



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-03972
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

01/24/2017

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

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

**Statement of the Case**

On December 4, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 January 19, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On, February 26, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on March 9, 2016. Applicant was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file

objections and submit material to refute, extenuate, or mitigate the security concerns. He did not provide any response. The case was assigned to me on December 5, 2016.

### **Procedural Issues**

In the FORM, Department Counsel references FORM Items 1-5. FORM Item 1 consists of the Statement of Reasons and Applicant's Answer, which are pleadings and are entered into the administrative record. FORM Item 3 is an unauthenticated summary of a January 7, 2015 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 3 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, and he raised no objections. Moreover, in light of Department Counsel's advisement and the Appeal Board rulings in ISCR Case Nos. 15-05252 and 14-06781, my *sua sponte* exclusion of FORM Item 3 may constitute error.<sup>1</sup> Therefore, I admitted the Government Exhibits, identified as FORM Items 2-5, without objection.

### **Findings of Fact**

Applicant is 46 years old.<sup>2</sup> Although he did not complete high school, he received his General Equivalency Degree (GED) in about 1987.<sup>3</sup> He received his welding certification in July 2014.<sup>4</sup> Between December 2003 and November 2013, Applicant worked full-time in the private sector, at times with two full-time jobs. From December 2013 to July 2014, he was unemployed. While unemployed, he was supported by unemployment compensation benefits and his girlfriend, with whom he has lived since August 2004.<sup>5</sup> Since August 2014, he has been employed full-time by a DOD contractor.<sup>6</sup> Applicant has a 15-year-old son and a 20-year-old son.<sup>7</sup>

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<sup>1</sup> See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016)(Applicant's waiver of the authentication element must be knowing and intelligent. The Judge's exclusion of the Report of Interview, containing mitigating evidence, was found to be error following applicant's appeal.). See *also* ISCR Case No. 14-06781 at 3 (App. Bd. Dec. 16, 2016)(By not responding to the Government's FORM, "Applicant waived any objection he might have had to this document.").

<sup>2</sup> Item 2 at 5.

<sup>3</sup> Item 3 at 1.

<sup>4</sup> Item 2 at 8.

<sup>5</sup> Item 3 at 1; Item 2 at 18.

<sup>6</sup> Item 2 at 9-14.

<sup>7</sup> Item 2 at 21-22.

The SOR alleges one unpaid judgment, two state tax liens, and 16 delinquent debts, totaling approximately \$13,210. In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b. and 1.c.<sup>8</sup>

The unpaid judgment (SOR ¶ 1.a.) was entered in May 2008 in the approximate amount of \$1,190, as established by the September 2014 credit report.<sup>9</sup>

Applicant admitted the state tax lien (SOR ¶ 1.b.), filed in August 2006, in the approximate amount of \$2,502.<sup>10</sup> In his response to the SOR, Applicant includes an “Installment Payment Agreement,” showing a payment plan for 58 months at \$25 per month,<sup>11</sup> however, Applicant provided no evidence of any payments in adherence to that payment plan. Furthermore, Applicant’s documentation does not appear to match any case number associated with the liens alleged in SOR ¶ 1.b. or ¶ 1.c.

Applicant admitted a second state tax lien (SOR ¶ 1.c.), filed in June 2006, in the approximate amount of \$499.<sup>12</sup> As with SOR ¶ 1.b., there is no evidence of payments to resolve this tax lien.

As to the child support collection account (SOR ¶ 1.d.) in the approximate amount of \$5,584, Applicant provided documentation showing that his total child-support arrears are approximately \$5,158.<sup>13</sup> As of December 2015, Applicant’s wages were garnished at \$71 per week for his current child-support obligation and an additional \$35 per week for his child-support arrearages.<sup>14</sup> Applicant claimed that after his son’s birth in 1996, he provided financial support to the child’s mother when he was able.<sup>15</sup> Applicant further claimed that because he provided the support directly to his son’s mother that perhaps the child-support agency was unaware of his payments until about 2004, when his wages were garnished.<sup>16</sup> Applicant has provided no corroborating documentation or further information as to the amounts of the payments he provided directly to his son’s mother.

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<sup>8</sup> See ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995)(Applicant’s admissions to SOR allegations relieve Department Counsel of the obligation to prove the admitted allegations).

<sup>9</sup> Item 5 at 2. See ISCR Case No. 14-03910 at 2 (App. Bd. Jun. 24, 2015)(“[I]t is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under E3.1.14 for pertinent allegations.”)

<sup>10</sup> Item 5 at 2.

<sup>11</sup> Item 1 at 5.

<sup>12</sup> Item 4 at 1; Item 5 at 3.

<sup>13</sup> Item 1 at 6.

<sup>14</sup> Item 1 at 6.

<sup>15</sup> Item 3 at 3.

<sup>16</sup> Item 1 at 6.

Two medical collection accounts (SOR ¶¶ 1.e. and 1.f.) in the approximate amounts of \$1,235 and \$892 were placed for collection in about June 2014.<sup>17</sup> Two additional collection accounts (SOR ¶¶ 1.g. and 1.h.) in the approximate amounts of \$296 and \$257 were placed for collection in about May 2014 and February 2013, respectively.<sup>18</sup> There is no evidence of steps taken to resolve these debts.

The SOR alleges nine traffic or parking tickets (SOR ¶¶ 1.i. to 1.q.) totaling approximately \$695. Applicant's September 2014 credit report lists these nine accounts as having been placed for collection between August 2013 and April 2014.<sup>19</sup> There is no evidence of steps taken to resolve these debts.

Applicant claims that the two medical collection accounts alleged in SOR ¶¶ 1.r. and 1.s., were incurred while he was unemployed and should have been covered under a state health insurance plan.<sup>20</sup> Applicant's September 2014 credit report lists these accounts as having originated in September 2013 and as having been assigned to collection in January 2014.<sup>21</sup> According to Applicant's work history, he was employed until November 2013, and the debts were incurred in September 2013. Given the documentary evidence in conflict with Applicant's claimed dispute, he has not adequately explained and provided evidence why he does not owe these two debts.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(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.

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<sup>17</sup> Item 5 at 4.

<sup>18</sup> Item 5 at 4.

<sup>19</sup> Item 5 at 4-6.

<sup>20</sup> Item 2 at 4.

<sup>21</sup> Item 5 at 6.

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.”

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.

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 and endures throughout off-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 the 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.

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's 19 debts total approximately \$12,784, given the reduction in the child-support arrearages. Some of the debts, such as the state tax liens, date back to 2006. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>22</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>23</sup> Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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;

(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.

With the exception of the involuntary wage garnishment for the child support arrearages, there is no record evidence of any payments upon the 19 alleged delinquent accounts. Although Applicant may have initiated an installment plan for repayment of a state tax lien, there is no evidence of any payments in adherence to that payment plan. Because Applicant's debts are ongoing and unresolved, AG ¶ 20(a) is not applicable.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted

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<sup>22</sup> Directive ¶ E3.1.15.

<sup>23</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

responsibly under the circumstances.<sup>24</sup> Applicant's employment history indicates that he has been gainfully employed full-time – often with two full time jobs – since December 2003. The only period of unemployment was December 2013 to July 2014. With the exception of two or three of the traffic tickets, all of the alleged delinquent debts predate Applicant's period of unemployment. Nonetheless, because Applicant's period of unemployment may have hindered his ability to address his delinquent debts, it may constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances. The second prong of AG ¶ 20(b) does not require an applicant to be debt-free or develop a plan for paying off all debts immediately or simultaneously.<sup>25</sup> Here, there is insufficient evidence to conclude that Applicant acted responsibly to address his delinquent debts or to develop and implement a reasonable debt repayment plan, whether before, during, or after his eight-month period of unemployment. Therefore, I conclude that AG ¶ 20(b) does not apply.

There is neither record evidence of credit counseling nor record evidence, such as a monthly budget, to conclude that there are clear indications that Applicant's financial problems are under control. Rather, the absence of evidence of payments or other steps to resolve the alleged delinquent debts undercuts such a conclusion. Therefore, AG ¶ 20(c) does not apply.

As discussed above, notwithstanding Applicant's installment agreement, there is no evidence of good-faith payments or other steps taken to resolve the alleged delinquent debts. 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."<sup>26</sup> Although Applicant's installment plan may show his intent to make payments to resolve his delinquent tax liens, "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches."<sup>27</sup> Therefore, because there is no record evidence that Applicant's payments toward his child support arrearages were voluntarily established,<sup>28</sup> AG ¶ 20(d) does not apply.

To the extent Applicant disputes the legitimacy of the two medical accounts alleged in SOR ¶¶ 1.r. and 1.s., the record evidence undermines his claims of dispute. The two medical collection accounts appear to have originated in about September

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<sup>24</sup> See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

<sup>25</sup> ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009)("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

<sup>26</sup> See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010)(Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

<sup>27</sup> ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009).

<sup>28</sup> See ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009)("On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.").

2013 when Applicant was still employed. Even assuming Applicant was able to show that these two debts occurred during his period of unemployment, he has not provided substantial evidence to demonstrate that he is not liable for these two debts. Thus, AG ¶ 20(e) does not apply.

Absent evidence of debt repayment and financial responsibility, I find that financial considerations concerns remain.

### **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 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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant was provided an opportunity in his SOR response and in response to the Government's FORM to explain the circumstances that led to these financial delinquencies, to show what steps he has taken to resolve these delinquencies, and to provide documentation, however, no such information was provided. As a result, the totality of 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
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Subparagraphs 1.a.-1.s.:	Against Applicant
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### **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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Eric H. Borgstrom  
Administrative Judge