to his income. For example, from 2007 to 2009, he purchased four new or nearly new vehicles, all financed. He indicated he used credit cards to pay expenses during his spouse's loss of income, despite his own substantial income, and has a history of paying the minimum balances on credit cards. He claimed he worked with a finance company to consolidate his debts, which is unusual after a Chapter 7 bankruptcy discharge, and has not detailed any financial counseling or budgeting assistance outside of the court-mandated requirement. Applicant's spending appears overextended, considering his income and family size. Finally, failing to pay federal and state income taxes when due creates a concern that Applicant is unwilling to

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<sup>10</sup> No recent income or expense records were provided except for tax transcripts for 2008, 2009, and 2011, and a 2012 bankruptcy income and expense filing.

follow rules and regulations. His short-term loss of income is not so substantial that it made payment of taxes and other debts impossible.

Although there is sufficient evidence to determine that Applicant's Chapter 13 plan will be soon completed, I continue to have doubts about his overall financial responsibility and willingness to live within his means. His financial issues remain recent and ongoing, and he has not shown that he is willing or able to maintain a financially prudent lifestyle and plan for changes in income or expenses. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to resolve his debts before filing bankruptcy. Even though a successful bankruptcy is evidence of debt resolution, it does not erase the concerns for an applicant's ability to manage his finances prudently and responsibly so that further financial problems are avoided. Divorce and a loss of family income are mitigating factors to consider, but the total financial liability carried by Applicant points to a more troubling trend of overspending, unreasonable accumulation of debt, and inattention to financial management.<sup>11</sup>

The totality of the delinquent debts, to include substantial student loans, credit card, and tax debts, leaves me with doubts about Applicant's overall financial condition and ability or willingness to face his financial responsibilities. They continue to cast doubt on his current reliability, trustworthiness, and good judgment, and leaves him vulnerable to the potential for pressure, coercion, exploitation, or duress.

### **Whole-Person Concept**

Under the whole-person concept, the 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. The 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

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<sup>11</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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.

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. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Applicant has not prudently managed his finances and has resorted to bankruptcy on two occasions after accumulating substantial debt. There is insufficient evidence to show that he attempted to cure his financial burden through other means, and his lack of reasonable financial management after a Chapter 7 bankruptcy, continued overspending, and failure to pay income taxes for three years, leaves me with doubts about his intent and ability to maintain financial solvency after his second bankruptcy is concluded. The Applicant is a mature adult, the conduct is serious and recurrent in which he knowingly and voluntarily participated, there is no evidence of permanent change of behavior, and the potential for pressure, coercion, exploitation, or duress remains.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

### **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 (2) and 1.b:	For Applicant
Subparagraph 1.a (1), (3) and (4), 1.c, and 1.d:	Against Applicant

### **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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Gregg A. Cervi  
Administrative Judge