



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-07775
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

02/06/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the delinquent debts he incurred after a divorce and following the recent recession that saw his former home's value plummet by over fifty percent. Years before applying for a security clearance, he took decisive, responsible action to address his delinquent accounts. He consolidated his non-mortgage related accounts through a debt consolidation program and paid the debts over a period of five years from 2008 to 2013. He also addressed his delinquent mortgage account. After multiple good-faith attempts to resolve the mortgage proved unsuccessful, he was able to negotiate a deed in lieu. He received financial counseling, reduced his living expenses, and presently lives within his means. He established his eligibility for a security clearance to support a federal contract. Clearance is granted.

**Statement of the Case**

On December 7, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a hearing.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On September 15, 2016, a date mutually agreed to by the parties, a hearing was held.<sup>2</sup> Applicant testified at the hearing, and Government Exhibits (Gx.) 1 – 5 and Applicant's Exhibits (Ax.) 1 – 10 were admitted into the administrative record without objection. Applicant timely submitted Ax. 11 post-hearing and it was also admitted into the record without objection. The transcript of the hearing (Tr.) was received on September 23, 2016, and the record closed on September 29, 2016.

On November 16, 2016, after reviewing the transcript and the record evidence, I advised the parties that the matter appeared appropriate for summary disposition in Applicant's favor. Department Counsel objected and requested a full decision.<sup>3</sup>

### **Findings of Fact**

Applicant is in his mid-thirties. He is a heating, ventilation, and air conditioning (HVAC) licensed contractor. He has been working for his current employer for three years. He submitted a security clearance in 2015, to support a government contract to repair and service HVAC units on military installations.<sup>4</sup>

In 2005, Applicant and his wife divorced. As part of the divorce settlement, Applicant refinanced the marital home and paid his former wife a portion of the equity from the home's increased value. Applicant and his wife had purchased the home for approximately \$155,000. When they divorced, the fair market value of the home had increased to about \$210,000.<sup>5</sup>

Following the divorce, Applicant found it difficult to pay the mortgage on his income alone. He had been paying approximately \$1,000 a month before the divorce. After refinancing the mortgage, Applicant's monthly mortgage payments increased to \$1,250. He found tenants to offset the increased housing cost, but after the economy went into recession his tenants stopped paying rent. Applicant went to court to evict his tenants and, in the process, was awarded a \$5,000 judgment against them. His former tenants have not paid the judgment.<sup>6</sup>

Applicant was unable to pay the mortgage on his former marital residence and remain current with his other debts. He defaulted on the mortgage and a number of other accounts. He obtained financial counseling and consolidated his non-mortgage related accounts through a debt consolidation program. He paid the debts through consistent monthly payments of \$212 for five years from 2008 to 2013. He has filed

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<sup>2</sup> Prehearing correspondence, the notice of hearing, and the case management order are attached to the record as Appellate Exhibits (App. Exh.) I – III, respectively.

<sup>3</sup> App. Exh. IV.

<sup>4</sup> Tr. 4, 24-26; Gx. 1.

<sup>5</sup> Tr. 27-49; Gx. 4 at 8, trade line 25 (shows paying mortgage "as agreed" before divorce); Ax. 1 – 2.

<sup>6</sup> Tr. 27-49; Gx. 4 at 4, trade line 6; Ax. 4 (judgment against former tenants).

disputes with the credit reporting agencies to remove incorrect information appearing on his old credit reports regarding accounts he paid through the consolidation program. He responsibly addressed and resolved his non-mortgage related debts, including those listed at SOR 1.b – 1.e.<sup>7</sup>

Applicant also responsibly addressed the mortgage debt for his former marital residence, which is referred to at SOR 1.a. He contacted the lender and applied for numerous modification programs. His efforts to modify the mortgage were frustrated by the lender, which routinely lost his paperwork and his account repeatedly changed hands as one lender sold it to another and so on. He then tried to sell his former home to resolve the debt, but the property had lost a majority of its value after the housing market collapse. By 2015, the property was worth about \$60,000. He received an offer of \$61,000, but the new lender refused the offer. He was finally able to resolve the mortgage by negotiating a deed in lieu. The three major credit reporting agencies do not show Applicant has any outstanding mortgage account (delinquent or otherwise), or any other derogatory accounts.<sup>8</sup>

Applicant currently rents an apartment for \$550 a month. He shares the apartment with his 12-year-old daughter. He and his ex-wife share physical custody of their daughter. He has been paying \$500 a month in child support since 2005. He earns an annual salary of approximately \$80,000. After paying monthly expenses, Applicant has about \$1,500 in net income with which to pay unanticipated bills. He has about \$16,000 in savings, and makes regular contributions to a 401(k) retirement account (\$7,000 - \$8,000 balance). His recent credit reports reflect a fair to good credit rating.<sup>9</sup>

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

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<sup>7</sup> Tr. 34-36; Ax. 5, Ax. 6, Ax. 8, Ax. 9 (debt repayment history through consolidation plan), Ax. 10 (payment of two SOR debts outside debt consolidation plan).

<sup>8</sup> Tr. 27-34, 39-42, 46-49; Ax. 11.

<sup>9</sup> Tr. 36-37, 46; Ax. 7 (all three major bureaus reflect a score of over 700); Ax. 11.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 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. 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 an 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.

## **Analysis**

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

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.<sup>10</sup>

As stated in the relevant portion of AG ¶ 18 quoted above, the financial considerations security concern is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt cast doubt upon a person’s judgment, self-control, and other qualities essential to protecting classified information.<sup>11</sup>

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<sup>10</sup> AG ¶ 18.

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

Applicant's inability to pay some of his financial obligations following his divorce raises this security concern. The record evidence also requires consideration of the disqualifying conditions at AG ¶¶ 19(a) and 19(c).<sup>12</sup>

Once a disqualifying condition is established, the burden shifts to an applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. In assessing Applicant's case, I have considered all the available mitigating conditions, including the following:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's past financial problems were directly tied to his divorce, the sharp decrease in his home's value (from \$210,000 to \$60,000), loss of rental income, and his lenders' actions, which frustrated his attempts to resolve the mortgage delinquency. Applicant did not sit idly by as his financial situation worsened, nor did he walk away from his financial obligations. Instead, years before applying for a security clearance, he took concrete and responsible action to address his financial situation. He consolidated his non-mortgage related debt and paid them over the course of five years (2008 – 2013). After repeated good-faith efforts to resolve the largest of his outstanding debt, that involving his mortgage, were stymied by his lenders, Applicant was eventually able to resolve it. He has reduced his expenses, including reducing his housing expense by over fifty percent (\$1,250 monthly mortgage payment down to \$550 monthly rent). In short, Applicant demonstrated that he has taken responsible action to take control of his finances and currently lives within his means.

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<sup>12</sup> Inability or unwillingness to satisfy debts and a history of not meeting financial obligations.

Individuals applying for a security clearance are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted eligibility for a security clearance.<sup>13</sup> This is the heavy burden of persuasion that all prospective and active clearance holders must meet before they can be granted eligibility for a security clearance.

Here, Applicant met his heavy burden of persuasion. Specifically, I find that the mitigating conditions listed at AG ¶¶ 20(a) through 20(e) apply, either in full or in part, and when considered together with the favorable whole-person factors<sup>14</sup> present in this case mitigate the financial considerations security concern.

### **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 (Financial Considerations):      FOR APPLICANT

Subparagraphs 1.a – 1.f:      For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>13</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

<sup>14</sup> See generally AG ¶ 2(a).