



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 15-07823  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

01/27/2017  
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**Decision**  
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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant handled his finances irresponsibly and several of his accounts were placed for collection. In May 2016, he began working a second job for the income to pay down his debt, but it is too soon to conclude that his financial problems are behind him. Clearance is denied.

**Statement of the Case**

On February 26, 2016, Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On March 4, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On May 9, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I scheduled a hearing for May 18, 2016. Applicant waived his right under ¶ E3.1.8 of the Directive to 15 days advance notice of his hearing.

I convened the hearing as scheduled. Three Government exhibits (GEs 1-3) and three Applicant exhibits (AEs A-C) were admitted into evidence without objection, AE A being a duplicate of GE 3. The letter forwarding discovery to Applicant was marked as a hearing exhibit (HE 1) for the record. Applicant testified, as reflected in a transcript (Tr.) received on May 27, 2016.

I held the record open after the hearing initially for one month for Applicant to supplement the record. On June 17, 2016, Applicant submitted three documents, which were incomplete. I extended the record for another two weeks for Applicant to submit complete documents. On June 20, 2016, Department Counsel expressed that the Government had no objection to the documents Applicant had submitted. No additional documents were received from Applicant by the new deadline, so the documents submitted on June 17, 2016, were marked and admitted without objection as AEs D-F. The record closed on July 1, 2016.

### **Findings of Fact**

The SOR alleges under Guideline F that, as of February 26, 2016, Applicant owed \$7,190 in collection debt placed by phone companies (SOR ¶¶ 1.a, 1.g-1.j, and 1.m-1.n); \$354 in collection debt placed by a cable/Internet provider (SOR ¶ 1.b); four charged-off debts totaling \$11,012 (SOR ¶¶ 1.c-1.f); and three collection debts totaling \$1,522 (SOR ¶¶ 1.k, 1.l, and 1.o). When he responded to the SOR, Applicant admitted each of the debts as alleged. He stated with regard to each debt that he was responsible for not paying his bills on time, but that he was or would be in the process of paying off the debt as soon as possible.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 35-year-old manager for a defense contractor. Applicant began his employment in March 2012, and he held an interim security clearance until it was withdrawn pending final adjudication of his security clearance eligibility. (GE 1; Tr. 24-25.)

Applicant graduated from high school in June 1999. He served on active duty in the U.S. military starting in January 2000. He deployed for six months to the Persian Gulf. (Tr. 34.) In February 2002, he was discharged under other than honorable conditions for financial issues and for unauthorized absence of 40 days. (Tr. 35-37.) After his discharge, he lived with his parents and worked in retail. From March 2005 to April 2008, he served in the National Guard as a unit supply specialist. (GE 1; Tr. 38.) He reenlisted in the U.S.

military in April 2008 and served until June 2009. (GE 1; Tr. 39-40.) Due to stress related to family issues at home, he received a hardship discharge. (Tr. 40-42.)

Applicant was employed as a full-time security guard from June 2009 to April 2011. From September 2010 to May 2011, he also attended a community college. While working part time in security for a private high school, Applicant attended a private university from September 2011 to May 2012. In February 2013, he resigned from his part-time security guard position and enrolled in a public university. In the fall of 2013, he temporarily suspended his studies. He started working in retail part time in September 2013. In September 2014, he resumed his studies toward a bachelor's degree while continuing to work in retail part time until he began his current employment. (GE 1; Tr. 30-31.) He did not re-enroll for the fall semester 2015 because he needed to focus on his job. (Tr. 31.)

On April 23, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He reported that he had previously undergone background investigations for DOD secret clearance eligibility in May 2000 and June 2008, but that he did not know when his clearances were granted. Concerning financial record inquiries, Applicant responded affirmatively to whether he was currently utilizing or seeking assistance for financial difficulties. He indicated that he was working with a debt counseling service to work his way out of debt, and that he hoped to pay off all his debts within the next few years. In response to inquiries about delinquencies involving routine accounts, Applicant listed one debt, a \$7,500 car loan debt (SOR ¶ 1.d) that he was in the process of repaying. Under an additional comment section, Applicant acknowledged that he had been financially irresponsible in the past, but asserted that he has a plan to pay off his creditors. (GE 1.)

Applicant had contacted a debt resolution company about negotiating settlements for him with his creditors. Believing that it would look better on his credit report if he paid his debts in full rather than settled for less than their balances, Applicant chose not to proceed with a debt repayment plan. (Tr. 57-58.)

As of May 30, 2015, Applicant's credit report showed a collection balance of \$7,969 on the car loan in SOR ¶ 1.d. He had the vehicle voluntarily repossessed when he could not afford the payment. (Tr. 62.) Several other debts had been charged off or placed for collection: a \$1,948 cell phone debt from April 2014 (SOR ¶ 1.g); an unsecured payday loan for \$1,844 in July 2010 (SOR ¶ 1.e); a payday loan for \$1,261 (balance \$1,049) in October 2009 (SOR ¶ 1.c); a \$150 credit card debt from January 2014 (SOR ¶ 1.f); and wireless phone service collection debts of \$1,652 from December 2012 (SOR ¶ 1.h), \$1,460 from November 2013 (SOR ¶ 1.i), \$1,322 from September 2013 (SOR ¶ 1.j), \$348 from November 2014 (SOR ¶ 1.a), \$265 from August 2010 (SOR ¶ 1.m), and \$195 from June 2014 (SOR ¶ 1.n). In addition, a \$793 debt from February 2013 (SOR ¶ 1.k), and fitness membership debts of \$624 from December 2013 (SOR ¶ 1.l) and of \$105 from January 2015 (SOR ¶ 1.o) were in collection status. (GEs 2, 3.) On June 5, 2015, a cable/Internet provider placed a \$354 debt from May 2014 for collection (SOR ¶ 1.b). (GE 3; AEs A, B; Tr. 54-56, 62-72.)

Applicant had two outstanding federal student loans obtained in September 2011 for \$7,516. Available credit reports show that his student loan account was 120 days past due as of May 2014. His student loans were deferred from June 2014 through December 2014. He resumed repaying his student loans in January 2015, but when he missed a payment in March 2015, his monthly repayment increased to \$93. Available credit records show that he made his student loan payments on time for the most part from April 2015 through October 2015 (missed July 2015), when he obtained another deferment. (AEs A-C) In May 2016, he resumed monthly payments of his student loans, but at an arranged reduced rate of \$54 a month. (Tr. 22.) Applicant presented student loan payment records showing four payments of \$86 and five payments of \$93 but not when the payments were made. (AE F.)

On March 24, 2016, Applicant satisfied the credit card debt in SOR ¶ 1.f. (AE E.) He was making timely payments of \$201 per month on a car loan obtained in July 2015 for \$4,299. He was paying \$25 per month on a credit card account opened in November 2015. The balance on the account was \$202. He had made no progress toward resolving the delinquencies in SOR ¶¶ 1.a-1.e, 1.j, and 1.o, which were still on his credit report. (AE B-C.) In addition to the \$348 debt in SOR ¶ 1.a, the wireless phone company had placed a \$1,144 debt for collection in November 2015 (not alleged). The payday loan account in SOR ¶ 1.e was reported as having been charged off and settled for less than its full balance. (AEs B, C.) Applicant testified that he was advised not to make any payments on either of his payday loans (SOR ¶¶ 1.c and 1.e) because they would be coming off his credit report in a few months. (Tr. 57, 64.)

Applicant testified that he had been financially irresponsible in the past. (Tr. 17.) He lived with his mother until September 2015, when he moved into a one bedroom apartment at rent of \$950 per month. (Tr. 28-29.) He pays his living expenses on time. (Tr. 73.) He was paying at least the monthly minimum of \$25 on his one open credit card account. (Tr. 46.) Applicant's mother is unemployed and disabled. When he can, he gives her \$50 to \$100 toward some of her bills. (Tr. 29-30.)

As of May 2016, Applicant had not been able to save or set aside funds to where he could commit to a monthly repayment under a debt consolidation. (Tr. 60-61.) Applicant had a total of \$300 in checking and savings deposits as of his hearing. He has a 401(k) through work. (Tr. 45.) His net take-home pay is \$500 a week from his defense contractor employment. (Tr. 42.) In May 2016, he began working a second job in nightclub security to pay off his delinquent debts. He earns \$16 an hour in that job. (Tr. 23, 26-27.) He expressed a plan to pay off some smaller debts first, including satisfying the \$195 (SOR ¶ 1.n) and \$256 (SOR ¶ 1.m) cellular phone collection debts in June 2016. (Tr. 22, 71-72.) Applicant authorized a credit charge of \$44 on June 9, 2016, toward the debt in SOR ¶ 1.b. (AE D.) He testified and annotated on his credit reports that he arranged with the collection entities holding the wireless phone debts in SOR ¶¶ 1.h (balance \$1,144) and 1.j (balance \$1,322) to make \$50 monthly payments starting May 26, 2016. (AEs B, C; Tr. 76-78.) He testified that he arranged to make \$50 monthly payments toward the cell phone debts in SOR ¶¶ 1.g, 1.i, and 1.j, and that he was unaware of the debt in SOR ¶ 1.h. (Tr. 65, 67-68.) The record does not contain any documentation confirming that agreement or any payments. Applicant had yet to reach out to his creditors about the debts in SOR ¶ 1.a, 1.c-

1.e, and 1.k-1.o. (Tr. 55-72.) He lacked sufficient knowledge of the debts alleged in SOR ¶¶ 1.k, 1.l, and 1.o to make repayment arrangements. (Tr. 66-72.) Trans Union was reporting the creditors as fitness clubs for the debts in SOR ¶¶ 1.l, and 1.o. (AE B.) Applicant expressed a determination to satisfy his past-due debts. (Tr. 74.)

Applicant's federal income tax refund of \$2,300 for tax year 2015 was intercepted by the state and applied to a debt incurred between September 2013 and March 2015. He collected unemployment compensation when he was working part time in retail. He still owes the state another \$10,000-\$11,000. He has yet to establish a repayment plan for the debt. (Tr. 49-53, 79.)

The private university Applicant attended from September 2011 to May 2012 is pursuing him for about \$6,000 in claimed unpaid tuition and fees. Applicant intends to apply for retroactive GI benefits to cover any balance owed the university. (Tr. 80-81.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 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. Section 7 of Executive Order 10865 provides that 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 concerns about financial considerations are set forth 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.

Available credit reports establish that Applicant owed approximately \$19,570 in delinquent balances. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant admitted that he also owes the state between \$10,000 and \$11,000 for unemployment compensation paid to him when he was working part time. That information was apparently unknown to the Government before the hearing, and it was not alleged. A debt not alleged cannot be considered for disqualifying purposes, but it is relevant to assessing Applicant’s financial judgment generally and issues in mitigation, such as whether he can be relied on to make consistent payments toward the delinquencies in the SOR.<sup>1</sup>

Mitigating condition 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,” does not apply. The debts in SOR ¶¶ 1.a and 1.b first became delinquent in 2014 and were respectively placed for collection in October 2015 and June 2015. Only the credit card

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<sup>1</sup> The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant’s credibility; to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

delinquency (SOR ¶ 1.f) has been paid. The creditor in SOR ¶ 1.e is now reporting the account as “paid for less than full balance, Paid charge off.” Most of his delinquent debt was yet to be resolved as of the close of the evidentiary record.

Applicant did not provide significant evidence of circumstances beyond his control that would implicate AG ¶ 20(b), which provides:

(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.

Unemployment may well have been a factor at times, especially when he was employed in retail. However, his income was supplemented by unemployment compensation that he now has to repay. Applicant acknowledges that he did not handle his personal finances responsibly in the past.

Mitigating conditions AG ¶ 20(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 AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” have some applicability. Applicant paid the debt in SOR ¶ 1.f, although not before the SOR was issued. Applicant’s intention to satisfy his debts in full rather than settle them for lesser amounts is evidence of good faith towards his creditors and is a sign of financial responsibility. By starting a part-time job in May 2016 for the income needed to make payments on his delinquent debts, Applicant demonstrates a desire to resolve his debts. However, promises to pay debts are not a substitute for a record of timely payments. See, e.g., ISCR 14-04565 (App. Bd. Sep. 18, 2015); ISCR 14-05359 (App. Bd. May 4, 2016).

Applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR.<sup>2</sup> However, while Applicant testified that

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<sup>2</sup> The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g.,

he can afford to make the payments promised on the wireless phone debts, he also admitted that he was still struggling financially. He had not been able to accumulate any significant savings that he could put toward paying his delinquencies. With the income from his second job, Applicant's financial situation may improve sufficiently in the future for him to pay down his debts. However, his debt to the state for unemployment compensation and the \$6,000 in college tuition debt sought by the private university could hinder his ability to make progress toward stabilizing his finances. Except for SOR ¶ 1.f, he has not made enough progress toward repaying his delinquent accounts to find for him with respect to the allegations. Based on the evidence before me, I cannot yet conclude that the financial considerations concerns are fully mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>3</sup> The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant appears to be living within his means in that he is not taking on new debt beyond what he can reasonably afford. However, his financial problems go well beyond the collection and charged-off balances in the SOR in that he owes the state between \$10,000 and \$11,000 for unemployment compensation that he improperly accepted when he was employed. He testified that he did not know that he was not entitled to that benefit at the time, but the debt is considerable in light of his current financial situation. He has yet to enter into any repayment arrangements with the state. Any tax refunds for 2016 are likely to be intercepted by the state and applied to that debt, so he cannot count on tax refunds to pay down his delinquencies. Applicant has taken some positive steps to become more financially responsible, but they are not enough to overcome the security concerns. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or

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ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

<sup>3</sup> The factors under AG ¶ 2(a) are as follows:

(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.



renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990). For the reasons noted, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.o:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge