



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-01795
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

06/07/2018

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the security concerns about his financial problems. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 16, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant responded to the SOR on July 24, 2017, and he elected a determination with a hearing. On October 30, 2017, a notice of hearing was issued, scheduling the hearing for November 15, 2017. The hearing proceeded as scheduled. Applicant testified and submitted 25 documents, which I admitted as Applicant Exhibits (AE) A through Y, without objection. Department Counsel submitted four documents, which I admitted as Government Exhibits (GE) 1 through 4, without objection. DOHA received the transcript on November 27, 2017. After the hearing, Applicant timely

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<sup>1</sup> The action was taken under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

submitted an email with five attachments, which I admitted as AE Z through EE, without objection.

### **Findings of Fact**

The SOR alleges financial considerations security concerns based on Applicant's 19 delinquent debts. In his response to the SOR, Applicant denied the debts in SOR ¶¶ 1.a., 1.f., 1.k., 1.l., and 1.m., and he admitted the remaining debts. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 31 years old. From September 2006 to May 2011, Applicant attended undergraduate-level courses. Applicant's employment history includes two lengthy periods of unemployment – April 2009 to March 2012 and April 2013 to November 2014 – and he otherwise worked as a server or clerk in a restaurant. Since May 2016, Applicant has been employed full time by a DOD contractor.

Applicant's admissions and his April 2016 and April 2017 credit reports establish the 19 alleged debts. Applicant paid all of the delinquent medical accounts (SOR ¶¶ 1.i., 1.k., 1.l., 1.m., 1.p., 1.q., 1.r., and 1.s.), except for SOR ¶ 1.f., on which he has made payments totaling \$1,150. Applicant also resolved one delinquent student loan (SOR ¶ 1.o.).<sup>2</sup> In total, Applicant has made payments totaling approximately \$5,588 on alleged debts and payments totaling approximately \$900 on unalleged medical debts between about June 2017 and January 2018.<sup>3</sup>

In October 2017, Applicant's eight delinquent student loans (SOR ¶¶ 1.b.-1.e., 1.g., 1.h, 1.j., and 1.n.) were consolidated. Applicant was approved for an income-driven repayment plan, whereby his payments were held in abeyance given his low income and no funds were currently due. Nonetheless, Applicant established an automatic monthly withdrawal and payments began in December 2017, with the intent to rehabilitate his student loan accounts.<sup>4</sup>

Applicant's largest debt (SOR ¶ 1.a.) resulted from his treatment at an alcohol rehabilitation facility in 2014. At the time, the insurance provider sent funds to Applicant's residence to pay for the rehabilitation program. Unbeknownst to Applicant, who was in detoxification and rehabilitation at the time, Applicant's father used the funds to support his own gambling addiction. Applicant did not learn of this delinquent debt until his August 2016 OPM interview. Applicant's father acknowledged his responsibility for this delinquent debt and made two payments towards its resolution; however, he has not adhered to the repayment plan. After several months, Applicant recognized that his father would not adhere to the repayment plan, and Applicant, based on his father's malfeasance, filed a formal dispute with the creditor. Applicant challenged his liability for the debt as he never

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<sup>2</sup> AE A, C, H, Q, R, S, AA.

<sup>3</sup> AE AA.

<sup>4</sup> AE I-P.

received the funds purportedly sent by the insurance provider. He included his father's admissions of responsibility. The creditor held Applicant responsible for the debt, and Applicant currently lacks the funds available to obtain legal counsel to further contest his liability for this debt or otherwise recoup the funds from his father.<sup>5</sup>

Applicant attributed his student-loan delinquencies and medical expenses to his alcoholism. Applicant began his undergraduate education in September 2006. In spring of 2007, Applicant withdrew from classes because his alcoholism had progressed such that he was no longer functional. Between 2007 and 2011, Applicant repeatedly enrolled in courses and later withdrew when his alcohol consumption spiked. As a result, Applicant accrued significant student-loan debt. Applicant's alcohol consumption resulted in several hospitalizations and emergency room visits – for a broken foot, multiple concussions, and pneumonia – at a time when Applicant did not have health insurance. All of the alleged student-loan accounts and medical expenses precede Applicant's sober date of April 29, 2014.<sup>6</sup>

After completing alcohol rehabilitation, Applicant began to take steps to improve his financial situation. Since 2015, Applicant has not incurred any additional delinquent debts. In May 2016, he attained full-time employment, but his initial salary (\$31,000) was insufficient to fulfill his monthly financial obligations and address his delinquent debts. Applicant has closely adhered to his monthly budget for several years, given his small net monthly remainder. He has taken extreme steps to reduce his expenses, including shopping at thrift stores and receiving donated clothing. In June 2017, he received a small performance bonus, and he consulted a credit-counseling service and initiated some debt repayments. In September 2017, Applicant's annual salary was increased to \$42,000, providing Applicant additional funds to address his delinquent debts.<sup>7</sup>

Applicant is actively engaged with Alcoholics Anonymous and has a sponsor. He volunteers at his local parish and advises youths about the consequences of substance abuse. He also regularly volunteers at a homeless shelter and has organized clothing collections for homeless individuals. In addition to his recent performance-based salary increase, Applicant has received workplace awards and bonuses, and his work ethic and character are highly regarded by his peers and supervisors.<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

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<sup>5</sup> AE B-H.

<sup>6</sup> AE B, Tr. 44.

<sup>7</sup> Tr. 40-45.

<sup>8</sup> AE U, W, and Y.

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(c), 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."

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**

The security concern for financial considerations is set out in AG ¶ 18:

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 risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's 19 debts total approximately \$125,000. These debts became delinquent between 2011 and 2014. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and (c).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service; and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant bears the burdens of production and persuasion in mitigation to demonstrate that his financial problems do not cast doubt on his reliability, trustworthiness, and good judgment. Applicant's delinquent debts were incurred prior to his April 2014 sober date. While in recovery, he has adhered to a strict monthly budget

and taken significant steps to reduce expenses. His recent salary increase enabled him to remain current on his monthly financial obligations and to make significant payments on his delinquent accounts. Applicant has provided documentary evidence of his financial responsibility and his exhaustive efforts to address his delinquent debts. AG ¶ 20(a) applies.

Applicant's financial delinquencies are linked directly and indirectly to his alcoholism and his father's fraudulent conversion of the funds allotted for Applicant's alcohol treatment. These circumstances were largely beyond Applicant's control. Since 2015, Applicant has incurred no additional delinquent debts. Although he has been employed by a DOD contractor since May 2016, his initial salary did not allow him to pay more than his monthly financial obligations. With his small performance bonus, he initiated some payments in June 2017, and he has taken significant debt-resolution steps since his larger salary increase in September 2017. Applicant exhaustively documented his monthly budget, his debt repayments, and the steps he has taken to reduce his monthly expenses. Applicant acted responsibly to fulfill his monthly financial obligations and then address his delinquent debts when his finances permitted. AG ¶ 20(b) applies.

Applicant consulted a credit-counseling service in June 2017. While he found the service unhelpful, he self-initiated payments, payment arrangements, and disputes to resolve his delinquent accounts. All of Applicant's delinquent medical accounts have been paid or nearly paid, and he has taken significant steps towards rehabilitating his student loan accounts. Although the alcohol-treatment expense remains unresolved, Applicant demonstrated a reasonable basis for his dispute – his father's admitted malfeasance. He lacks the funds to obtain legal counsel to further dispute the debt, but he has taken all the steps his finances permit at this time. AG ¶¶ 20(c), (d), and (e) apply.

Despite circumstances beyond his control, Applicant has acted responsibly to improve his financial stability and resolve his delinquent accounts since completing his alcohol rehabilitation. He strictly adhered to his monthly budget and has not incurred any delinquent debts since 2015. He has taken significant steps to repay and otherwise resolve his delinquent debts. Applicant mitigated the financial considerations security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant is actively engaged in Alcoholics Anonymous and volunteers in his community. He has taken austere measures to reduce his expenses and adhere to his monthly budget, so as not to incur any additional delinquent debts. He has received multiple performance-based awards, and his work ethic and character are well regarded by his peers and supervisors. Since his April 2014, Applicant has turned around his career and substantially rehabilitated his finances. Given his burden to demonstrate financial responsibility, trustworthiness, and good judgment, I conclude Applicant mitigated the financial considerations security concerns.

### **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:	FOR APPLICANT
Subparagraphs 1.a.-1.s.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Eric H. Borgstrom  
Administrative Judge