



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-07688
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel  
For Applicant: *Pro Se*

08/25/2017

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**Decision**

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 2, 2014. On September 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted 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.

On September 26, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 17, 2016, and the case was assigned to me on March 1, 2017. On April 28, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 18, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. I appended to the record the Government's exhibit list as HE I. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through I, which were admitted without objection. At Applicant's request, I left the record open to June 1, 2017. Applicant timely provided additional documents which I admitted as AE J through P, without objection. DOHA received the transcript (Tr.) on May 31, 2017.

On June 8, 2017, the DOD implemented new AG.<sup>1</sup> Accordingly, I have applied the June 2017 AG.<sup>2</sup> However, because the September 2006 AG were in effect on the date of the hearing, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

### **Findings of Fact<sup>3</sup>**

Applicant, age 54, has been married to his wife since 1990. He has four adult children. He served honorably in the U.S. Marine Corps from 1981 to 1996. He received a bachelor's degree in 2005, and a master's degree in 2007. He has been employed as the president of his own defense-contracting company since June 2010, immediately following a layoff by his previous employer. Applicant has held a top-secret security clearance since approximately 2009. His company has held a facility clearance since 2011.<sup>4</sup>

The SOR alleges four delinquent debts totaling \$166,827, including a \$76,993 second-mortgage account (SOR 1.a), an \$18,580 credit-card account (SOR 1.b), state and federal taxes totaling \$70,000 (SOR 1.c), and a \$1,254 cable account (SOR 1.d). In his SOR answer, Applicant admitted each debt. The cable account was resolved in September 2016.<sup>5</sup>

Applicant's June 2010 layoff was due to a reduction-in-force by his employer. He attributes his accumulation of delinquent debt to the period following his June 2010 layoff when he was not earning any income to when his company was solvent enough

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

<sup>3</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR Answer, his SCA (GE 1), and the summary of his August 2015 background-investigation interview (GE 2).

<sup>4</sup> See also Tr. at 7-8, 34, 37-38.

<sup>5</sup> AX D; Tr. at 55-56.

to pay him an income. During that period, he depleted his personal savings of \$50,000 and used credit cards to pay his personal expenses, and the start-up and other costs necessary to get his company off the ground and keep it afloat. He was not able to pay himself a salary until April 2011 when the company procured its first contract as a prime contractor. Prior to that, the company relied on a small contract as a subcontractor, which brought in some, but not enough, income to pay his salary.<sup>6</sup>

Applicant immediately notified his creditors of his employment situation in June 2010 and diligently worked with them to resolve his delinquent accounts. By September 2014, he had settled numerous accounts, including loans, credit cards, and lines of credit that he used to pay his company's start-up costs and other expenses.<sup>7</sup>

In approximately April 2014, Applicant modified the mortgage loan on his primary residence to settle his then delinquent balance. However, he discovered during his August 2015 background-investigation interview that the lender failed to include the second-mortgage loan account, and then charged off the amount of \$76,993 (SOR ¶ 1.a). In September 2016, Applicant settled with the creditor via an installment agreement. He has timely made the required payments since then.<sup>8</sup> This debt has been resolved.

In 2013, the creditor for one of the credit cards that Applicant used for his business charged off the account in the amount of \$18,580 (SOR ¶ 1.b). In December 2015, he settled the account.<sup>9</sup> This debt has been resolved.

Applicant's state and federal tax debt totaling approximately \$106,186 (SOR ¶ 1.c) resulted from his forgiven-debt income and unpaid business taxes. He chose to pay his employees rather than his business's taxes during the period when his company had insufficient income to pay both. At the hearing, he acknowledged that this was a mistake and promised to honor his obligation to the IRS first in the future.<sup>10</sup>

Applicant established an installment agreement with the IRS in June 2012 to pay delinquent taxes owed for tax year 2011, and subsequently modified it to include tax years 2012 through 2014. As of July 2015, he owed \$85,181 to the IRS. By July 2016, Applicant had paid the account in full. His IRS debt has been resolved.<sup>11</sup>

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<sup>6</sup> See also Tr. at 29-32, 69-72.

<sup>7</sup> AX H; GE 2 at 3-4; GE 3 and 4; Tr. at 32, 45, 58-68.

<sup>8</sup> See also AX A, E, K; GE 3 and 4; Tr. at 32-33; 45, 58-68.

<sup>9</sup> See also AX B; GE 3 at 25; GE 4 at 2; Tr. at 33, 45-46.

<sup>10</sup> GE 2 at 3; Tr. at 36, 73-84, 90-91.

<sup>11</sup> AX F, I, L, and M; Tr. at 47-50, 78-83.

State A filed a \$20,905 tax lien against Applicant in July 2014 for delinquent taxes owed for tax years 2012 and 2014. In September 2014, Applicant established an installment agreement to resolve it. State A released the lien as “satisfied” in September 2015. State A sent a notice to Applicant in August 2016 because he did not submit the full payment due on his tax return for tax year 2015. He immediately paid it. His State A debt has been resolved.<sup>12</sup>

Applicant earned an annual salary of approximately \$100,000 prior to his 2010 layoff. He was paid a \$5,000 severance. His wife, who had been earning approximately \$800 per month, was also laid off in 2010 and then took time off to care for her ailing parents. She now works part time. In April 2011, Applicant began paying himself a monthly salary of \$3,500. In 2013, he increased his salary to \$115,000 annually. His company is now growing and thriving with sufficient funds to meet its expenses.<sup>13</sup> In September 2015, Applicant engaged the services of a credit repair law firm. He has received financial counseling and now has a CPA assist him with his personal and business finances, including filing his tax returns.<sup>14</sup>

Applicant’s company has received various corporate awards and has been recognized by several local business publications, including being ranked among the top 50 of the fastest growing small business contractors in the government market, and highly ranked among veteran-owned businesses.<sup>15</sup>

## **Policies**

“[N]o one has a ‘right’ to a security clearance.”<sup>16</sup> As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.”<sup>17</sup> The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>18</sup>

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative

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<sup>12</sup> AX C, G, I, N, and O; Tr. at 33, 46, 76-78.

<sup>13</sup> Tr. at 30, 38-39, 53-55, 57-58, 72, 90.

<sup>14</sup> AX H and J; Tr. at 33-42, 50-51, 85-90.

<sup>15</sup> AX P; Tr. at 88.

<sup>16</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>17</sup> *Egan* at 527.

<sup>18</sup> EO 10865 § 2.

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>19</sup> Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.<sup>20</sup> "Substantial evidence" is "more than a scintilla but less than a preponderance."<sup>21</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.<sup>22</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>23</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>24</sup>

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>25</sup> "[S]ecurity clearance determinations should err, if they must, on the side of denials."<sup>26</sup>

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<sup>19</sup> EO 10865 § 7.

<sup>20</sup> See *Egan*, 484 U.S. at 531.

<sup>21</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>22</sup> See ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993).

<sup>23</sup> Directive ¶ E3.1.15.

<sup>24</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>25</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>26</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . .

Applicant's financial indebtedness and his failure to timely pay his federal income taxes establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required).

I find that the security concerns raised in the SOR have been mitigated by the following applicable factors:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant acted responsibly to address debts caused by circumstances beyond his control. As soon as he was laid off, he initiated action to negotiate payment arrangements with his creditors. He resolved numerous accounts not only before the issuance of the SOR, but even before his background-investigation interview. He resolved three of the debts alleged in the SOR before it was issued, and the other two shortly thereafter. Applicant received financial counseling and has an established track record of managing his finances responsibly. Given the circumstances under which he incurred his delinquent debt and failed to timely pay his taxes, and in light of the responsible manner in which he resolved both issues, I conclude that his finances are under control.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his financial indebtedness and failure to timely pay his taxes. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine  
Administrative Judge