



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-03352
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

11/07/2016

---

**Decision**

---

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial problems. Clearance is granted.

**Statement of the Case**

On November 23, 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 determination on the administrative (written) record (Answer).

On April 21, 2016, Department Counsel prepared her written case, known as a file of relevant material (FORM) and sent it to Applicant. With the FORM, Department Counsel forwarded to Applicant seven exhibits (Items 1 – 7) that the Government offers for admission into the record. Applicant submitted a response to the FORM (Response).

---

<sup>1</sup> This action was taken under Executive Order (E.O.) 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 using the previous version of the adjudicative guidelines, which were applicable to all industrial (contractor) security clearance cases falling under the jurisdiction of the Directive between September 1, 2006 and June 7, 2017.

The exhibits offered with the Answer, FORM, and Response are admitted into the record without objection.

On March 21, 2017, I was assigned the case. After receiving confirmation that Applicant remains sponsored for a security clearance, I reopened the record to allow the parties to submit current and relevant evidence regarding his eligibility.<sup>2</sup> Both sides submitted additional exhibits. Department Counsel's additional exhibit was marked Item 8, while Applicant's were marked Exhibits A – I. Without objection, these exhibits are admitted into the record. The record closed on June 27, 2017.<sup>3</sup>

## **Findings of Fact**

### *General Background*

Applicant, 55, was born in another country. When he was just a toddler, he was adopted by his parents, U.S. citizens. He became a U.S. citizen in approximately 1964, and has continuously resided in the United States since his adoption. He and his wife have been married for over 30 years and raised three children in the United States. They are currently separated.

Applicant earned two associate's degrees in 1996. He worked for his current employer, a defense contractor, from 1996 to 1999. He rejoined the company in 2003. He last went through a security clearance investigation in 1999. The current review was initiated when Applicant submitted a security clearance application in 2014.

### *Financial Issues*

Applicant has experienced financial problems over the last several years that are generally attributable to a failed construction business, his father's passing, and (purported) fraud committed by a technical school that he attended for a year. He addressed a majority of the debts that he incurred following each of these negative events by negotiating settlements and payment plans with his creditors. However, following his recent marital separation, he recognized that he had no other option but to file for Chapter 13 bankruptcy to address his situation. He has been making the required Chapter 13 plan payments to the bankruptcy trustee for at least a year without issue.

From approximately 2004 to about 2008, Applicant and two partners ran their own construction business. They renovated and built new homes for sale. The business was successful for a time, but the collapse of the U.S. housing market and ensuing economic recession left Applicant responsible for mortgages on two properties that he

---

<sup>2</sup> Confirmation of Applicant's continuing sponsorship for a security clearance and the email sent to the parties reopening the record were marked as Appellate Exhibits I and II, respectively.

<sup>3</sup> On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD-4), revising the Adjudicative Guidelines. The revised adjudicative guidelines are applicable to all security clearance decisions issued on or after June 8, 2017. Accordingly, I have applied the revised adjudicative guidelines (hereinafter "AG"). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

could not sell. He rented the properties for a time, but when the tenants moved out he was unable to re-rent the properties and fell behind on the mortgages. He reported this potentially adverse financial information on his security clearance application.

Applicant resolved the debts associated with these properties through short sale, and reported the short sale to his facility security officer when it occurred. He agreed to pay \$20,000 to one of the creditors in return for their agreement to release their hold on one of the transactions. Before filing for Chapter 13 bankruptcy in 2016, Applicant had paid down this \$20,000 debt to \$12,000 through agreed-upon monthly payments directly to the creditor.

In 2012, Applicant's father passed away. Applicant inherited his father's former home, but was unable to afford the mortgages on the property and his own home (marital residence). Applicant has owned his home since approximately 1994. He fell behind on the mortgage on the property he inherited. He brought this mortgage account current through a combination of retirement savings and a debt consolidation loan. He reaffirmed the mortgages for both properties, and is paying these debts outside of bankruptcy. A June 2017 credit report reflects that the mortgages for both properties are current. The credit report also reflects that Applicant is paying his other debts in a timely manner, with no past-due amounts.

The debts listed in SOR 1.b and 1.c, totaling about \$20,000, are related to the mortgage-related financial problems that Applicant experienced following the collapse of his former construction business and his father's death. Applicant addressed these two debts and they are resolved.

From approximately 2004 to 2005, Applicant attended a school to become a helicopter pilot. After a year, the school closed and the school president absconded with the school's assets. Applicant financed this education through federally-backed student loans. Before the school closed, it charged Applicant with tuition for the coming year and the private lender servicing Applicant's student loans disbursed the money to the school based on documents Applicant had signed when he matriculated at the school. The school promised to refund Applicant's tuition, but did not. The school subsequently filed for bankruptcy.

Applicant paid the student loans for the helicopter school for about three years before joining a group of former students in a class-action lawsuit. The class-action lawyers advised Applicant to stop repaying the student loans because it could damage their position in the lawsuit. Applicant used the money he was using to pay his student loans to pay the attorney's retainer fee. The class was not certified by a court, and the lawsuit was ultimately dismissed. Applicant submitted substantial and credible documentary evidence in support of his position that the aviation school was essentially a sham that defrauded its former students and, by extension, the federal government, which had extended student loans to many of the school's former students.

Applicant purportedly owes about \$20,000 in past-due student loans for the fraudulent aviation school. This debt is referenced in SOR 1.a. Applicant dutifully

reported this debt on his security clearance application. Applicant's bankruptcy attorney listed this debt and the other two SOR debts in the bankruptcy petition's schedule of creditors and all creditors were notified of their ability to file a claim with the bankruptcy trustee. The current creditor for the alleged student loan debt did not file a claim. Applicant's bankruptcy attorney states that if the lender eventually does file a claim, he will object and bring the matter of the debts' formation to the attention of the bankruptcy court. Applicant is paying another student loan debt outside the Chapter 13 bankruptcy plan. His credit reports reflect no past-due balance on this account. Applicant is repaying this other student loan debt as agreed.

In 2013, Applicant and his wife separated. Instead of renting the house that he inherited from his father, Applicant is now living in the house. After some time, Applicant found it difficult to pay the expenses associated with maintaining two households. He obtained financial counseling before filing for Chapter 13 bankruptcy in 2016.

Applicant is required, as a separate condition of the court-approved 60-month bankruptcy plan, to submit on an annual basis to the bankruptcy trustee his income tax returns. He is also required to submit any tax refunds exceeding \$1,000 to the bankruptcy trustee for distribution as supplemental payments to his creditors.

Applicant states and his certified Chapter 13 bankruptcy petition reflects that he frugally manages his finances. For instance, he drives a 1997 car with over 350,000 miles. His bankruptcy petition reflects that the majority of his debts are secured by collateral. He is in the process of selling his marital residence, and is required to provide the trustee with any excess funds from the sale of the property.<sup>4</sup>

The manager of Applicant's credit union submitted a statement noting that Applicant has obtained financial advice from them and she has assisted him in setting up the monthly payments to the bankruptcy trustee. She describes Applicant as reliable. A current coworker, who has worked with Applicant for the past five years and seen Applicant handle daily stressful job assignments without issue, noted that he has not witnessed any frivolous spending or purchases by Applicant.<sup>5</sup>

### *Whole Person*

Applicant's current and former workers, who have worked side-by-side with him from 5 to 15 years, describe him as a hard worker who takes pride in his work. They and several social acquaintances vouch for Applicant's loyalty, honesty, dependability, and overall good character.<sup>6</sup> A former supervisor states that she has routinely assigned time-sensitive work to Applicant, and he generally completed the project in time.<sup>7</sup> A

---

<sup>4</sup> Response; Exhibits A, C – G, I; Items 7, 8.

<sup>5</sup> Exhibit B at 7, 9.

<sup>6</sup> Exhibit B.

<sup>7</sup> Exhibit B at 6.

current coworker states that Applicant “is a valuable asset to our work projects that support the American warfighter and our American values.”<sup>8</sup>

Applicant is devoted to his family. He is the sole caretaker of his mother, who suffers from dementia and has Alzheimer’s. He also supports his three children.<sup>9</sup> One of Applicant’s coworkers, who attended the same elementary school as Applicant, states that Applicant’s children “always rely on him. They just call dad and he will fix it!”<sup>10</sup> A neighbor recounts how when they moved into the neighborhood, Applicant helped them free-of-charge in making needed home repairs.<sup>11</sup> Applicant is the person others call on for help in fixing mechanical issues with their cars or home.<sup>12</sup>

## **Law & Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals 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; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. 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. AG ¶ 2.

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 make certain that applicants: (a) receive fair notice of the issues, (b) have a reasonable opportunity to address those issues, and (c) are not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In deciding a case, a judge must resolve any doubt raised by the evidence in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

---

<sup>8</sup> Exhibit B at 9.

<sup>9</sup> Exhibit B.

<sup>10</sup> Exhibit B at 11.

<sup>11</sup> Exhibit B at 5.

<sup>12</sup> Exhibit B at 11.

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**

Applicant was unable to pay his debts due largely to a number of matters beyond his control. He has obtained financial counseling and is responsibly addressing his past financial problems through a court-approved Chapter 13 plan. However, his negative financial history raises the Guideline F security concern, which is explained at AG ¶ 18:

Failure 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 or sensitive information. . . .

Guideline F 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>13</sup>

In assessing Applicant's case, I considered all the Guideline F disqualifying and mitigating conditions, including the following:

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;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

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

---

<sup>13</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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.

A security clearance adjudication is not a debt collection process. Instead, an administrative judge examines the way an applicant handles his or her personal financial obligations to assess how they may handle their security obligations.<sup>14</sup> Moreover, the resolution of past financial issues alone without evidence of true reform and rehabilitation is of limited probative value in the security clearance context.<sup>15</sup>

The record evidence shows that each time Applicant has been faced with difficult financial issues he has taken responsible action to address and resolve his debts. Applicant's record of responsible action in the face of financial adversity raises favorable inferences regarding his ability to continue to properly handle and safeguard classified information.

Individuals applying for a security clearance are not required to be debt free, nor are they 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>16</sup>

Applicant met his burden of proof and persuasion. He addressed his recent financial problems by filing for Chapter 13 bankruptcy and presenting a favorable track record of debt repayment. Although Applicant is still in the process of repairing his finances, his present financial situation does not raise a concern about his judgment, reliability, or trustworthiness. Specifically, I find that AG ¶¶ 20(a) through 20(e) apply in full or in part. When considered together with the positive whole-person matters raised by the record evidence, to include the candor Applicant exhibited in self-reporting the information about his financial issues, the favorable record evidence mitigates the security concerns at issue.

---

<sup>14</sup> See generally ISCR Case No. ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

<sup>15</sup> Compare, ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (despite the presence of unresolved debt, notably, a second mortgage loan tied to a property that had been foreclosed, Board upheld grant because clear evidence of reform and rehabilitation), with, ISCR Case No. 15-03481 (App. Bd. Sep. 27, 2016) (applicant's resolution of alleged financial issue (overdue tax returns) insufficient to mitigate security concerns, because no extenuating circumstances to explain issue or evidence of true financial reform).

<sup>16</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

### **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):      FOR APPLICANT

Subparagraphs 1.a – 1.c:      For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the interest of national security to continue Applicant's eligibility for access to classified information. Applicant's request for a security clearance is granted.

---

Francisco Mendez  
Administrative Judge