



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-04559
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, 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 sufficiently mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 4, 2016, 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 February 29, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On April 18, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on April 20, 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. Applicant provided a response to the FORM, which was received by the Government on or about May 9, 2016. The case was assigned to me on December 5, 2016.

### **Procedural Issues**

In the FORM, Department Counsel references FORM Items 1-5. FORM Items 1 and 2, consisting of the SOR and Applicant's response to the SOR, are pleadings and are entered into the administrative record. I admitted the Government Exhibits, identified as FORM Items 3-5, into evidence without objection.

In his FORM response, Applicant submitted a letter, a summary of medical appointments, an IRS payment history, and two collection accounts repayment histories, which are admitted without objection as Applicant's Exhibits (AE) A-D.

### **Findings of Fact**

Applicant is 53 years old. He has been married since 1991, and he has two children, ages 19 and 24, who live with him and his wife. From 1983 to 1986, Applicant served in the U.S. Army. From 1986 to 2004, he served in the National Guard, from which he received an honorable discharge.<sup>1</sup>

From 2004 to April 2013, Applicant was employed as a civilian with the Department of Army. He was unemployed from April to August 2013. Since August 2013, he has been employed as a federal contractor.<sup>2</sup>

The SOR alleges three consumer debts (§§ 1.a., 1.f., and 1.g.), four medical collection accounts (§§ 1.b., 1.c., 1.d., and 1.e.), and two federal tax debts (§§ 1.h. and 1.i.). In his response to the SOR, Applicant admitted all the alleged debts, and he provided documentation demonstrating that the debts alleged in SOR §§ 1.a.-1.e. were paid or settled.<sup>3</sup> The Government, in its FORM, conceded that these five debts had been settled or paid.<sup>4</sup> In his FORM response, Applicant explained that he did not make any payments on the debt in 1.a., however, he received and filed a 1099-C to resolve this debt.<sup>5</sup> Given Applicant's documentation and the Government's concession, I find that the debt in SOR § 1.a. was resolved through the filing of the 1099-C and that Applicant paid the four medical collection accounts (§§ 1.b. – 1.e.).

The two remaining consumer debts (SOR §§ 1.f. and 1.g.) were placed for collection in the approximate amount of \$3,092 and \$3,942, respectively. Applicant's FORM response includes a payment history showing 47 bi-weekly payments (totaling

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<sup>1</sup> Item 3.

<sup>2</sup> Item 3.

<sup>3</sup> Item 2 at 1, 3-8.

<sup>4</sup> Government's FORM at 2. Although the Government's FORM concedes resolution of the debts alleged in "1.a., 1.b., 1.c., and 1.d." the context of the paragraph, taken with the documentation cited, indicates that the Government was referencing the debts alleged in SOR §§ 1.a. -1.e.

<sup>5</sup> AE A.

\$5,875) from November 2013 through March 2016 and satisfying the debt in SOR ¶ 1.f.<sup>6</sup> Although the debt in SOR ¶ 1.g. has accrued interest, Applicant's bi-weekly payments will continue to apply towards this remaining debt.<sup>7</sup>

The two federal tax debts (SOR ¶¶ 1.h. and 1.i.) resulted from past due taxes from tax years 2009 and 2012, respectively. Applicant's FORM response lists 17-monthly payments between November 2014 and March 2016, totaling approximately \$7,750,<sup>8</sup> and both his security clearance application and FORM response state that payments began before November 2014.

Applicant's financial problems arose due to several converging events and circumstances. In 2009, Applicant moved to a different state to assist with family medical issues, and he transitioned from a permanent government position to a temporary government position. In 2013, budget cuts and the sequestration led to the end of the temporary position and to Applicant's four-month period of unemployment. Applicant continued to support his wife and children in one state as he moved to a lower-paying federal contractor position in another state. He continued to support households in two states and was required to often take leave following his wife's 2011 cancer diagnosis and subsequent treatment.<sup>9</sup>

### **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.

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

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<sup>6</sup> AE D.

<sup>7</sup> AE A.

<sup>8</sup> AE A; AE C.

<sup>9</sup> AE A; AE B; Item 3 at 16-17.

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.

The SOR alleges nine debts totaling approximately \$22,028. Some of the debts date back to about 2010, and three debts remain delinquent. 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>10</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>11</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.

Applicant's financial difficulties arose from a convergence of circumstances beyond his control – his family medical issues, his unemployment/underemployment, and maintaining two households. Because he continues to maintain two households, because there is no evidence to conclude that unemployment and medical issues are unlikely to recur, and because some of the delinquent debts remain, AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.<sup>12</sup> Applicant provided sufficient evidence of circumstances beyond his control to fulfill the first prong 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

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<sup>10</sup> Directive ¶ E3.1.15.

<sup>11</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>12</sup> See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

debt-free or to develop a plan for paying off all debts immediately or simultaneously.<sup>13</sup> Here, despite facing circumstances beyond his control, Applicant addressed the alleged delinquent debts and established a track record of payments since November 2013. He has already settled or paid the debts alleged in SOR ¶¶ 1.a.-1.f., and he has been paying on the three remaining accounts. Therefore, I conclude that AG ¶ 20(b) does 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. Therefore, AG ¶ 20(c) does not apply.

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>14</sup> Applicant's voluntary debt repayments predate his submission of his security clearance application and the issuance of the SOR. He has established a track record of repayments or has taken significant steps towards resolution on all of the alleged accounts, thereby demonstrating an overall plan to resolve his delinquent debts. Thus, AG ¶ 20(d) does apply.

Given Applicant's established track record of debt repayments, while encountering circumstances beyond his control, I find that Applicant sufficiently mitigated the financial considerations concerns.

### **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.

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<sup>13</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>14</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).

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 identified and documented the circumstances that contributed to his financial indebtedness and his lengthy track record of debt repayments. I conclude that he sufficiently mitigated 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:	For Applicant
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Subparagraphs 1.a.-1.i.:	For Applicant
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### **Conclusion**

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

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Eric H. Borgstrom  
Administrative Judge