



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-01506

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

08/06/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

**Statement of Case**

On June 2, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by DOD on September 1, 2006.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect when the SOR was issued would not affect my decision in this case.

Applicant responded to the SOR on June 2, 2017, and requested a hearing. The case was assigned to another judge on March 23, 2018, and reassigned to me on April 9, 2018. The case was scheduled for hearing on May 9, 2018. The Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on one witness (himself) and 11 exhibits. (AEs A-K) The transcript was received on May 17, 2018.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented creditor payments and payment arrangements. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded three days to respond. Within the time permitted, Applicant submitted copies of his rehabilitation agreement with his Department of Education (DoE) student loan lender and payments and payment arrangements with SOR creditors ¶¶ 1.g-1.i. Applicant's submissions were admitted as AEs L-N.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated four delinquent DoE debts exceeding \$152,000 and five consumer debts exceeding \$52,000. Allegedly, these listed debts remain unresolved and outstanding.

In his response to the SOR, Applicant denied each of the allegations covered by SOR ¶¶ 1.a-1.i with explanations. He claimed that he lived within his means and was subjected to diversions of moneys from his ex-wife that he had earmarked for payment of his listed creditors. He claimed that he has eliminated all home expenses and is in the process of getting a divorce. He further claimed that he deferred to his wife to take care of the monies he would send home for payment of his bills while he was away. And, he claimed that he was betrayed by the trust he placed in his ex-wife.

Addressing his student loan debts, Applicant claimed that he has a lawyer handling his property settlement with his ex-wife and expected his liability for his student loans to be equally apportioned between himself and his ex-wife in accordance with his state's community property law. He further claimed that once his pro-rata share is established, he will be able to settle his student loan accounts. And, he claimed he paid off the debts covered by SOR ¶¶ 1.e and 1.g-1.h and is making monthly payments on the debts covered by SOR ¶¶ 1.f and 1.i.

## **Findings of Fact**

Applicant is a 44-year-old pilot (Tr. 60) for a defense contractor who seeks a security clearance. The allegations covered in the SOR are denied and will be addressed with findings that follow.

### **Background**

Applicant married in May 1993 and divorced in July 2007. (GEs 1-2) He has one stepchild from this marriage. He remarried in December 2008 and divorced in December 2017. (GEs 1-2 and AE B; Tr. 66) He has one stepchild from this marriage. (GEs 1-2) Applicant earned a bachelors degree in July 2006 and attended the same institution's medical school between August 2006 and October 2013. However, he did not obtain a medical degree. (GEs 1-2; Tr. 60-61) Applicant did not report any military service. (GEs 1-2)

### **Applicant's finances**

Between October 2006 and September 2010, Applicant took out four government-guaranteed student loans, mostly to finance his medical education. (GEs 2-5 and AEs C and L; Tr. 46, 62-63) These loans were subsequently transferred to DoE and ultimately to the collection agent referenced in SOR ¶¶ 1.a-1.d. (GEs 1-2; Tr. 46, 49-55) Altogether, his DoE loans exceeded \$152,000 and became delinquent in December 2014. (GEs 2-5 and AE C) Currently, he owes \$246,520, inclusive of accrued interest on his loans. (AEs D and N) In May 2018, Applicant completed a rehabilitation agreement with a collection agent for DoE. Under the terms of his rehabilitation agreement, Applicant is obligated to make monthly payments of \$684 a month beginning in May 2018. (AE N) Because Applicant could not at this time provide a copy of his divorce settlement agreement, no determination can be made of whether Applicant and his wife were able to split his student loan obligations in accordance with community property rules recognized in his state. (AE A Tr. 56) While he expects the split to be resolved soon, he could not provide any reliable estimates. (Tr. 50-57)

Applicant attributed his delinquent student loan debts to his ex-wife's diversion of the funds Applicant transmitted to her for discharge of his student loan debts. (Tr. 68-69) Based on Applicant's documentation, he is in compliance with his rehabilitation agreement.

Besides his student loans, Applicant accumulated several delinquent consumer debts. They are covered by SOR ¶¶ 1.e (\$15,912); 1.f (\$13,781); 1.g (\$12,542); 1.h (\$7,102); and 1.i (\$3,553). Applicant has since paid off three of the listed debts: SOR creditor 1.e with a \$6,365 payment (AE F) and SOR creditors 1g and 1.h with a settlement agreement for less than the full amounts due. (AE M) For two of the remaining listed debts (SOR debts ¶¶ 1.g and 1.h), he completed a settlement agreement in May 2018 for less than the total amounts owed for the two accounts. (AE M) Addressing the remaining debts listed in the SOR, (SOR debt ¶ 1. f), Applicant documented a settlement

agreement with the creditor for the balance owing as follows: 12 monthly payments of \$500 due in June 2018 and monthly payments of \$250 for the remaining 11 months until fully paid. (AE G) He provided documentary proof, too, of a settlement agreement with creditor 1.i that provides for monthly payments of \$100, beginning in October 2017. (AE I) Applicant is credited with being in compliance with his payment agreement. (AEs G and K)

Applicant nets \$5,077 a month from his employment as a pilot. (AE J) His pay statements reflect bi-monthly garnishment deductions of \$1,937 since October 2017 by his student loan creditor. (AE J)

### **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

## Financial Considerations

*The Concern:* Failure or inability 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

## Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## Analysis

Security concerns are raised over Applicant's historical accumulation of delinquent student loan and consumer debts. Applicant's accumulated debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, evaluation of an applicant's delinquent debts are critical to an assessment of the applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited disputes with his ex-wife over payment responsibilities for the listed student loan and consumer debts afford some grounds for crediting him with extenuating circumstances. Based on his cited circumstances, MC ¶ 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances," partially applies to Applicant's situation.

To his credit, Applicant has entered into a rehabilitation agreement with the collection agent for his student loans and has resolved his consumer debts covered by SOR ¶¶ 1.e-1.i. Based on his most recent payment initiatives with his listed creditors, Applicant may claim the mitigation benefits of the "acting responsibly" prong of MC ¶ 20(b), as well as the benefits of other applicable mitigating conditions. MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," is fully applicable. See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 26, 2017); ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). In Applicant's case, he has addressed his listed student loan and consumer debts and resolved them with payoffs (SOR debts ¶¶ 1.e and 1.g-1.h) and satisfactory payment arrangements with SOR creditors 1.a, 1.f and 1.i.

## **Whole-Person Assessment**

In making a whole-person assessment of Applicant's trustworthiness, reliability, and good judgment, consideration is given to not only the financial issues raised in the SOR, but the contributions he has made to his employer and the defense industry in general. Favorable credit is also warranted for the corrective steps Applicant has taken with his creditors. Overall, Applicant's actions to date in addressing his finances are promising and enable him to overcome any reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that his finances are sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Financial concerns are mitigated.

Favorable conclusions are warranted with respect to SOR ¶¶ 1.a-1.e. Criteria for meeting the eligibility requirements for holding a security clearance are satisfied.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT**

Subparagraphs 1.a-1.i:

For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge





