



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-07832
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: David J. Hebb, Esq. and  
James M. Carr, Esq.

02/23/2017

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the security concerns about his finances. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 5, 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 March 3, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On April 12, 2016, the Government submitted its file of relevant material (FORM). Applicant, through legal counsel, responded to the FORM on May 9, 2016.

On January 19, 2017, I reopened the record to permit both parties to supplement the written record.<sup>1</sup> Applicant submitted additional documents on February 1, 2017. The record closed on February 6, 2017.

### **Procedural Issues**

In the FORM, Department Counsel references FORM Items 1-5. FORM Items 2-5 are entered into evidence as Government Exhibits (GE) 2-5, without objection.<sup>2</sup>

In his FORM response, Applicant submitted a cover memorandum and five attachments, which are entered into evidence as Applicant Exhibits (AE) A-F, without objection. Applicant's supplemental FORM response included a cover memorandum and two attachments, which are entered into evidence as AE G-I, without objection.

### **Findings of Fact**

The SOR alleges three delinquent debts – two credit card debts (SOR ¶¶ 1.a. and 1.c.) and a mortgage loan account (SOR ¶ 1.b.). After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 61 years old. He received a bachelor's degree in May 1977. He has been employed consistently by DOD contractors since at least November 1985. Applicant was first married from 1983 to 2000. His second marriage was from 2002 to 2008. He has five children, ages 14, 16, 25, 27, and 31.<sup>3</sup>

Applicant attributed his financial delinquencies to his second separation and divorce and the nationwide housing crisis. He separated from his second wife in 2006, and the divorce proceedings and disposition of the marital home continued until 2016. During the separation and divorce, the court ordered Applicant to pay the mortgage loan and utilities for the marital home, as well as child support for his two minor children. Meanwhile, he was still paying child support to his first ex-wife and for a second residence for himself outside the marital home. In 2016, Applicant was awarded custody of his two minor children and was permitted to relocate to the marital home.<sup>4</sup>

The first credit card account (SOR ¶ 1.a.) was opened in February 2004, and was delinquent as of May 2009 for about \$4,709.<sup>5</sup> Applicant submitted documentation that

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<sup>1</sup> This order and the accompanying email is admitted into the record as Administrative Exhibit (AX) I. Applicant's February 1, 2017 email and Department Counsel's February 6, 2017 email are admitted into the record as AX 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 part of the record.

<sup>3</sup> GE 2.

<sup>4</sup> Response to SOR; AE A; GE 2; GE 3.

<sup>5</sup> GE 4.

this debt was resolved. The creditor forgave the debt and issued a Form 1099-C in the amount of \$4,613 for tax year 2012, causing Applicant to incur additional federal income tax liability. Applicant paid the additional tax liability.<sup>6</sup>

The mortgage loan account (SOR ¶ 1.b.) was opened in August 2005 and was \$154,874 past due as of November 2014.<sup>7</sup> The possession of this home was a contentious issue during the divorce proceedings and for several years thereafter. Applicant's initial attempts to sell the house in 2008 coincided with the nationwide housing crisis and decreasing property values. In 2010, Applicant's wife abandoned the home in disrepair, and Applicant moved back in and completed needed repairs. He was later required by the court to pay his ex-wife back-rent for residing in the abandoned home. In 2016, the court awarded Applicant custody of his two minor children and possession of the marital home.

Between November 2007 and July 2015, Applicant attempted a short sale and several loan modifications. He provided correspondence regarding his successful efforts to modify the mortgage loan and documentary proof of payments in February, March, April, and May 2016. In April 2016, Applicant qualified for the Home Affordable Modification Program, signed the new loan agreement, and made his first payment (May 2016). His January 2017 mortgage loan statement shows that this account remains current.<sup>8</sup>

The second credit card account (SOR ¶ 1.c.) was opened in January 2006, and Applicant became delinquent on the account while going through the divorce and trying to resolve the mortgage loan. He resolved this credit card debt in May 2016, through an agreed-upon settlement with the creditor.<sup>9</sup>

While Applicant failed to provide a monthly budget, his February 2016 credit reports list no further delinquent debts and show lengthy account histories with consistently current accounts. There is no evidence of any financial counseling, though Applicant apparently did consult an attorney about resolving his delinquent debts (SOR ¶¶ 1.a. and 1.c.). Applicant claims that the attorney advised him that the two credit card debts were uncollectable due to the statute of limitations. Nevertheless, he went ahead and resolved these two uncollectable debts.

Applicant submitted letters from co-workers who attest to his exemplary work performance and strong character.

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<sup>6</sup> AE A; AE H.

<sup>7</sup> GE 4.

<sup>8</sup> AE D; AE E; AE I.

<sup>9</sup> AE F.

## 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 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 three delinquent debts totaling approximately \$185,436. Two of the debts became delinquent in about 2009. Accordingly, the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(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; and

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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.).

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>11</sup>

Applicant's financial difficulties arose from the convergence of circumstances beyond his control – his marital separation, protracted divorce proceedings, and the nationwide housing crisis. The convergence of these circumstances is unlikely to recur. Moreover, these circumstances and Applicant's persistence to resolve his financial indebtedness do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does 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> As discussed above, 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 debt-free or to develop a plan for paying off all debts immediately or simultaneously.<sup>13</sup> Applicant's efforts to resolve these three delinquent debts began as early as 2008. Understandably, the protracted and contentious divorce proceedings, coupled with the nationwide housing crisis, stymied Applicant's attempts to resolve his mortgage loan account. These efforts, the mortgage loan modification, and the resolution of the one credit account (SOR ¶ 1.a.) all preceded the SOR. Upon receipt of the SOR, Applicant corrected his misplaced reliance on a tolled statute of limitations by settling the last remaining debt (SOR ¶ 1.c.). Since January 2016, he established a track record of payments on his mortgage loan account, while staying current on his remaining credit accounts.<sup>14</sup> Given the concurrent circumstances beyond his control, Applicant acted responsibly in addressing his delinquent debts. Therefore, I conclude that AG ¶ 20(b) applies.

There is neither record evidence of credit counseling nor a monthly budget; however, the two February 2016 credit bureau reports show a track record of other accounts remaining current. AG ¶ 20(c) applies.

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<sup>11</sup> Applicant does not dispute any of the alleged debts. Therefore, AG ¶ 20(e) is not applicable.

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

<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> FORM Item 1 (Applicant's response to the SOR includes two February 2016 credit reports. These reports include lengthy account histories showing Applicant's credit accounts are consistently current.).

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>15</sup> Applicant’s debt-resolution efforts predate the submission of his security clearance application and the issuance of the SOR. He has established a track record of repayments and has taken significant steps towards resolution on all of the alleged accounts. Thus, AG ¶ 20(d) applies.

Given Applicant’s established track record of debt-resolution efforts and repayments, while encountering circumstances beyond his control, I find that Applicant 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.

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 resolution and repayments. I conclude 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
Subparagraphs 1.a.-1.c.:	For Applicant

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<sup>15</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).

## **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