



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



In the matter of: )  
)  
) ISCR Case No. 17-01765  
)  
Applicant for Security Clearance )

**Appearances**

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

08/31/2018

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to revoke his eligibility for a security clearance to work in the defense industry. Applicant mitigated concerns raised by his delinquent debt and a 2016 incident of criminal conduct. Applicant's continued access to classified information is granted.

**Statement of the Case**

On June 2, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and criminal 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 4 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 through D, without objection. DOHA received the transcript (Tr.) on June 19, 2018. After the hearing, Applicant timely submitted AE E and F, which are also admitted without objection.<sup>2</sup>

### **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, 37, has worked for his current employer, a federal contractor, since April 2014. He was initially granted access to classified information during his military service. Applicant served on active duty in the U.S. Army from June 2000 to June 2003 and in the Army Reserve from June 2003 to March 2007. He completed his most recent security clearance application in December 2015. Based on Applicant's disclosures and information developed during the background investigation, the SOR alleges that Applicant owes approximately \$30,000 in delinquent debt, and that in June 2016, he was found guilty of child endangerment and simple assault charges and was sentenced to probation until June 2018.<sup>3</sup>

Applicant's financial problems began in 2013. After he left active duty military service, Applicant continued living and working overseas. His wife and children lived in his wife's home country while Applicant worked for federal contracting companies in the Middle East and Asia. In total, Applicant lived apart from his family for seven years before being laid off in February 2013. For the next year, Applicant was unemployed and tried to find another job. During his unemployment, Applicant's family relied on their savings and the revenue from his wife's two businesses. However, because of ongoing road construction eliminating access to the businesses, both business were forced to close by the end of 2013. After losing that source of income, Applicant began to rely on the credit card alleged in SOR ¶ 1.a to help pay his family's living expenses. Applicant decided to return to the United States to find employment. He worked a temporary job for two months before he began working his current job April 2014, earning \$23 per hour, or approximately \$48,000 annually. He sent the majority of his earnings to his wife. He did so for almost a year as his wife and stepson waited for their visas to enter the United States.<sup>4</sup>

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<sup>2</sup> HE II.

<sup>3</sup> GE 1.

<sup>4</sup> Tr. 18-21; GE 1.

Applicant's wife and three children, then ages 18, 11, and 10, lived in close proximity to his wife's family. When they moved to the United States in February 2015, they moved to an unfamiliar country with no close family or other support network. It was also the first time since 2007 that the family lived together for an extended period time. The couple had a fourth child in 2016 and incurred at least \$2,000 in medical expenses related to her birth. Applicant continued to support his family on one income and did not have extra funds to pay toward his delinquent accounts.<sup>5</sup>

After the move, Applicant's middle son began exhibiting behavioral problems. Around March 2016, the boy, then 11, pushed his sister's head into a wall and threatened to stab her. Applicant spanked him on the buttocks with a belt. The next day at school, a teacher overheard Applicant's daughter teasing her brother about the incident. The school intervened and contacted child-protective services. While at the hospital having the boy examined, the police arrested Applicant. Pending the resolution of the case, Applicant could not have contact with his family. He had to secure and pay for housing, while maintaining the family home. In June 2016, Applicant was found guilty of child endangerment and simple assault. He was placed in a deferred adjudication program. He was required to attend parenting classes and obtain a mental-health evaluation to determine if he required anger-management classes. Based on the results of the evaluation, he was not required to do so. He was also ordered to pay over \$1,000 in court costs and fines. He complied with the terms of his probation and was released from supervision in June 2017, with a recommendation from his probation officer that the charges against him be dismissed. In April 2018, the court dismissed all charges and expunged the matter from his criminal history record.<sup>6</sup>

Since the incident, Applicant's son has been diagnosed with a neurodevelopmental-type disorder that impacts the child's ability to control his behavior. Although Applicant and his wife have declined to medicate their son, they try to manage his symptoms with diet and activity. The family has also developed a strong support system through their church. The family is actively involved in a number of ministries and are held high esteem by members of the congregation. The church's pastor counseled Applicant's son weekly between May and December 2016. The pastor continues to check in with the boy on a regular basis after church and in Applicant's home. Applicant believes it has helped his son to have someone outside the family with whom discuss his feelings and concerns. Applicant also believes he received helpful information through the parenting class. Applicant acknowledges that because he worked and lived separately from his children for so many years when they were small, that he did not really know how to connect with them. He credits the parenting class with giving him the skills to connect with and guide his son when he experiences emotional and behavioral difficulties.<sup>7</sup>

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<sup>5</sup> Tr. 21, 32, 42-44.

<sup>6</sup> Tr. 23-29,36,41; GE 4; AE A.

<sup>7</sup> Tr. 34-35, 37-40; AE F.

The credit reports in the record show that Applicant maintained a favorable credit history until he was laid off in February 2013. Just as Applicant's home life is improving, so are his finances. In April 2017, he paid off the debts alleged in SOR ¶¶ 1.b (\$180) and 1.c (\$78), which were unidentified medical debts. Through due diligence, he located the creditor and resolved the accounts. He also paid SOR ¶ 1.d (\$66). He attempted to negotiate a payment plan with the creditor alleged in SOR ¶ 1.a (\$29,851), but the creditor wanted more than he could afford. However, in June 2018, Applicant started a job, earning \$30 per hour. His wife also returned to work part time. She works 20 hours a week and earns \$12 per hour. This increases Applicant's household income to approximately \$75,000 annually. He anticipates that once his wife learns to drive, she will be able to work more shifts during the week, increasing their household income. After starting his new job, Applicant contacted the creditor holding SOR ¶ 1.a and made a \$300 payment toward the debt.<sup>8</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.

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

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<sup>8</sup> Tr. 21-23, 30, 41-42, 45. GE 2-3; AE B-E.

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>9</sup> The record establishes the Government’s *prima facie* case, that Applicant has a history of not meeting his financial obligations. As the sole provider for family of six between 2014 and 2018, Applicant also had an inability to pay his delinquent accounts.<sup>10</sup> However, Applicant has presented sufficient evidence to mitigate these concerns.

Applicant, who did not experience financial problems until 2013, did not incur delinquent debt under circumstances that indicate reckless or irresponsible behavior. Applicant’s financial problems were caused by events beyond his control beginning with his loss of employment in February 2013 and the loss of his wife’s income that same year. The financial problems that Applicant experienced after he returned to work in 2014 reflects the difficulty of providing for a family of six on a single income. However, Applicant acted responsibly in light of his circumstances.<sup>11</sup>

Applicant moved his family from their overseas location to a city in the United States, where he could find employment. He also paid off delinquent accounts as he was able, including SOR ¶¶ 1.b through 1.c. Furthermore, he has demonstrated a willingness to resolve his delinquent accounts.

Applicant attempted to negotiate a payment plan, albeit unsuccessfully, with his largest creditor (SOR ¶ 1.a). He successfully identified the unnamed creditors alleged in SOR ¶¶ 1.b and 1.c and resolved those accounts. After being unable to negotiate an

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<sup>9</sup> AG ¶ 18.

<sup>10</sup> AG ¶ 19(a) and 19(c).

<sup>11</sup> AG ¶20(b).

affordable payment plan for the debt alleged in SOR ¶ 1.a, he made a \$300 payment toward the debt after starting a higher paying job in June 2018. Furthermore, Applicant's finances should improve now that he and his wife have accepted new positions that will increase their household income by \$2,000 each month.

Although the outstanding delinquent account alleged in SOR ¶ 1.a is sizeable and remains unpaid, that fact alone, is not dispositive of Applicant's security worthiness. The purpose of a security clearance case is not aimed at collecting debts. Rather the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."<sup>12</sup> Here, 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.

## **Criminal Conduct**

Criminal activity calls into question a person's ability or willingness to comply with law, rules, and regulations, as well as a doubts about a person's judgment, reliability, and trustworthiness.<sup>13</sup> In 2016, Applicant was found guilty of child endangerment and simple assault after using corporal punishment to discipline his then 11-year-old-son, which is disqualifying. The SOR also alleges that Applicant is on probation until June 2018.<sup>14</sup>

Between 2015 and 2016, Applicant family was dealing with several difficult issues, including an international move, learning how to live together as a family unit for the first time in many years, and his middle son's undiagnosed neurodevelopmental disorder. At that time, Applicant did not have the tools to handle these issues, in particular his son's violent outbursts toward his younger sibling, and resorted to the use of corporal punishment.

However, Applicant has demonstrated successful rehabilitation.<sup>15</sup> He completed the terms of his deferred adjudication program, was released from supervision a year early in June 2017, and the incident has been expunged from his criminal record. Now, Applicant and his wife have more insight to their son's behavior and actively try to manage his symptoms. Having completed parenting classes as part of his sentencing, Applicant feels he is better able to interact with his son. Applicant and his wife have established a support network through their church. This incident is a single act of misconduct that was out of character for Applicant. He has no history of criminal behavior or anger-management issues. Given emotional and economic hardship the

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<sup>12</sup> AG ¶ 2(a).

<sup>13</sup> AG ¶ 30.

<sup>14</sup> AG ¶¶ 31(b).

<sup>15</sup> AG ¶ 32(d).

incident caused Applicant and his family, it is unlikely that Applicant will engage in similar conduct in the future.<sup>16</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). He has held a security clearance for many years without incident. While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. Security clearance adjudications are not meant to punish applicants for past misconduct, but rather to determine if an applicant's past actions are indicative of a current inability to properly handle and protect classified information. Neither Applicant's financial issues nor his 2016 incident with his son are indicative of his inability to properly handle or safeguard 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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Criminal Conduct:	FOR APPLICANT
Subparagraph 2.a:	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

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<sup>16</sup> AG ¶ 32(a).