



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-07994
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

06/20/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial problems. Clearance is granted.

**Statement of the Case**

On February 10, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a determination on the administrative (written) record (Answer).

On June 23, 2016, Department Counsel prepared her written case, known as a file of relevant material (FORM) and sent it to Applicant. With the FORM, Department Counsel forwarded to Applicant nine exhibits for admission into the record. Applicant submitted a response to the FORM (Response). The exhibits accompanying the FORM

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<sup>1</sup> The CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

and the documents Applicant submitted with his Answer and Response are admitted into the record.<sup>2</sup> On May 9, 2017, I was assigned the case for decision.<sup>3</sup>

### **Findings of Fact**

Applicant, 37, is applying to retain a security clearance that he was initially granted while serving in the U.S. military. Currently, he is working overseas supporting the U.S. military as a federal contractor.

From 2003 to 2011, Applicant was on active duty in the U.S. military. He is a disabled veteran. After receiving an honorable discharge from the military in September 2011, Applicant was unemployed for about six months.

In March 2012, Applicant was hired by a federal contractor to work overseas. That job assignment ended in January 2013. He was again unemployed until October 2013, when he was hired by his current employer.

Applicant fell behind on his court-ordered child support for the children from his first marriage – a marriage that ended in divorce in 2006. Applicant reported his delinquent child support on his 2014 security clearance application and discussed it during his clearance interview. He estimated on the application that he was about \$5,000 in arrears on his child support. He told the security clearance investigator that State A, where his former spouse had moved with their children after the divorce, claimed he owed \$50,000 in past-due child support.

Applicant also told the clearance investigator that he was in the process of collecting the necessary paperwork to show State A how much he paid his ex-wife in child support since their divorce. He did not pay his child support through the court or a state agency. Instead, while in the military, he paid his child support through a voluntary allotment from his pay. After leaving the military, Applicant sent his former spouse monthly checks.

Applicant, with his Answer, submitted over 115 pages of documents showing that, while in the military, he had a voluntary allotment taken out of his pay in the exact amount that he was ordered to pay in child support (\$680 a month). (See Answer, Leave and Earning Statements.) He also provided copies of the paid checks made out to his former spouse for child support. With his Response, Applicant provided documentation showing that he is now making his monthly child support payments through a state agency. His credit reports do not reflect any other delinquent account.

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<sup>2</sup> Administrative documents, including confirmation of Applicant's continuing sponsorship for a clearance, were collectively marked and attached to the record as Appellate Exhibit I.

<sup>3</sup> On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD-4), revising the Adjudicative Guidelines. The revised adjudicative guidelines are applicable to all security clearance decisions issued on or after June 8, 2017. Accordingly, I have applied the revised adjudicative guidelines (hereinafter "AG"). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

## Law & Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals 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; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. 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. AG ¶ 2.

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 make certain that applicants: (a) receive fair notice of the issues, (b) have a reasonable opportunity to address those issues, and (c) are not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In deciding a case, a judge must resolve any doubt raised by the evidence in favor of the national security. AG ¶ 2(b). *See also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “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

Applicant was unable to pay his court-ordered child support while unemployed and accrued a past-due balance. This situation raises the Guideline F security concern, which is explained at 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. . . .

Guideline F 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>4</sup>

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

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(d): the individual initiated and is adhering to 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 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 was unable to pay his court-ordered child support, which was established while he was still in the military and receiving a reliable paycheck on the first and the fifteenth of every month. After separating from the military, Applicant experienced two periods of unemployment that left him unable to pay his child support. He apparently did not apply for a modification, which when coupled with his equally unwise decision to not setup a child support account with the state, left him in his current unenviable predicament. However, these past poor personal decisions do not raise a concern about his ability to handle and safeguard classified information.

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<sup>4</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

Applicant addressed the concern raised by the SOR allegation. Notably, he presented clear and unambiguous documentary evidence to support his position that he has been paying and is currently paying his child support. His credit reports do not reflect any other delinquent account. In short, Applicant is resolving the issue with his child support account and his current financial situation does not raise a security concern. AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply.

After a complete and thorough review of the record evidence, including considering the whole-person factors set forth in AG ¶ 2, I find that Applicant met his heavy burden of proof and persuasion in mitigating the security concerns raised by the SOR allegation. Furthermore, he established his eligibility for continued access to classified information.

### **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

Subparagraph 1.a:      For Applicant

### **Conclusion**

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

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Francisco Mendez  
Administrative Judge