



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-03537
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

08/12/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his delinquent debts. He has yet to take action to address his past-due debts and take control of his finances. Notwithstanding the presence of some mitigating circumstances that impacted his finances, Applicant did not meet his burden of persuasion for access to classified information. Clearance is denied.

**History of the Case**

On October 28, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> On November 30, 2015, Applicant answered the SOR and requested a determination on the administrative (written) record (Answer).

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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 implemented by the Department of Defense on September 1, 2006.

On February 3, 2016, Department Counsel prepared the Government's written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings and five documentary exhibits, which were pre-marked Items 1 – 6. Without objection, Items 1 – 6 were admitted into the record.

On February 26, 2016, Applicant filed his response to the FORM (Response). The Response was marked Exhibit A and, without objection, admitted into the record. On June 29, 2016, I was assigned Applicant's case for decision.<sup>2</sup>

### **Findings of Fact**

Applicant, who is in his early 50s, is a college graduate and has been with his current employer since July 2014. Prior to securing his current job, Applicant was unemployed or underemployed for nearly two years. He lost his job with his former employer in about February 2012, because of a disagreement with his supervisor regarding his work assignment and performance. He was previously counseled by his former employer about a similar issue.

Applicant suffered another financial blow in 2012, when his tenants lost their jobs and stopped paying rent. Unemployed and no longer receiving rental income, Applicant was unable to pay the mortgage on the rental property and it was foreclosed in 2013.

Applicant incurred a number of debts while unemployed. The SOR lists seven delinquent debts totaling over \$50,000. Applicant admits all the SOR debts, except for a minor \$55 debt referenced in 1.d, which he disputes. In his Answer, Applicant stated that he contacted one of his overdue creditors and agreed to a payment plan to satisfy the debt, but stopped paying with a decrease in income. He did not elaborate on the decrease in income that left him unable to make the payments he had negotiated with the creditor. He also did not submit documentation to corroborate his claims of debt repayment or basis to substantiate a reasonable basis to dispute any of the SOR debts.

Applicant did not explain his failure to address the two minor medical collection accounts totaling less than \$100, which he was first made aware of during his background interview in December 2014. At the time, Applicant promised the investigator he would address these two minor debts after the interview.

Applicant states that he plans to file for bankruptcy to resolve his past-due debts. He did not submit documentation of what steps, if any, he has taken to file for bankruptcy, such as taking and completing the mandated credit counseling course. As of the close of the record, the SOR debts, including the two minor collection accounts listed in 1.e and 1.f totaling less than \$100, remain unresolved.

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<sup>2</sup> Administrative documents, including confirmation that Applicant is still being sponsored for a clearance, are collectively attached to the record as Appellant Exhibit I.

## 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

The security concern under this guideline is explained at 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 financial considerations security concern is not limited to a consideration of whether an individual with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an individual's delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.<sup>3</sup>

The record evidence reflects that Applicant accumulated a sizeable amount of delinquent debt over the past four years. This history and inability or unwillingness to satisfy debts implicates the financial considerations security concern and raises the disqualifying conditions listed at AG ¶¶ 19(a) and 19(c).

The financial considerations guideline also lists a number of conditions that could mitigate the concern. I have considered all the mitigating conditions, including the following:

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 (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

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<sup>3</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.

Applicant's current financial problems are, in part, attributable to experiencing two matters beyond his control, notably, nearly two years of unstable employment and loss of rental income. However, he regained full-time employment in July 2014 and has yet to take action to resolve his delinquent debts, including the two minor collection accounts totaling less \$100, which he promised the background investigator back in December 2014 that he would look into.

Applicant indicates that he now plans to file for bankruptcy to resolve his debts. He initially stated in his November 2015 Answer that he would file for bankruptcy in January 2016, but in his February 2016 Response said he anticipated filing in March 2016. No evidence was submitted that he: (a) took the mandated credit counseling course an individual must complete before s/he can file for bankruptcy, (b) actually filed for bankruptcy, or (c) currently follows a budget to manage his personal finances in an attempt to avoid future financial issues.

It would be unrealistic to expect an individual, such as Applicant, whose finances were negatively impacted by matters beyond their control to resolve all debts immediately or simultaneously. However, applicants are expected to present a reasonable plan to address their financial situations and demonstrate conduct consistent with such plans. Here, as of the close of the record, Applicant's plan constituted essentially of a promise to take action in the future, which is insufficient to mitigate the security concerns raised by his accumulation of delinquent debt.<sup>4</sup> Accordingly, I find that AG ¶ 20(b) partially applies, but is insufficient to mitigate the security concerns at issue.

### **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 factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F. I gave due consideration to all the favorable and extenuating factors in this case. However, after weighing the favorable and unfavorable evidence, Applicant's financial situation continues to raise a security concern. Overall, the record evidence leaves me with doubts about his present eligibility for access to classified information.

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<sup>4</sup> ISCR Case 14-00714 at 2-3 (App. Bd. May 27, 2015).

### **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.g:      Against 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 access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge