



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-03916
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: Kel McClanahan, Esq.

03/23/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. He amassed over \$280,000 in delinquent debt, which remains unresolved. His efforts to address his delinquent accounts and the unfortunate circumstances that contributed to his financial situation are insufficient to mitigate security concerns raised by the sizeable amount of delinquent debt at issue. Clearance is denied.

**Statement of the Case**

On December 16, 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> Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information.

Applicant's hearing was initially scheduled for September 12, 2016. He subsequently retained counsel, who requested a continuance. The continuance was

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

granted and the hearing was rescheduled for November 21, 2016. The hearing was held on this later date.<sup>2</sup>

Applicant testified at the hearing and the exhibits offered at hearing and post-hearing were admitted into the administrative record without objection. (Government Exhibits 1 – 3 and Applicant's Exhibits A – X.)<sup>3</sup> The transcript (Tr.) was received on November 29, 2016, and the record closed on December 13, 2016.<sup>4</sup>

### **Findings of Fact**

Applicant is a contract employee working for a federal agency. He has been working as a contractor for the same agency for over 10 years. He started as a mail courier and two years ago was promoted to logistics manager. He recently received an award for his exemplary work in support of the agency's mission. He has held a security clearance since about 2009.

Applicant married in 2014, and he and his wife recently welcomed their first child. They purchased a home in 2016. Due to Applicant's poor credit history, the mortgage loan is only in his wife's name.<sup>5</sup>

Applicant's financial troubles began in around 2008. He had purchased a home two years earlier with his then fiancée. The home cost approximately \$282,000, and they financed the purchase price with a first and second mortgage. Applicant subsequently called off the wedding and sometime thereafter his fiancée moved out. She refused to contribute to the mortgage and later filed for bankruptcy, which relieved her of financial responsibility for the mortgages.<sup>6</sup>

Applicant submitted an application to the lender for the primary (first) loan seeking to modify his mortgage so he could pay it on his income alone. The lender refused, and Applicant's efforts to sell the property to satisfy the debt proved unsuccessful. He stopped

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<sup>2</sup> Correspondence, documents regarding first continuance request, the notice of hearings, case management order, and documents regarding second continuance request were marked Appellate Exhibits (App. Exh.) I – V.

<sup>3</sup> Applicant's index and Department Counsel's position regarding Applicant's post-hearing exhibits were marked App. Exh. VI – VIII. Department Counsel's objection to the statements made by Applicant's counsel in the index is overruled, as the index is not evidence. I have, however, considered the Government's objections in assessing what weight to extend to the post-hearing documents. Directive, ¶ E3.1.19; ISCR Case No 03-21434 at 5 (App. Bd. Feb. 20, 2007).

<sup>4</sup> The record was originally left open until December 12, 2016. The following day Applicant submitted Exhibit X. The late submission was excused and the exhibit was admitted without objection.

<sup>5</sup> Tr. 12-13, 17, 66-70, 79-81; Exhibit 1; Exhibit W.

<sup>6</sup> Tr. 14-33, 51-55, 59-71.

paying the mortgage in late 2007 or early 2008. He was served with a foreclosure notice in 2013. He then moved out of the property and it was foreclosed in 2015.<sup>7</sup>

Applicant incurred other delinquent debt between 2008 and 2015. He explained that, despite not paying the mortgage, he was still spending money on maintenance and upkeep of the property. After moving out of the property in 2013, Applicant's expenses increased as a result of having to pay rent.<sup>8</sup>

As of the close of the record, the status of the SOR debts is as follows:

**First and second mortgages totaling about \$280,000 (SOR 1.a and 1.b).** These are the two mortgages for the property Applicant purchased with his former fiancée. He presented documentation reflecting his efforts to resolve the debts through loan modifications and short sale. His efforts were frustrated by his ex-fiancée who refused to cooperate and by the recent economic downturn which saw his former home's value decrease substantially. Applicant also presented documentation showing that, following the 2015 foreclosure, the first mortgage was sold by the lender to its subsidiary. He recently attempted to contact the creditor for the second mortgage to work out a payment plan. He provided no documentation showing that either loan was canceled, forgiven, or otherwise resolved. As of the close of the record, the mortgage debts remain unresolved.<sup>9</sup>

**Car debt (SOR 1.c).** Applicant was involved in a car accident in February 2014. The car was deemed a total loss. Applicant was informed that, after deducting the amount paid by insurance, he still owed \$2,800 on the car loan. After the hearing, he contacted the creditor and agreed to settle the debt through two \$435 payments. He provided no proof of payment. The debt remains unresolved.<sup>10</sup>

**Charged-off credit card accounts (SOR 1.d and 1.e).** After defaulting on the mortgages for the property he purchased with his former fiancée, Applicant obtained two credit cards to re-establish his credit. He defaulted on both cards. In his Answer, he stated that both accounts were the result of fraud and he had hired a debt verification firm to dispute the matter. At hearing, he acknowledged both debts were his. Both delinquent credit card accounts remain unresolved.<sup>11</sup>

**Charged-off jewelry and clothing store accounts (SOR 1.f and 1.g).** Applicant provided documentation showing that he satisfied both debts.<sup>12</sup>

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<sup>7</sup> Tr. 14-33, 51-71; Exhibit X.

<sup>8</sup> Tr. 62-74.

<sup>9</sup> Tr. 14-33, 51-71; Exhibits A, G – P, S, X.

<sup>10</sup> Tr. 33-36, 55, 71-73; Exhibit T.

<sup>11</sup> Tr. 36-42, 73-74; Exhibits A, U.

<sup>12</sup> Tr. 42-44, 58; Exhibits D, E.

**Collection account for cable service (SOR 1.h).** Applicant disputes the amount claimed by the collection company. A recent credit report reflects a \$399 outstanding balance. Applicant acknowledges he is indebted in some amount for this debt, which he incurred in 2010. He provided documentation showing he returned some cable equipment that should have reduced the outstanding balance. The debt remains unresolved.<sup>13</sup>

Applicant received some financial counseling when going through pre-marital counseling with his wife. He was counseled during those sessions to take immediate steps to fix his poor credit. He hired a credit verification firm in January 2016, which advised him not to pay any of the delinquent accounts appearing on his credit reports until they had a chance to verify the debts. He also received some money management advice through the firm. As of the close of the record, the firm was in the process of sending out a second set of dispute letters.

Applicant earns a yearly salary of approximately \$75,000 and his wife earns about \$55,000 as a public school teacher. Applicant states that, after paying his monthly expenses, he has about \$250 a month in disposable income that he can use to pay his debts. He claims to have saved about \$700, which he plans to use to pay his debts.<sup>14</sup>

### **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

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<sup>13</sup> Tr. 44-48; Exhibits A, D, E.

<sup>14</sup> Tr. 48-50, 74-82.

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**

Applicant's history of financial problems from 2008 to the present raise the financial considerations security concern, which is addressed 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.

Thus, the security concern is not limited to a consideration of whether a person 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 the circumstances giving rise to a person's financial problems cast doubt on their judgment, self-control, and other qualities essential to protecting classified information.<sup>15</sup>

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

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<sup>15</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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

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 situation was caused by a combination of financial mismanagement and some matters largely beyond his control. He made some efforts over the years to address and resolve his debts. Notably, he satisfied the delinquent debts listed at SOR 1.f and 1.g, and provided documentation to substantiate the basis of his dispute regarding the delinquency listed in SOR 1.h. These three SOR debts are resolved in Applicant's favor.

Notwithstanding these favorable matters, Applicant did not fully mitigate security concerns raised by his past financial issues. Of note, he failed to adequately explain how he continued to incur delinquent debt while not paying his mortgage for five years from 2008 to 2013. During that time, he took out credit cards to re-establish his credit worthiness. He then promptly defaulted on the cards. He has been aware of the security significance of the relatively minor accounts referenced in SOR 1.c – 1.e, including the delinquent credit card accounts, since at least December 2015, when the SOR was issued. As of the close of the record, these debts remain unresolved.

Moreover, even if I were to set aside the security concerns raised by these minor delinquent debts, the sizeable amount of debt referenced in SOR 1.a and 1.b and, more importantly, the serious security concerns associated with this significant amount of debt remains. Applicant's efforts to address this debt are not enough to mitigate the concerns that such a large sum of unresolved delinquent debt poses as a potential source of undue

influence, pressure, or coercion.<sup>16</sup> Also, Applicant defaulted on the mortgages in 2008 and the property was foreclosed in 2015. He did not provide sufficient evidence of financial reform to mitigate concerns that similar financial issues will not recur.

Accordingly, I find that the mitigating conditions listed at AG ¶¶ 20(a) – 20(e) have some applicability. However, even when these matters are considered together with the favorable whole-person factors present in this case (some of which are noted below), they are 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 whole-person factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant has held a clearance for over five years without apparent issue. His exemplary work has been rewarded by a recent promotion. This evidence, coupled with the mitigating matters noted above and the other favorable record evidence, raises favorable inferences regarding Applicant's overall eligibility. On the other hand, a sizeable amount of delinquent debt, which was initially incurred by Applicant in 2008, remains outstanding as of the close of the record. Furthermore, Applicant did not present sufficient evidence from which I could draw a favorable conclusion regarding the likelihood of recurrence of similar issues.

Clearly, this case presents the proverbial "close call." Under the Directive, DOHA administrative judges must decide any unmitigated doubts raised by the evidence in favor of protecting national security. See AG ¶ 2(b). Here, despite the strong and favorable evidence presented by Applicant, doubts about his eligibility, which were raised by his financial circumstances, persist. Consequently, Applicant failed to meet his heavy burden of persuasion for continued access to classified information.

### **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.e:	Against Applicant
Subparagraphs 1.f - 1.h:	For Applicant

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<sup>16</sup> *Contrast with* ISCR Case No. 15-02903 (App. Bd. Mar. 9, 2017) (remanding case to judge to explain how applicant's efforts in addressing \$125,000 in delinquent debt, which led to the debts cancellation, did not sufficiently mitigate Guideline F security concerns raised by the debt).

## **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 eligibility for continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge