



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 16-02399
	)	
Applicant for Security Clearance	)	

**Appearances**

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

10/20/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his financial situation. Clearance is denied.

**Statement of the Case**

On March 26, 2016, Applicant submitted a security clearance application in connection with his employment in the defense industry. In response to relevant questions, Applicant reported on the application that he did not file his 2014 federal and state income tax returns. He also reported a home foreclosure and nine delinquent debts totaling about \$20,000. He indicated on the application that he was in the process of resolving his past-due tax returns and debts. (Item 5.)

On September 28, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline. Specifically, the SOR lists Applicant's failure to file his 2014 tax returns, the foreclosure, and 12 delinquent debts totaling over \$50,000. The SOR also alleges that Applicant's wages were being garnished to repay a \$30,000 debt to a creditor that had obtained a judgment against him in 2013.<sup>1</sup> (Item 1.)

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<sup>1</sup> The SOR also alleged under Guideline E (personal conduct) that Applicant falsified his security clearance application by failing to disclose the 2013 judgment. Subsequently, Department Counsel withdrew the falsification allegation. Accordingly, it will not be further discussed herein.

On November 16, 2016, Applicant answered the SOR. He admits all the SOR allegations. He presented no evidence showing that he had taken any action to address his past-due tax returns and debts. He declined the opportunity to present his case at a hearing. Instead, he elected to have his case decided on the written record. (Item 4.)

On December 29, 2016, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant twelve exhibits (Items 1 – 12) that the Government offers for admission into the record. Applicant received the FORM and accompanying exhibits on January 15, 2017. (Appellate Exhibit I.) He was given 30 days to submit a response to the FORM and raise an objection(s) to the evidence offered by the Government. He did not submit a response, raise an objection, or present any evidence showing he had taken any action to address his ongoing financial problems.

On October 1, 2017, after the Hearing Office received confirmation that Applicant remained sponsored for a clearance, I was assigned the case for decision. No additional matters were submitted by either party for my consideration. Without objection, Items 1 – 12 are admitted into the record.

### **Findings of Fact**

Applicant, 39, is a machinist working at a U.S. Navy installation. He graduated high school in 1995, and then enlisted in the Navy. He served on active duty from 1995 to 2009, when he was involuntarily separated from the Navy. In 2011, he joined the reserves and is an active naval reservist in the E-6 paygrade.

After Applicant was involuntary separated from active duty in 2009, he was unemployed for a short time. He was a police recruit from January to March 2010, but left this former job under adverse circumstances. He stole a magazine containing ammunition and lied when asked if he had taken it. His theft was caught on videotape and he was given the option of either quitting or being fired. He decided to quit. He reported this information on his recent security clearance application, and discussed it during a security clearance interview. He was hired by his current employer in 2011.<sup>2</sup>

Applicant was first granted a security clearance in approximately 1995. He submitted a security clearance application in 2008 while still on active duty. He reported a delinquent car loan for a car that he jointly owned with his former wife. He and his first wife divorced in August 2007, and he and his current wife married a few months later in October 2007. Applicant discussed the delinquent car loan with a security clearance investigator. He told the investigator that his ex-wife had taken legal responsibility for the debt. She stopped making the monthly payments for the car and it was repossessed.

In April 2008, Applicant told the security clearance investigator that he could sum up his financial situation as "getting by", because, at the time, he was paying the

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<sup>2</sup> Items 5, 8.

mortgages on two homes. He expected his former marital home to sell in short order. It did not and the mortgage lender foreclosed on the property in 2013.<sup>3</sup>

After Applicant submitted another security clearance application in September 2015, a security clearance investigator interviewed him. Applicant discussed his ongoing financial problems with the investigator. He discussed those issues that he had reported on his clearance application and several past-due debts appearing on his credit report. As for the 2013 foreclosure, Applicant told the investigator that he stopped making the monthly payments on the first and second mortgages on his former home in 2010. He promised the investigator that he would make arrangements to address his (non-mortgage-related) past-due accounts, including those that he was made aware of during the interview. Applicant attributes his financial problems to the divorce, child support payments, and involuntary separation from the Navy.<sup>4</sup>

### **Law, Policies, and Regulations**

This case is decided under Executive Order (E.O.) 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 (AG) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).<sup>5</sup>

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “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. 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.

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<sup>3</sup> Items 8, 9, 11.

<sup>4</sup> Items 4, 5, 8. It appears that the garnishment alleged in SOR 1.m is related to the 2013 judgment obtained in SOR 1.q. Furthermore, it appears likely that both these debts are related to the second mortgage loan on the former marital property that was foreclosed in 2013, as alleged in SOR 1.n. In reaching my decision, I have merged all three allegations.

<sup>5</sup> Nonetheless, I considered the previous version of the guidelines, which were in effect when the SOR was issued, and my ultimate conclusion would have been the same.

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 must remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.<sup>6</sup>

Any doubt raised by the evidence must be resolved by a judge in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Additionally, the Supreme Court has held that responsible 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.

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<sup>6</sup> However, a judge’s mere disbelief of an applicant’s testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is put on notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

## Analysis

### Guideline F, Financial Considerations

Applicant's long history of financial problems raise a security concern, which is explained at AG ¶ 18:

Failure to . . . 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. . . .

The concern here is not limited to a consideration of whether a person with financial issues might be tempted to compromise sensitive 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 sensitive information.<sup>7</sup>

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

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

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 . . . 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;

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<sup>7</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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

AG ¶ 20(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.

Applicants are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the debts listed in the SOR first. However, they are expected to present evidence to refute, explain, or mitigate security concerns raised by their conduct and 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 all prospective and active clearance holders.<sup>8</sup>

Here, Applicant failed to meet his burden of proof and persuasion. His current financial situation may, in part, be attributable to some matters largely beyond his control, such as the 2007 divorce and the 2008 housing market collapse. However, these matters occurred about a decade ago and Applicant has been gainfully employed as a federal contractor since 2011. Notwithstanding such full-time employment for the past six years, Applicant's financial situation appears to have gotten worse since his last security clearance investigation was completed in 2008. In the intervening nine years, Applicant's home was foreclosed after he defaulted on his mortgages, he has failed to file his income tax returns, and he has amassed over \$50,000 in delinquent debt. His overdue creditors have been forced to obtain garnishments to force him to pay his debts. He has made repeated promises to address his financial situation, but failed to submit any evidence that he has taken any such action.

Accordingly, I find that AG ¶¶ 19(a) – 19(c), and 19(f) apply. None of the mitigating conditions fully apply. Applicant may in the future be able to (re-)establish his eligibility for a security clearance. At present, however, security concerns raised by his financial situation remain.<sup>9</sup>

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<sup>8</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008). *See also* ISCR Case No. 15-02585 at 2 (App. Bd. Dec. 20, 2016) ("It is reasonable for Judges to expect applicants to present documentation about the satisfaction of individual debts."). Applicant's failure to timely file his tax returns also raises heightened concerns about his reliability, judgment, and ability to follow rules and regulations. ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) ("A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

<sup>9</sup> In reaching this adverse decision, I considered Applicant's military service and the candor he exhibited during the security clearance process. However, these favorable whole-person matters are insufficient, whether considered individually or collectively with the other favorable record evidence, to mitigate the security concerns at issue. *See generally* AG ¶ 2. *See also* SEAD-4, ¶ E.4; Directive, ¶ 6.3. I also considered the exceptions listed in SEAD-4, Appendix C, but none are warranted in this case.

### **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):      AGAINST APPLICANT

Subparagraphs 1.a – 1.q:      Against Applicant

Paragraph 2, Guideline E (Personal Conduct):      WITHDRAWN

Subparagraph 2.a:      Withdrawn

### **Conclusion**

In light of the record evidence, it is not clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge