



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-06357  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2017

**Decision**

MURPHY, Braden M., Administrative Judge:

Applicant has significant unresolved delinquent debts, and made little to no effort to resolve them before the hearing, despite being gainfully employed with ample assets. His post-hearing efforts were not sufficient to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for continued access to classified information is denied.

**Statement of the Case**

On April 19, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (Exec. Or.) 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 effective within the DoD on September 1, 2006.

Applicant answered the SOR on June 8, 2016 and requested a hearing. He lives and works at a location in the Middle East. On September 28, 2016, Department Counsel mailed discovery to Applicant and requested that the case be assigned to an administrative judge of the Defense Office of Hearings & Appeals (DOHA) for scheduling. Applicant confirmed receipt of the Government's discovery package on November 29, 2016.<sup>1</sup>

On June 21, 2017, the assigned administrative judge issued a Notice of Hearing scheduling the hearing for September 27, 2017, a date Applicant initially agreed to.<sup>2</sup> On August 9, 2017, Applicant requested a continuance to a date in October 2017, when he would be back in the continental United States for other reasons. (HE III)

On August 10, 2017, Department Counsel opposed the motion, on the grounds that: 1) Applicant had previously agreed to the September 27 hearing date; and 2) funding for the federal government past September 30, 2017, was then in doubt, thus putting an October hearing date at risk, meaning the hearing might have to be postponed indefinitely, given Applicant's location overseas. The assigned Administrative Judge denied the continuance motion the same day on that basis. (HE III) On August 14, 2017, he assigned the case to me due to a conflict in his schedule.

Applicant's hearing convened on September 27, 2017, as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 6. Applicant testified and submitted three exhibits, which were marked as Applicant's Exhibits (AE) A through C. All exhibits were admitted without objection. I held the record open until October 13, 2017, to afford Applicant the opportunity to submit additional documentation.

Applicant timely submitted three e-mails (marked together as AE D), an updated SOR response (AE E) and five documents (AE F through AE J). AE D through AE J are admitted without objection. The record closed upon their receipt.<sup>3</sup> DOHA received the transcript on October 6, 2017.

On December 10, 2016, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG).

---

<sup>1</sup> Hearing Exhibit (HE) I and HE II.

<sup>2</sup> "On June 21, 2017, [Applicant] acknowledged his availability for the hearing on September 27, 2017." (Aug. 10, 2017 e-mail of Department Counsel Morin) (HE III)

<sup>3</sup> HE IV. In one of his post-hearing e-mails, Applicant requested that DOHA "revisit" his financial situation in six months, by which point he expected to eliminate a large amount of his remaining debt. (AE D) The Directive does not allow for such action. ¶ E.3.1.10 of Enclosure 3 of the Directive states that "The Administrative Judge . . . shall conduct all proceedings in a fair, *timely*, and orderly manner." (Emphasis added) Additionally, ¶ E.3.1.25 states that "The Administrative Judge shall make a written clearance decision in a timely manner . . ." An applicant is not entitled to a delayed or deferred adjudication of his security eligibility. ISCR Case No. 09-02926 at 2 (App. Bd. May 11, 2010).

The new AGs became effective on June 8, 2017, for all adjudicative decisions on or after that date.<sup>4</sup>

### **Amendments to the Statement of Reasons**

During the hearing, Department Counsel moved to amend the SOR to conform certain allegations to the record evidence. SOR ¶¶ 1.a, 1.b and 1.c were amended to reflect that the tax liens alleged were issued by a county tax authority, not a state tax authority.<sup>5</sup> SOR ¶ 1.d was withdrawn because that tax debt had been paid. SOR ¶ 1.g was amended to change the amount owed from \$6,513 to \$5,428. Similarly, SOR ¶ 1.n was amended to change the amount owed from \$2,409 to \$2,384. These SOR amendments were granted without objection. (Tr. 16-19, 99-102).

### **Findings of Fact**

In his answer, Applicant admitted SOR ¶¶ 1.e through 1.s. He denied SOR ¶¶ 1.a-1.c (as originally drafted) and ¶ 1.d (later withdrawn). He denied SOR ¶ 1.t as being duplicative of SOR ¶ 1.s. He neglected to answer SOR ¶ 1.u, but he denied it at the hearing. (Tr. 11-12) Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 49 years old. He was first married between February 2007 and August 2011. He remarried in October 2012; his second marriage lasted about a year. (Tr. 33-35, 80)

Applicant has two children, ages seven and five. His son was born in 2010 to a woman he became involved with while he was separated from his first wife. The boy and his mother live in a foreign country. Applicant's daughter was born in 2012. She lives with her mother, Applicant's second wife, in a different foreign country. He testified that he pays a combined \$1,500 a month in child support for his two children. (Tr. 35-36, 63-65, 80)<sup>6</sup>

Applicant served honorably in the United States Army from 1986 to 2006. He retired as a staff sergeant (E-6). His decorations include the Meritorious Service Medal, four Army Commendation Medals, and five Army Achievement Medals. (AE G) Since retiring from the Army, he has worked for a large defense contractor. He has not had any periods of unemployment. From 2006 to 2011, his home of record was in the United

---

<sup>4</sup> The new AGs were discussed with the Applicant at the start of the hearing. (Tr. 8-10)

<sup>5</sup> SOR ¶¶ 1.a, 1.b and 1.c now begin, "You are indebted to [XXX County, State YYY] for a tax lien . . .", instead of "You are indebted to the State of [YYY] for a tax lien . . ."

<sup>6</sup> Applicant listed neither of his two children on his 2014 security clearance application. (GE 1)

States, in State 1. During much of this time, however, he was deployed overseas. He earned about \$65,000 to \$67,000 in that position. (Tr. 36-42; GE 1)

Since early 2012, Applicant has lived and worked in the Middle East. He has held a security clearance since he joined the Army in 1986, and he needs a clearance for his job. (Tr. 14-15, 38-39, 89, 92; GE 1)

Applicant submitted a security clearance application (SCA) in December 2014. He disclosed several delinquent debts, including a mortgage, an auto loan, and another unpaid loan, and indicated that they were due to his divorce. (GE 1). The SOR (as amended) alleged 20 delinquent debts, totaling about \$66,478.

### **County tax liens:**

SOR ¶¶ 1.a (\$703), 1.b (\$840), 1.c (\$733) and the withdrawn ¶1.d (\$1,083) are tax liens issued by a county tax authority in State 2, where Applicant's parents live. Applicant testified that the liens are attached to a property where his father manages a business. He also testified that at some point, his father asked him to put his name on the property deed.<sup>7</sup> He acknowledged at hearing that he was nonetheless responsible for the resulting liens, which he thought might relate to unpaid property taxes. (Tr. 65-70)<sup>8</sup>

SOR ¶¶ 1.a, 1.b, and 1.c all relate to liens filed in 2012, 2013, and 2014, respectively. Similarly, the withdrawn SOR ¶ 1.d was filed (and released) in 2015. (GE 2, GE 4) GE 5 also reflects two additional, more recent county tax liens: 1) a \$1,137 lien, filed in March 2016; and 2) a \$1,215 lien, filed in March 2017. Neither of these more recent liens was alleged in the SOR.

Applicant testified that the day before the hearing, he went to the county tax office in State 2 to resolve these debts. (Tr. 65-70) AE A reflects that he paid \$189 to resolve a 2015 county tax bill (for which AE C was the invoice). AE B reflects that he paid \$1,530 to pay a 2016 tax bill. A post-hearing document (AE I) also reflects that this debt has been paid.

### **Other SOR debts:**

At hearing, Applicant provided no documents concerning any of the other SOR debts, most of which he admitted. All of them are, or appear to be, consumer debts that have been either charged off or reported to a collection agency. They include: SOR ¶¶

---

<sup>7</sup> AE A, AE B and AE C are all addressed to Applicant, either at the business's address, or his parent's home address, both in State 2.

<sup>8</sup> Post-hearing, Applicant asserted that his father's business had closed. (AE E) He provided a June 2015 letter from the State 2 Department of Revenue regarding the closure of an unnamed account. The letter is addressed to "[Applicant's First Name, Middle Initial, Last Name,] Inc." (AE H) He indicated that he was attempting to have his name removed from the business property. (AE D)

1.e (\$11,115); 1.f (\$7,394); 1.g (\$5,428); 1.h (\$5,261); 1.i (\$4,963); 1.j (\$4,914); 1.k (\$3,631); 1.l (\$3,191); 1.m (\$2,633); 1.n (\$2,384); 1.o (\$2,402); 1.p (\$537); 1.q (\$2,000); 1.r (\$5,068); 1.s (\$1,615); 1.t (\$1,515) and 1.u (\$250). All these debts are listed on Applicant's January 2015 credit report. (GE 2) Some of them are also listed on his March 2016 credit report, (GE 3), or his August 2017 credit report. (GE 6)<sup>9</sup>

Applicant denied SOR ¶ 1.t as being duplicative of SOR ¶ 1.s. Both are debts to a cell phone company. He testified that he had only one account there, and had not had one since 2011. (Tr. 83-85) The accounts allege dollar amounts that are \$1 apart (\$1,516 and \$1,515). Both are listed on the same credit report. (GE 2 at 17)

Applicant stated in his answer that "[t]he majority of the debt[s] are the direct result of a bad divorce." By this, he meant his first marriage. He indicated that he helped his first wife financially with loans and a car purchase. (SOR ¶ 1.n) She also lived for a time in their marital home (in State 1) with her nephew while he was overseas, after they separated. The home later became "repossessed." (Tr. 40-45; GE 1)

In addition to his first divorce, Applicant blamed various circumstances related to his life and work overseas for his financial woes, and his failure to address them more actively. This included an unfavorable exchange rate, and an expensive consumer economy at his overseas location. After the hearing, Applicant also stated, for the first time, that during his time overseas, his mother became ill and passed away, and as a result, he incurred additional unexpected expenses. (AE D) As a result, his debts "snowballed" and he fell behind. (Tr. 45-53)

Applicant also indicated that his overseas location had unreliable mail service as well as poor phone and internet communications. These factors, he claimed, hindered his ability to monitor his credit and to address his debts more promptly. (Tr. 40, 45-53) His plan, therefore, was to reach out to his creditors and to attempt to pay his debts when he was back in the United States on leave. He testified, however, that the pressures of his overseas mission made this difficult. (Tr. 47, 54)

Neither the pressures of his mission nor the expenses of living overseas, however, prevented him from making several other foreign trips. (Tr. 33-35, 77-81; GE 1 at 29-31) Applicant was also in the United States on business, if briefly, in April 2017, but he took no action to resolve his debts. (Tr. 88-89)

Applicant testified that the hearing was an "eye opener." (Tr. 105) However, he acknowledged reporting some of his debts on his December 2014 SCA, discussing them during his May 2015 background interview, and admitted most of the debts in his June 2016 SOR response. (Tr. 89-96) Nevertheless, Applicant took no action towards resolving any of his debts until the day before the hearing. As he acknowledged, "I haven't done anything," and that he had "no excuse for it." (Tr. 46, 47)

---

<sup>9</sup> GE 3 and GE 6 both list SOR ¶¶ 1.g, 1.h, 1.i, 1.k, 1.l, 1.m, 1.n, 1.p and 1.q.

At hearing, Applicant also acknowledged that he had yet to file his 2016 federal income tax return, nor had he filed an extension. (Tr. 55-57) After the hearing, Applicant indicated that his accountant had filed his 2016 state and federal income tax returns, that he did not owe any federal taxes, and that he was owed a small state tax refund. (AE D) His tax issues are not alleged in the SOR.

Applicant testified that in July 2017 (after the hearing date was set) he took out a \$25,000 loan from his employer's 401(k) plan for repaying his debts. He testified that he was not aware that this option was available to him as a way to pay his debts. (Tr. 47, 59-63, 74, 87)

Applicant testified that he earns about \$70,000 a year in salary. This includes a 5% cost of living adjustment because he lives in an expensive location overseas. He also earns a military pension, bringing his annual income up to about \$80,000. Because he works overseas, Applicant's auto expenses are covered by his employer, and he also gets a housing allowance, which is also part of his taxable income. He testified that he typically has about \$1,200 left over each month. He currently has between \$5,000 and \$6,000 in savings, and about \$150,000 in his 401(k) plan (after the \$25,000 loan). (Tr. 40-41, 47, 54-63, 73-75, 87; AE D)

Applicant submitted updated information, and some documents, after the hearing. This included an updated answer to the SOR, detailing his post-hearing actions to resolve his debts. (AE E) SOR ¶ 1.m was paid, on October 9, 2017. (Tr. 85-87; AE J)

In AE E, Applicant asserted that he had paid half of the amounts owed for SOR ¶¶ 1.h and 1.k on October 13, 2017, and would pay the remainder a week later. He asserted that he had made a similar arrangement (one payment of \$2,500 made, and a payment of \$2,493 to be made) for SOR ¶ 1.i. He asserted that SOR ¶¶ 1.n (\$3,884), 1.o (\$2,401) and 1.p (\$537) had been paid in full. He provided no corroborating documentation. He did not indicate that any of the other debts (SOR ¶¶ 1.e, 1.f, 1.g, 1.j, 1.l, 1.r, 1.s, 1.t and 1.u) had been paid. (AE E) Applicant asserted that he had paid almost \$19,000 towards his SOR debts since the hearing, and would be paying almost an additional \$7,000 more on October 20, 2017, for a total of almost \$26,000. (AE D)

Applicant also stated, "I have re-enrolled in college, which gives me an additional \$1,500 a month, all of which will be used to eliminate the rest of the debt more quickly." (AE D) He did not explain how it might be appropriate to take money related to college enrollment and to use it instead on paying his delinquent debts.

Applicant's supervisor attested to his value as an employee. Applicant has supported U.S. Army field artillery units in combat situations during five deployments. He has expertise in leading personnel and ensuring proper equipment maintenance. He is a trusted and loyal employee who is respected by his supervisors and co-workers. (AE F)

## Policies

It is well established that no one has a right to a security clearance.<sup>10</sup> As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”<sup>11</sup>

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 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, these guidelines are applied 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(a), 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 national security eligibility will be resolved in favor of the 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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

---

<sup>10</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

<sup>11</sup> 484 U.S. at 531.

extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

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

The security concern for financial considerations 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The financial considerations guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and
- (f) . . . failure to pay annual Federal, state, or local income tax as required.

Applicant has accrued over \$66,000 in delinquent debt over the last several years. He has remained gainfully employed in the defense industry since retiring from the Army in 2006. He makes about \$70,000 to \$80,000 annually, from his job and his Army pension, and he has about \$150,000 in a company 401(k) account – funds he used after the hearing to begin paying his numerous delinquent debts. AG ¶¶ 19(a), 19(b), 19(c), and 19(e) apply.

SOR ¶¶ 1.a, 1.b and 1.c relate to overdue county property taxes, rather than income taxes. Thus, AG ¶ 19(f) does not technically apply. Nevertheless these debts (which are proven by the Government's credit reports) satisfy the more general disqualifying conditions noted above.



Conditions that could mitigate financial considerations security concerns are set forth 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(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; and

(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 did not establish that any of his debts occurred due to circumstances beyond his control. Some of his debts may well stem from his first divorce. But his first marriage ended in 2011, and he has been gainfully employed, with ample income and assets, ever since. Even if he incurred unexpected expenses, for things such as his mother's illness and funeral, Applicant did not establish that he acted reasonably under the circumstances. AG ¶ 20(b) does not fully apply.

Applicant's debts stem from his prior life in the United States, and he essentially left those debts behind when he moved overseas, taking no action to resolve them until confronted with the reality of his hearing. Applicant had access to ample funds with which to pay his debts, yet took no action. He remained gainfully employed during the entire period. Applicant asserted that several factors kept him from addressing his debts more actively. This included the needs of his mission, the purported mail, internet and communication difficulties at his overseas location, and living in an expensive location (where he nevertheless has a car and housing both provided by his employer). Despite all this, Applicant travels widely. Applicant's protestations about his difficulties in addressing his debts from overseas are not credible.

Shortly before the hearing, Applicant took out a \$25,000 loan from his 401(k), for paying his numerous debts. He provided one document (AE J) showing one of them

(SOR ¶ 1.m) was paid in October 2017. After the hearing, he indicated that several other debts had been paid, but did not provide corroborating documentation. Even if he had provided such evidence, his efforts are far too little, far too late, to establish a good faith effort to repay his numerous debts. AG ¶ 20(d) does not apply.<sup>12</sup>

I find that SOR ¶ 1.t is a duplicate of ¶ 1.s. Applicant testified that he had only one account with the cell phone company, an account he had not had for several years. It is likely that the two accounts (\$1 apart) are one account, listed twice on his credit reports. AG ¶ 20(e) applies to SOR ¶ 1.t.

Applicant went to the county tax office to resolve the liens related to his father's business (SOR ¶¶ 1.a, 1.b, 1.c) and provided related documentation. AG ¶ 20(g) applies. The business is now closed, so these debts are also unlikely to recur.

Applicant's outstanding financial delinquencies are a "continuing course of conduct."<sup>13</sup> They are significant, ongoing and unresolved. Applicant did not provide sufficient evidence to establish that the behavior which led to his delinquencies happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not continue to cast doubt on his current judgment, trustworthiness and reliability. Except as to the tax debts, AG ¶ 20(a) does not apply.

### **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(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.

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

---

<sup>12</sup> The timing of debt payments is relevant in evaluating an applicant's case for mitigation. ISCR Case No. 14-05762 at 3 (App. Bd. Dec. 15, 2016).

<sup>13</sup> ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraphs 1.e-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant

### **Conclusion**

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

---

Braden M. Murphy  
Administrative Judge