



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-07572  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Charles C. Hale, Esq., Department Counsel  
For Applicant: *Pro se*

10/10/2017  
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**Decision**  
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MURPHY, Braden M., Administrative Judge:

Applicant provided sufficient documented evidence that he is making a good-faith effort to resolve his delinquent debts, which largely occurred following several job losses, reductions in income, and a divorce. He mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

On May 31, 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 (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on June 27, 2016, and elected to have his case decided on the written record in lieu of a hearing. On August 22, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on September 12, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on September 19, 2016. He did not object to the Government's evidence. His FORM response and the documents included are marked as Applicant's Exhibits (AE) A through F, and admitted without objection. The SOR and the answer (Items 1 & 2) are the pleadings in the case.<sup>1</sup> Items 3 through 7 are admitted into evidence without objection. The case was assigned to me on July 31, 2017.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017, for all decisions after that date, and they supersede the AGs that Applicant received with the SOR.

Since the information in the file was almost a year old when I received the case, I e-mailed the parties on September 7, 2017, and re-opened the record to allow Applicant the opportunity to submit more recent information. I also provided him a copy of the new AGs.<sup>2</sup> On September 21, 2017, Applicant submitted an e-mail response and 26 pages of documents, which were marked as AE F through AE P. He submitted additional materials on October 3, 2017, including two new documents, which are marked as AE Q and AE R. AE F through AE R are admitted without objection. The record closed on October 5, 2017.<sup>3</sup>

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.j, and 1.k. He denied SOR ¶¶ 1.a, 1.e, 1.g, 1.h, 1.i, and 1.l, with explanations and documents.<sup>4</sup> I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

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<sup>1</sup> With his answer to the SOR, Applicant submitted 37 pages of documents, which are also included in the record.

<sup>2</sup> Hearing Exhibit (HE) I, HE II, HE III.

<sup>3</sup> Applicant's October 3, 2017 submission included 31 pages of materials, most of which are duplicative of his September 21, 2017 submission. The October 3 filing is included in the casefile for review, but is not marked as an additional exhibit (but for the two new documents, AE Q and AE R).

<sup>4</sup> In his answer to the SOR and in his FORM response, Applicant addressed each debt in order, but his "labelling" of each debt (2.a, 2.b, 2.c, etc.) was mistakenly off by one for each debt from SOR ¶ 2.b onward. (Debt ¶ 2.a in the answer is actually SOR debt ¶ 2.b, and so on). *Compare* Items 1, 2 and FORM Response. He corrected the error in his September 2017 "Updated Response to the SOR." (AE I) The debts are labelled here as they are listed in the SOR.

Applicant is 38 years old. He was married from 2001 to February 2004, and again from August 2004 to 2012. He has one son (age 15) from his first marriage, and a daughter (age 11) from his second marriage. He also has a son (age 18) from a previous relationship. Applicant graduated from high school in 1998, and has a semester of technical education. (Items 3, 4)

In November 2006, Applicant began working as an engineer for a defense contractor at an Air Force base in his home state (State 1). In February 2007, his employer lost the contract at the base, so Applicant was transferred to a job in another state (State 2). He worked there until the contract ended, in March 2011. He then took a job in State 3, where he worked until February 2015. (Items 3, 4) His salary at this job was about \$25,000 less than at his previous position, where he made about \$85,000 a year. (AE F)

In March 2015, Applicant returned to State 1 for a job with another defense contractor at the base where he had worked originally. He has worked there ever since. Applicant held a security clearance between 2006 and 2011. He submitted his most recent security clearance application (SCA) in March 2015. (Items 3, 4; AE B, AE F)

The SOR alleges 12 delinquent debts. They are listed on Applicant's credit reports from April 2016 and May 2015. (Items 5, 6)<sup>5</sup>

SOR ¶ 1.a is a mortgage account allegedly in foreclosure, with \$19,033 past due, and a total balance of \$139,355. The account relates to the home Applicant purchased in State 2 after he moved there in 2007. In his answer, he indicated that he was unable to afford both the mortgage on that home and also his rent in State 3, where he had begun working in 2011. The mortgaged property was foreclosed on in early 2012, around the time of Applicant's divorce. He provided documentation from the creditor indicating that the home was conveyed back to federal housing authorities in early 2013, and no money is owed. (AE D). This account is resolved.

SOR ¶ 1.b (\$16,665) is a child support account for Applicant's youngest child. Applicant explained that the child support owed is past due because it was calculated retroactively from the date of the divorce decree. He stated that he has been making payments of \$79 a month against the delinquency (in addition to his monthly child support requirement) since October 2014 and that he also makes payments through re-channeling of his tax refunds. He is to pay \$288.46 every two weeks. As of October 2016, he owed \$12,040 in past-due child support. (Court order provided with Answer, AE A, AE E, AE K)

Applicant's most recent submissions establish that he has made bi-weekly payments of \$288.46 since early 2015. He also made large payments in the spring of

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<sup>5</sup> Item 5 lists SOR ¶¶ 1.a - 1.d, 1.f, and 1.l as delinquent. Item 6 lists SOR ¶¶ 1.a – 1.e, and ¶¶ 1.g – 1.k as delinquent.

2015, 2016 and 2017, which are likely redirected tax refunds. He still owes an arrearage of \$9,247, though he has made child support payments of almost \$25,000 in this manner over the last three years. (AE F, AE Q) This account is being resolved.

SOR ¶ 1.c (\$1,545) is a credit card debt in collection. Applicant provided documentation indicating that he makes regular \$25 payments on the debt, and now owes \$820. (AE R). This debt is being resolved.

SOR ¶ 1.d (\$878) is another credit card debt in collection. Applicant provided documentation that he regularly pays \$26 a month on the account, and now owes \$97. He will finish paying this debt in December 2017. (AE F, AE M) This account is being resolved.

Applicant denied SOR ¶ 1.e (a \$738 charge off) and said he did not borrow money from that bank. His May 2015 credit report indicates that the account was opened in January 2009, and became past due two years later. The bank's address is in Applicant's home state (State 1). (Item 6 at 3) Applicant took a similar position in his background interview. He indicated that he was contacted by the bank, and informed that a loan account had been set up for him. Applicant went to the bank to challenge it but was not able to obtain verifying information. (Item 4 at 5)

SOR ¶ 1.f (\$2,753) is a rental/leasing account from an apartment where Applicant lived after his divorce. Applicant acknowledged that he broke the lease. He stated in his answer and FORM Response that he had been paying on the debt for the last 15 months, but provided no documentation. More recently, he indicated that he has now arranged a \$125 monthly payments to resolve the debt. The debt is now being resolved.

SOR ¶ 1.g (\$471) is a child support account for Applicant's eldest son. It was listed as delinquent on his April 2015 credit report. (Item 6 at 4) His April 2016 credit report reflected that the account was current, with a balance due of \$422. (Item 5 at 3) Applicant explained in his answer that the debt was due to a delay in starting payments from a new job. His son graduated from high school in May 2017, so Applicant no longer has a child-support obligation, no arrearage is owed, and money is no longer being taken out of his pay at \$600 a month. (AE F, AE I, AE O). This debt is resolved.

SOR ¶ 1.h (\$520) is a phone bill. Applicant was not aware it was past due until he received the SOR. The debt has been paid. (AE P)

SOR ¶ 1.i (\$450) is a past-due medical debt related to dental treatment for Applicant's son. Applicant has denied responsibility for the debt on the grounds that his ex-wife arranged the appointment without authorization from Applicant. (Item 6 at 7).

SOR ¶¶ 1.j (\$387) and 1.k (\$128) are medical debts owed to the same collection agency. Applicant admits both debts but questions the amount the collection agency says he owes. He indicated that he is in contact with the creditor to determine what he owes.

With his answer and more recently, he provided several invoices from the collection agency regarding multiple accounts, including debt ¶ 1.j (acct. # ending 2749) but not debt ¶ 1.k (acct. # ending 2750). These accounts are being resolved.

SOR ¶ 1.l (\$358) is a past-due medical debt, listed on Applicant's April 2016 credit report. Applicant denied the debt, and said he did not recognize it. The creditor is not sufficiently identified on Item 6 for Applicant to attempt to resolve the debt.

Applicant indicated that he earns about \$55,000 a year in his current position. He indicated that he lives within his means and is able to pay his rent, utilities, and the debt he owes. He has access to more funds now that his son has aged out of child support, which saves Applicant \$600 a month. (AE F)

Applicant's supervisor for the last two years indicated that Applicant is a solid, consistent performer who brings years of experience to his job. He has high standards and is quality-oriented. He assumes responsibility and accountability for his work assignments. He has good judgment and is trustworthy. (AE H)

### **Policies**

It is well established that no one has a right to a security clearance.<sup>6</sup> As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."<sup>7</sup>

The adjudicative 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(a), 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 national security eligibility will be resolved in favor of the 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

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<sup>6</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

<sup>7</sup> 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>8</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accrued multiple financial delinquencies after his divorce as well as several moves and job changes. The above disqualifying conditions apply. SOR ¶ 1.I, which Applicant denied, is not established, since it was not identified beyond being an unspecified medical debt.

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<sup>8</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to 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 debts were due to several circumstances beyond his control. They included job losses, reductions in income, and a divorce. The first prong of AG ¶ 20(b) applies. For full application of AG ¶ 20(b), Applicant must establish that he acted responsibly under the circumstances. Applicant's efforts to resolve his various debts are well documented. He is adhering to his court-ordered child support requirements as to debt SOR ¶ 1.b, and has been paying down his arrearage for the last three years. Most of his other debts have been, or are being, resolved through regular payments. Applicant has acted responsibly in resolving his debts, and AG ¶ 20(b) fully applies.

The DOHA Appeal Board has noted that:

An applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. 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. ISCR Case No. 07-06842 at 3 (App. Bd. May 21, 2008).<sup>9</sup>

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<sup>9</sup> ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009); *see also* ISCR Case No. 09-08462 at 4 (May 31, 2011).

Under that precedent, Applicant has acted responsibly in resolving his debts. He established a significant track record of steady payments or other evidence of financial stability to show that he “initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts” as required under AG ¶ 20(d).<sup>10</sup>

Applicant documented that several of the debts he denied have been paid or otherwise resolved. This includes SOR ¶¶ 1.a, 1.g and 1.h. He made a reasonable effort to resolve other debts he denied, such as SOR ¶¶ 1.e and 1.i. AG ¶ 20(e) therefore applies.

Applicant established that his financial problems are unlikely to recur. He acted responsibly in resolving them, and has established that his financial issues no longer cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) applies.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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(a), 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 in my whole-person analysis. Applicant provided sufficient documented information that he is resolving his debts in a good-faith, responsible manner. Overall, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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<sup>10</sup> ISCR Case No. 98-0445 at 3 (App. Bd. Apr. 2, 1999).



### **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.l: For Applicant

### **Conclusion**

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

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Braden M. Murphy  
Administrative Judge