



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-02130  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill Esq., Department Counsel  
For Applicant: *Pro se*

01/30/2018

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past financial problems. Clearance is granted.

**Statement of the Case**

On July 19, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a decision on the administrative (written) record (Answer).

On October 3, 2017, 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 seven exhibits for admission into the record. Applicant did not submit a response to the FORM (Response). The exhibits accompanying the

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<sup>1</sup> The CAF took this action under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

FORM and the documents Applicant submitted with his Answer are admitted into the record. On January 17, 2018, I was assigned the case for decision.<sup>2</sup>

### **Findings of Fact**

Applicant, 42, is employed as a network administrator for a defense contractor. He obtained his undergraduate degree in 2010. He is twice divorced and has five children. He completed his security clearance application in 2015. (Item 2) He has been with his current employer abroad on contract the last year, but he has been a contractor since 2008. He has maintained two jobs to keep his financial accounts current for the last two years. (Item 2) He has held a security clearance since 2010.

The SOR alleges that Applicant has a charged-off account in the amount of \$28,927; a collection account in the amount of \$844 and that he filed a Chapter 7 bankruptcy in January 2002 and in July 2012. The debts were respectively discharged in 2002 and 2013.

Applicant and his wife separated. She left the marriage, and he was the sole financial support for his family at that time of three children. His divorce was final in 2003. He had debts and had to provide for his three children. The petition for Chapter 7 bankruptcy was filed and the debts discharged in 2002. (Item 7) He had no financial difficulties after the discharge, until his second separation and divorce, as referenced in his credit report dated, May 2017.

As to SOR 1.a, the judgment was satisfied in November 2013. This was the result of owing \$28,927 for a car loan. He submitted documentation, including the title for the vehicle, which shows there is no lien. (Attachment to Answer)

As to SOR 1.b, a collection account in the amount of \$844, has been paid. He paid this debt before the SOR was issued and presented the processed personal checks as proof of payment. (Attachment to Answer).

AS to SOR 1.c, Applicant admitted that in July 2012, he filed for Chapter 7 bankruptcy as a means to pay his legitimate debts. His second marriage had recently ended and financial decisions that were made jointly became his sole responsibility. He could not maintain the household expenses and bills with one income. A child custody legal issue exacerbated his financial issues. The debts were discharged in January 2013. (Item 6)

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<sup>2</sup> On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4 (SEAD 4), revising the Adjudicative Guidelines. The revised adjudicative guidelines are applicable to all security clearance decisions issued on or after June 8, 2017. Accordingly, I have applied the revised adjudicative guidelines (hereinafter "AG"). ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

As to SOR 1.d, Applicant admitted that he filed a Chapter 7 bankruptcy in January 2002, as a result of his separation and impending divorce. He provided for his children, and incurred legal bills. (Item 7)

He submitted four letters of recommendation. Two letters from co-workers attest to the fact that Applicant is an extremely skilled worker and has an excellent work ethic. He learns quickly; is a team player; completes complicated tasks efficiently and has a high degree of personal responsibility. The co-workers have known Applicant since 2012. They also have seen him in non-work situations and commented on his volunteer activities in the community and his coaching activities with youth football. (Attachment to Answer)

Another co-worker, who has known Applicant since 2010, and worked with him at different companies, stated that Applicant does not avoid challenging situations. He knows about the obstacles that Applicant has faced in the past years. The co-worker noted that Applicant is someone who he vouches for on a personal and a professional level.

Applicant's program manager hired him in 2016 on a part-time basis. Applicant presented as a reliable, flexible, and eager worker. He would gladly re-hire him. The final letter confirmed that Applicant can work independently, and consistently follows through to get a job done. He has an ability to troubleshoot matters and perseveres with a problem to its resolution.

The credit reports confirm that since the 2012 bankruptcy discharge, Applicant has not incurred delinquent debt. His credit reports reflect many accounts as "pays as agreed." He is now current with his student loans. (Item 4)

As of the submission of the case for decision, the delinquent debts in the SOR allegations are resolved. Applicant's credit reports do not reflect any other delinquent accounts that are not resolved. (Item 4)

### **Law & Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

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.

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 make certain that applicants: (a) receive fair notice of the issues, (b) have a reasonable opportunity to address those issues, and (c) are not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In deciding a case, a judge must resolve any doubt raised by the evidence in favor of the national security. AG ¶ 2(b). See *also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that 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.

## **Analysis**

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

Applicant petitioned for Chapter 7 bankruptcy in 2002 and 2012. Both bankruptcy debts were discharged. He incurred delinquent debt when he was separated and divorced. The presence of delinquent debt can raise the Guideline F security concern, which is explained at AG ¶ 18:

Failure 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. . . .

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified 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 classified information.<sup>3</sup>

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

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

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

AG ¶ 20(a): the behavior happened so long ago, . . . 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 (e.g., loss of employment, a business downturn, . . .), and the individual acted responsibly under the circumstances; and

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

Applicant's past financial problems and two bankruptcies with subsequent debt problems were attributable to separations and divorce. He has five children for whom he provides. He filed for bankruptcy in 2002 and 2012. He acquired two other delinquent accounts as reflected in the SOR.

Applicant did not simply walk away from his debts. Instead, he responsibly addressed each of his debts. He filed for bankruptcy, which is a legitimate means of resolving debt. His past financial problems are not attributable to not living within his means. He incurred debt trying to support his children on his income alone after his marriages fell apart. He made good-faith efforts to resolve his debts. He had legal expenses related to the custody of his children, which did not help his financial situation and he had student loans. He presented documentation showing that he is current on his student loans.

The circumstances giving rise to Applicant's past financial problems do not cast doubt on his ability and willingness to continue to properly handle and safeguard classified information. Additionally, the manner in which he addressed the debts that he incurred following his latest bankruptcy raises favorable inferences regarding his continued suitability. Applicant's present financial situation does not raise a security concern. AG ¶¶ 20(a), 20(b), and 20(d) apply.

After a complete and thorough review of the record evidence, including considering the whole-person factors set forth in AG ¶ 2, I find that Applicant met his heavy burden of proof and persuasion in mitigating the security concerns at issue. Furthermore, he established his eligibility for continued access to 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, Guideline F (Financial Considerations):      FOR APPLICANT

Subparagraphs 1.a – 1.d:      For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to continue Applicant's eligibility for access to classified information. Applicant's request for a security clearance is granted.

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Noreen Lynch  
Administrative Judge