



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-06179
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

03/24/2017

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the security concerns stemming from his financial problems. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 25, 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 February 2, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On April 11, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on May 26, 2016. He 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 responded to the FORM on May 26, 2016. The case was assigned to me on February 16, 2017.

On March 14, 2017, I reopened the record to permit the parties to supplement the written record. On March 14, 2017, Applicant submitted additional documents, and the record closed on March 20, 2017.<sup>1</sup>

### **Procedural Issues**

In the FORM, Department Counsel references FORM Items 1-5.<sup>2</sup> FORM Item 3 consists of unauthenticated summaries of interviews with a government investigator conducted on October 19, 2014 and June 18, 2015. 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 responded to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's education and work experience, I find his waiver to be knowing and intelligent.<sup>3</sup> Therefore, FORM Items 2-5 are admitted into evidence as Government Exhibits (GE) 2-5, without objection.

In his FORM response and supplemental FORM response, Applicant submitted ten documents, which are admitted into evidence as Applicant Exhibits (AE) A-J, without objection.

### **Findings of Fact**

The SOR alleges two delinquent tax debts and two other delinquent debts. Applicant admitted all four debts in his response to the SOR. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 45 years old. He attained an associate's degree in September 2009, and he has attended additional undergraduate-level classes since September 2009. He served in the U.S. military from October 2007 to March 2012. He worked in a retail store from March 2012 to September 2012. He has been gainfully employed full-time for a

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<sup>1</sup> My order and the relevant emails are admitted into the record as Administrative Exhibits (AX) I, II, and III, respectively.

<sup>2</sup> FORM Item 1 consists of the SOR and Applicant's response to the SOR. These documents are pleadings and are entered into the administrative record.

<sup>3</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.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

DOD contractor since September 2012. Applicant was married from March 2006 to November 2012, and he has two children – ages 13 and 14.<sup>4</sup>

When Applicant attempted to electronically file his 2013 federal income tax return in April 2014, his return was rejected due to a duplicate return having been filed listing one of his dependent children. He later filed this return in September 2015 and entered into a payment agreement for his 2013 and 2014 federal income taxes. The remaining balance is \$240.71. The delinquent 2013 federal income taxes were alleged in SOR ¶ 1.a.<sup>5</sup>

For identical reasons, Applicant's electronic filing for his 2013 state income tax return was rejected. The return was received in September 2015. He made monthly payments on his state taxes from September 2015 to September 2016, and all taxes were paid. The delinquent 2013 state income taxes were alleged in SOR ¶ 1.b.<sup>6</sup>

The debt in SOR ¶ 1.c. (\$289) became delinquent in November 2012. This utilities debt was settled in January 2016 for \$145.<sup>7</sup>

Applicant's November 2015 credit report lists the small debt (\$53) in SOR ¶ 1.d. as an overdraft charge by a credit union. He disputed the debt with the credit bureaus but then withdrew the dispute when it impeded his purchase of a home. He continues to disagree with this debt, but he has taken no further action. This debt remains unpaid.<sup>8</sup>

Applicant attributed his financial struggles to his divorce in late 2012. The separation and divorce required him to purchase new furnishings and a vehicle, as he was financially responsible for his daughter and granddaughter. He was also providing financial assistance to his former spouse. There is no evidence of financial counseling; however, Applicant's current monthly budget reflects a positive net monthly remainder of approximately \$2,800.<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.

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<sup>4</sup> GE 2.

<sup>5</sup> GE 2; GE 3; AE D; AE E; AE G; AE J.

<sup>6</sup> GE 2; GE 3; AE D; AE H; AE I.

<sup>7</sup> AE B.

<sup>8</sup> GE 5; Response to SOR; AE A; AE C.

<sup>9</sup> Response to SOR; GE 3; AE A; AE F.

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 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 had unpaid taxes and delinquent debts. His financial problems began in 2012. Accordingly, the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and (c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>10</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 attempted to timely file his state and federal income returns for 2013; however, these filings were rejected due to a duplicate dependent. He later filed the returns, entered into payment agreements, and reduced the outstanding balance to \$241. He satisfied one debt (SOR ¶ 1.c.) and one small debt (SOR ¶ 1.d.) remains unresolved. In light of Applicant's actions to resolve his delinquent debts, his financial indebtedness does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

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<sup>10</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control and that (2) Applicant acted responsibly under the circumstances.<sup>11</sup> Applicant went through a separation and divorce, and he was financially supporting his former spouse, his daughter, and his granddaughter. He provided documentation of his problems filing his tax returns. Because these circumstances hindered Applicant's ability to address his delinquent debts, they 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. Applicant filed his state and federal returns, entered into payment agreements, and made regular payments in accordance with the agreement. Although he still owes \$241 on his federal taxes and the \$53 debt remains unresolved, Applicant's actions establish a reasonable plan for repayment and concomitant conduct in furtherance of that plan.<sup>12</sup> Therefore, AG ¶ 20(b) applies.

There is no record evidence of credit counseling; however, Applicant provided a monthly budget reflecting a positive net monthly remainder. Furthermore, he has reduced his delinquent debts to \$293. AG ¶ 20(c) applies.

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>13</sup> Applicant provided documentation of his tax payments in accordance with his payment agreements and the significant reduction in his tax debt. He also settled another debt. AG ¶ 20(d) applies.

Applicant has been unable to ascertain the origin of the debt in SOR ¶ 1.d. Nonetheless, he has not provided sufficient evidence to establish a reasonable basis for a dispute. AG ¶ 20(e) does not apply.

Circumstances beyond Applicant's control contributed to his financial delinquencies. Although a small delinquent balance remains unpaid, he developed a reasonable plan for debt resolution and repayment and has taken significant steps in furtherance of this plan. He has also shown that he can maintain his current monthly financial obligations while making debt repayments. I find that Applicant has 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

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<sup>11</sup> See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

<sup>12</sup> See 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>13</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).

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.

Circumstances beyond Applicant's control contributed to his financial delinquencies. Applicant entered into payment agreements and adhered to those payment agreements to significantly reduce his delinquent debts. He has established a track record of debt repayments while maintaining his current monthly obligations. I conclude Applicant 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
Subparagraphs 1.a.-1.d.:	For Applicant

### **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