



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 16-01989  
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**Appearances**

For Government: Gatha Manns, Esq.

For Applicant: *Pro se*

12/19/2017

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**Decision**

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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 experienced a number of unrelated life events that had unexpected financial consequences. The events do not indicate a pattern of reckless or irresponsible behavior or bad judgment. Applicant has resolved all but one of the alleged debts. Clearance is granted.

**Statement of the Case**

On July 22, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<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. On May 22, 2017, I issued a prehearing order to the parties regarding the exchange and submission of

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<sup>1</sup> The DOD 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.

discovery, the filing of motions, and the disclosure of any witnesses, and the parties complied.<sup>2</sup> At the hearing, convened on June 20, 2017, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through F, without objection. DOHA received the transcript (Tr.) on June 28, 2017. After the hearing, Applicant timely submitted AE G through M, without objection.

### **Procedural Matters**

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.

### **Findings of Fact**

Applicant has worked for a federal contractor since 2002. He was initially granted a security clearance during his military service. In 2007, Applicant began working on an overseas contract. For the last 10 years, he has worked and lived abroad. Applicant's wife of 21 years and their five children reside in the United States. Applicant's wife manages the household finances in Applicant's absence.<sup>3</sup>

Applicant completed his most recent security clearance application in October 2014, disclosing one disputed derogatory account. The ensuing investigation revealed a number of delinquent accounts including a state tax lien (SOR ¶ 1.a), a delinquent child support enforcement account (SOR ¶ 1.d), a delinquent mortgage loan (SOR ¶ 1.l), a discharged Chapter 7 petition (SOR ¶ 1.m), and nine other delinquent accounts (SOR ¶¶ 1.b, 1.e – 1.k). Initially, Applicant denied knowledge of or responsibility for the debts. However, the record establishes that Applicant and his wife experienced a series of life events that had unexpected financial consequences.<sup>4</sup>

In 2000, Applicant's father-in-law was diagnosed with a terminal illness. Applicant decided to leave active duty service and work part-time to help care for him and support his wife. During his father-in-law's illness, Applicant and his wife guaranteed some of her father's financial obligations. At the time, Applicant and his wife were in their mid-twenties and living within their means. After Applicant's father-in-law died, the couple realized they could not afford to pay the accounts they guaranteed along with those of their large family. After consulting an attorney, the couple decided to file for Chapter 7 bankruptcy protection in September 2001, as alleged in SOR ¶ 1.m. The petition was

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<sup>2</sup> The prehearing scheduling order and the discovery letter are appended to the record as Hearing Exhibit (HE) I and II, respectively.

<sup>3</sup> GE 1; Tr. 24, 79-81.

<sup>4</sup> GE 1; Answer.

successfully discharged in January 2002. Applicant returned to full-time employment with a federal contracting company. The family recovered financially and lived within their means. They did not experience any financial issues for the next seven years.<sup>5</sup>

In 2002, Applicant and his wife purchased their first home with a conventional 30-year mortgage. In 2005, they refinanced the home. The couple did not realize that the refinanced mortgage was an interest-only loan originated by a sub-prime lender. In 2008, the mortgage payment adjusted from \$3,600 to \$5,800, which they could not afford. They applied for, but did not qualify for the home affordable refinance program (HARP). Applicant's wife hired an attorney in 2009 to negotiate a short sale of the property. As a show of good faith during the negotiation process, she continued to pay the original \$3,600 mortgage payment. Despite ongoing negotiations between the mortgage company and Applicant's counsel, the mortgage company foreclosed on the home in December 2010. In 2013, their state's attorney general joined a multi-state, class-action lawsuit against the lender, alleging misconduct in the origination and servicing of loans. Applicant and his wife were included in the class. In December 2013, the mortgage company settled the case. The couple received a cash settlement from the mortgage company in 2014.<sup>6</sup>

The credit report in the record erroneously reports the account as being 120 days past due in October 2014. However, in December 2010 the mortgage company cancelled the deficiency balance on the home.<sup>7</sup>

Also, in 2008, the state's department of child support services initiated an enforcement action against Applicant. In 2005, Applicant paid off the balance of an \$8,800 child support arrearage stemming from a 1997 order for a child from a previous relationship. He received a letter from the state, dated February 24, 2005, indicating that the account was paid in full. Three years later, the state assessed previously uncharged interest on the full \$8,800 arrearage amount. Applicant spent the next eight years disputing the debt, arguing the legality of an interest assessment on a satisfied account. He consulted attorneys and reached out to his state-level representatives. Applicant's protests did not yield any results. Although he continues to dispute the legitimacy of the interest assessment, he began making payments on the account alleged in SOR ¶ 1.d by payroll deduction in fall 2016.<sup>8</sup>

In 2011, the state's tax board executed two tax liens against Applicant after he failed to file state income tax returns for the 2007 through 2009 tax years. The state assessed the tax based on Applicant's W-2 income for those years. Applicant, who began working and living abroad in 2007, misunderstood the filing requirement for state residents working abroad. In November 2014, Applicant filed the outstanding state

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<sup>5</sup> Tr. 26-29, 91-93, 119-120; GE 5.

<sup>6</sup> Tr. 30-33, 94, 107-117.

<sup>7</sup> AE D.

<sup>8</sup> Tr. 40, 74, 110, 117-119; Answer; AE J.

income tax returns. He did not owe any state taxes for that period. The state released both liens in March 2015 and February 2016, respectively. The tax lien alleged in SOR ¶ 1.a is resolved.<sup>9</sup>

In December 2015, Applicant and his wife unexpectedly lost their son. He was 19 years old. Applicant's wife became severely depressed. She stopped working, allowing her professional certification to lapse. She stopped tending to the household finances, resulting in the delinquent accounts alleged in SOR ¶¶ 1.b (credit card) and 1.f – 1.k (medical accounts). Neither his wife, nor the other children in the household told Applicant about her crippling grief and depression. He did not learn about the severity of his wife's depression and its impact on their finances until his wife testified at the hearing. She credits a conversation with her younger son's therapist for pushing her into action. She started to take steps to restore a sense of normalcy to the family. She returned to work and began to address the delinquent accounts.<sup>10</sup>

To date, Applicant and his wife have resolved the delinquent accounts alleged in SOR ¶¶ 1.b, and 1.g – 1.k. Their cell phone account is in good standing (SOR ¶ 1.c). The couple is disputing the credit card account alleged in SOR ¶ 1.e as being a fraudulent account. Frustrated with the response from the credit card company, Applicant and his wife have filed a complaint against the creditor with their state's attorney general and plan to file a small claims action against the creditor to resolve the issue. Only one account alleged in the SOR remains unresolved, a medical account for the couple's deceased son (SOR ¶ 1.f), which the couple believes should have been covered by their medical insurance.<sup>11</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.

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.

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<sup>9</sup> Tr. 66-72, 19-20, 127; AE A.

<sup>10</sup> Tr. 120-127.

<sup>11</sup> Tr. 34-40, 46-48, 99-105; GE 4; AE B-C, E-F, H-I.

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**

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

Failure to meet one’s 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.<sup>12</sup> The record is sufficient to establish the government’s *prima facie* case that Applicant has a history of not meeting financial obligations and that he failed to timely file his state income tax returns as required between 2007 and 2009. However, Applicant submitted sufficient information to mitigate the alleged security concerns.

The financial issues Applicant has experienced were not caused by reckless or irresponsible behavior, but a series of unrelated life events that had unexpected, adverse impact on Applicant’s finances. The majority of these events, his father-in-law’s

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<sup>12</sup> AG ¶ 18.

illness; the foreclosure on his home; and the death of his son – were events beyond his control. In each instance, he acted responsibly under the circumstances.<sup>13</sup>

Applicant's decision to file for bankruptcy protection in 2001 was reasonable as he and his wife recovered from the emotional and financial toll of caring for a dying parent. Accordingly, the 2001 bankruptcy, which occurred over 15 years ago, does not reflect negatively Applicant's current security worthiness. When confronted, in 2008, with the an adjusted mortgage payment they could not afford, Applicant's wife retained counsel to help resolve the situation, but the lender acted improperly, foreclosing on the property during the short sale negotiation and as the couple continued to make partial payments on the mortgage. The most recent delinquent accounts occurred after the death of Applicant's teenaged son. He was unaware that his wife became temporarily unable to manage the finances as she had done for years without issue. Upon learning of the delinquent accounts, Applicant paid them.

Applicant has demonstrated a track record of debt repayment. Applicant has also demonstrated that he initiated and has adhered to a good-faith effort to repay his creditors or otherwise resolve debts.<sup>14</sup> Applicant has resolved the delinquent debts in SOR ¶¶ 1.b – 1.c, and 1.g – 1.k. He has entered into a payment plan for the debt in SOR ¶ 1.d, despite having a reasonable basis to dispute the account. He has also established a reasonable basis for disputing SOR ¶ 1.e, a credit card account, and has provided documented evidence of actions to resolve the issue.<sup>15</sup>

Applicant's failure to timely file his state income tax returns was not a result of avoidant behavior, but a misunderstanding of the filing requirement for state residents working abroad during the tax year. Applicant contacted the state authority, filed his tax returns, without any outstanding liability, resolving the issue alleged in SOR ¶ 1.a, two years before the SOR was issued.<sup>16</sup> He has since complied with the state's filing requirements.

After reviewing the record, I have no doubts about Applicant's continued access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Although Applicant has experienced some financial problems, he has not engaged in any conduct that suggests an inability to properly handle and safeguard classified information.

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<sup>13</sup> AG ¶ 20(b).

<sup>14</sup> AG ¶ 20(d).

<sup>15</sup> AG ¶ 20(e).

<sup>16</sup> AG ¶ 20(g).

### **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.m:    For Applicant

### **Conclusion**

In light of all of the circumstances presented, 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