



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



In the matter of: )  
)  
) ISCR Case No. 15-02995  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

05/18/2017

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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. While Applicant's financial problems may have been caused by events beyond his control, he failed to provide any evidence to mitigate the concerns raised by his history of delinquent debt.

**Statement of the Case**

On October 30, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.<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 January 26, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on February 4, 2016, and did not respond. The case was assigned to me on August 23, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 2, and 4 through 5, without objection. GE 3 is excluded as explained below.

### **Procedural Matters**

GE 3 is a report of investigation (ROI) summarizing the interview Applicant had with an investigator in October and December 2014. 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 or, specifically, to Footnote 1 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 3 is inadmissible and I have not considered it.

### **Findings of Fact**

Applicant, 38, has worked for a federal contractor since October 2005. He has held a security clearance for the duration of his employment. Applicant completed his most recent security clearance application in December 2015. He did not disclose any derogatory information. The ensuing investigation revealed that Applicant owes approximately \$23,800 on six delinquent accounts. The delinquent accounts and Applicant's failure to disclose them on his security clearance application served as the basis for the SOR allegations.<sup>3</sup>

Applicant admits that between 2005 and 2007, he and his wife experienced financial problems. They incurred debt during their efforts to adopt their daughter. In August 2007, Applicant enrolled in a debt consolidation program to resolve all of his debt. Believing his debt was resolved through the debt consolidation program, Applicant did not disclose any derogatory accounts on his security clearance application. Applicant did not learn that the debts alleged in SOR ¶¶ 1.a, 1.b. and 1.f, remained outstanding until his December 2014 interview with a background investigator. He claims to have resolved the debts in January 2015. Applicant did not provide any documentation to corroborate his claim. When he received the SOR in October 2015, Applicant learned about the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e. He believes the accounts became delinquent during the time he and his wife were experiencing marital problems, which ultimately ended in their separation in January 2014.

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<sup>2</sup> GE 1.

<sup>3</sup> GE 2.

Despite an admonishment in the FORM that documentation regarding the alleged accounts would be useful in adjudicating his case, Applicant did not provide any additional information about the status of the SOR accounts.<sup>4</sup>

## **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.

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**

### **Financial Considerations**

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>5</sup>

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<sup>4</sup> GE 1.

<sup>5</sup> AG ¶ 18.

The SOR alleges Applicant owes over \$23,800 in delinquent accounts. Applicant's admissions and GE 4, the credit report dated July 2014, establish the Government's *prima facie* case, that Applicant has a history of financial problems that remain unresolved.<sup>6</sup> The record is unclear about the current state of the debt. Applicant did not provide any documentation to corroborate his past efforts to resolve his delinquent accounts or their ultimate resolution. Although none of the alleged debts appears on GE 5, the most recent credit report in the record, this fact does not prove or establish that the debts have been resolved. The resulting ambiguity must be resolved in favor of the Government. While Applicant's financial problems were partially caused by events beyond his control, he did not provide enough information to warrant the application of the financial considerations mitigating conditions.

### **Personal Conduct, Guideline E**

Conduct involving a lack of candor or dishonesty, particularly, a failure to provide truthful and candid answers during the security process, raises questions about an individual's reliability, trustworthiness, and ability to protect classified information.<sup>7</sup> The SOR also alleges that Applicant deliberately failed to disclose his delinquent debt on his July 2014 security clearance application. Applicant denies the allegation. Proof of omission, alone, does not establish or prove an applicant's intent or state of mind when he completed the application. The record does not establish that Applicant intended to conceal adverse information from the Government. None of the personal conduct disqualifying conditions apply.

Based on the record, doubts remain about Applicant's ongoing suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant's favorable security clearance history is not enough to outweigh the security concerns raised by his derogatory financial record. Applicant failed to meet his burden of production and persuasion to refute or mitigate the SOR allegations. Applicant did not provide any evidence to show financial rehabilitation or reform. Accordingly, his request for continued access to classified information is denied.

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<sup>6</sup> AG ¶ 19(c).

<sup>7</sup> AG ¶ 15.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

Based on the record, 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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Nichole L. Noel  
Administrative Judge