



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



In the matter of: )  
)  
) ISCR Case No. 16-01947  
)  
Applicant for Security Clearance )

**Appearances**

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

11/02/2018

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant mitigated the security concerns raised the delinquent debt alleged in the Statement of Reasons (SOR). Applicant's access to classified information is granted.

**Statement of the Case**

On November 19, 2016, the DOD issued a SOR detailing security concerns under the financial considerations and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on June 11, 2018, I admitted Government's Exhibits (GE) 1 through 5 and

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant's Exhibits (AE) A<sup>2</sup> through B, without objection. DOHA received the transcript (Tr.) on June 19, 2018. After the hearing, Applicant timely submitted AE C and D, which are admitted without objection.<sup>3</sup>

## **Procedural Matters**

### **Implementation of the Amended Adjudicative Guidelines**

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

### **SOR Amendment**

At the hearing, Department Counsel moved to withdraw the personal conduct allegations. The motion was granted without objection from Applicant. Accordingly SOR allegations 2(a) and (b) are withdrawn.<sup>4</sup>

## **Findings of Fact**

Applicant, 63, has worked for his current employer, a federal contractor, since February 2015. He served in the U.S. Air Force between 1974 and 1976 and in the Pennsylvania Air National Guard from 1976 until he retired in 2001. Applicant worked as a civilian employee of the U.S. Army from May 1979 until his retirement until April 2014. He was granted access to classified information in at least 1997 and he completed his most recent security clearance application in February 2015. The investigation revealed and the SOR alleged that Applicant owed approximately \$24,000 in delinquent debt. Of the 27 alleged accounts, 18 are medical accounts with unspecified creditors identified only by account numbers.<sup>5</sup>

In late 2013, Applicant's wife began experiencing medical issues. When Applicant retired in April 2014, he did so believing that his retirement income and his wife's salary would be sufficient to meet their financial obligations. Applicant's wife managed the household finances, and he had no reason to believe that the couple had any financial problems. As her health continued to deteriorate, Applicant stepped in to

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<sup>2</sup> During the hearing, Applicant realized that he mistakenly submitted the document admitted as AE A, which was a personal document belonging to a relative. At Applicant's request, I withdrew AE A from the record and returned the document to Applicant. (Tr. 24-25.)

<sup>3</sup> HE III.

<sup>4</sup> Tr. 9-10.

<sup>5</sup> GE 1-5.

help manage the family finances and learned that they were in financial trouble. Applicant's wife withheld the information because she did not want to cause him any distress. In May 2014, Applicant returned to work at a retail store to help alleviate the couple's financial problems. In late 2014, Applicant accepted a consulting position with a federal contracting company. He was laid off after four months, however, he was able to return to full-time employment at his current job in February 2015.<sup>6</sup>

Applicant did not learn of the full extent of the financial problems until his April 2015 subject interview when the background investigator confronted him with evidence of his delinquent accounts. Initially, Applicant tried to contact his creditors and resolve the delinquent accounts on his own. He then retained a law firm to help him resolve his delinquent accounts. After paying the law firm \$1,200, he did not see any evidence of debt resolution and terminated the representation. Between 2016 and 2018, Applicant was able to resolve approximately \$2,000 in delinquent accounts on his own. However, he found the process overwhelming, which caused him to seek medical treatment for anxiety and depression. Applicant's sister-in-law referred him to a debt-management service and he enrolled in the program in February 2018.<sup>7</sup>

Under the terms of the contract, the service prepared a debt-repayment plan consisting of 13 delinquent accounts, totaling \$5,968. The accounts included in the plan are those reported on GE 5, a credit report dated May 2018. Applicant agreed to pay \$291 each month for 31 months to resolve the accounts. After making six monthly payments, Applicant funded the rest of the plan with money from his retirement savings. As of July 2018, the company disbursed the funds to the listed creditors resolving the \$5,968 of debt and closing out Applicant's debt repayment plan.<sup>8</sup>

The debt-management company identified three additional debts that were not included in the program: an automobile loan in good standing, a paid collection account for legal fees; and a mortgage loan. Although Applicant's mortgage remained in past-due status at the hearing, he has made arrangements with the mortgage company to bring the account current.<sup>9</sup>

## **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.

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<sup>6</sup> Tr. 23, 25-27, 40.

<sup>7</sup> Tr. 24, 27, 31-32, 36; GE 2; AE B.

<sup>8</sup> Tr. 24, 27-29; AE B-D.

<sup>9</sup> Tr. 33; AE B.

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(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.

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**

### **Financial Considerations**

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness 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.<sup>10</sup> The SOR alleged that Applicant owed approximately \$24,000 in delinquent debt. The credit

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<sup>10</sup> AG ¶ 18.

reports in the record as well as Applicant's April 2015 subject interview establish that he has a history of not meeting his financial obligations.<sup>11</sup>

Applicant provided sufficient evidence to mitigate the financial considerations concerns. He credibly testified that his wife withheld pertinent financial information from him – a circumstance beyond his control – and that he only learned about the financial problems after his wife's deteriorating health required him to take over the household finances. He also credibly testified that he did not learn the full extent of their financial problems until his background investigation. Applicant acted responsibly to resolve his financial problems by taking a number of steps between 2015 and 2018, including reentering the workforce after retiring in 2014; resolving \$2,000 of delinquent accounts on his own; employing a law firm to help him resolve his delinquent accounts; and, ultimately, using a debt-management service to resolve his remaining delinquent accounts. His efforts also show that he initiated and adhered to a good-faith effort to repay his overdue creditors or otherwise resolve debts.<sup>12</sup>

### **Whole-Person Concept**

Based on the record, I have no doubts about Applicant's ongoing security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Finding that Applicant resolved specific debts alleged in the SOR is difficult in this case. The credit reports the Government relied to establish its *prima facie* case contain either insufficient information or conflicting information (e.g. unidentified creditor or different account numbers) to match them to the SOR. However, a security clearance adjudication is not a debt collection process<sup>13</sup> and an Applicant is not required to establish the resolution of every debt alleged in the SOR.<sup>14</sup> The purpose of these adjudications is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the personal is an acceptable security risk."<sup>15</sup>

The SOR contained sufficient evidence to put Applicant on notice that the Government was concerned about his financial history. He responded to that concern by taking steps to resolve his previously unknown delinquent accounts. In doing so he demonstrated that he takes his fiduciary duty to the Government seriously. Applicant's financial problems do not raise any behavior that indicates poor self-control, lack of judgment, or an unwillingness to follow rules and regulations that may hinder his ability to properly handle or safeguard classified information.

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<sup>11</sup> AG ¶ 19(c).

<sup>12</sup> AG ¶ 20(b),(d).

<sup>13</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.)

<sup>14</sup> See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

<sup>15</sup> AG ¶ 2(a).

### **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, Financial Considerations:                      FOR APPLICANT

Subparagraphs 1.a – 1.aa:                                      For Applicant

Paragraph 2, Personal Conduct:                                WITHDRAWN

Subparagraphs 2.a – 2.b:                                        Withdrawn

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge