



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



In the matter of: )  
)  
) ISCR Case No. 17-04264  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany Muetzel, Esq., Department Counsel  
For Applicant: *Pro se*

11/06/2018

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant's delinquent debts and tax issues are alleged as a security concern under Guideline F, financial considerations. His debts remain largely unresolved. Applicant did not provide sufficient evidence to mitigate the financial security concern. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 25, 2016. On March 22, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>1</sup>

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<sup>1</sup> 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) (December 10, 2016), effective June 8, 2017.

Applicant answered the SOR on April 16, 2018, and requested a hearing. The case was assigned to me on June 27, 2018. On July 27, 2018, a notice of hearing was issued scheduling the hearing for August 23, 2018. The hearing convened as scheduled.

At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 4. Applicant testified and submitted Applicant's Exhibits (AE) A through AE D. All exhibits were admitted without objection. I held the record open to provide Applicant the opportunity to submit additional documentation. He timely submitted additional documents, which are marked as AE E through AE I, and admitted without objection.<sup>2</sup> DOHA received the transcript (Tr.) on August 30, 2018. The record closed on September 7, 2018.

### **Amendment to the SOR**

At the start of the hearing, the Government moved to withdraw SOR ¶¶ 1.a and 1.c, as duplicative of SOR ¶¶ 1.h and 1.k, respectively. The motion was granted. (Tr. 12-13)

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a - 1.i, and 1.k - 1.p. He denied SOR ¶ 1.i. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 28 years old. He is a high school graduate. He and his wife married in 2012. They have two daughters, a six-year-old and a ten-month-old. Applicant works as an electronics technician for a defense contractor since August 2013. Previous employers included an auto repair shop, a package delivery service, and a fast food restaurant. His wife works as a waitress. This is his first application for a security clearance. (Tr. 9, 28-30; GE 1)

When Applicant was first hired by his employer, in 2014, he was paid \$11 an hour. He has since been promoted and earned raises, and since January 2018, he has earned \$20 an hour, and \$30 an hour working overtime. After taxes he earns about \$2,400 a month. (Tr. 28-30, 77-81, 91-92)

As amended, the SOR alleges that Applicant has incurred \$22,256 in delinquent debt. The debts are listed on Applicant's credit reports from June 2016 and November 2017. (GE 3; GE 4) Applicant testified (and explained in his background interview) that he began falling behind on his debts in 2012, after his daughter was born. He was then

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<sup>2</sup> AE E is an e-mail from Applicant concerning his efforts to get documentation from one of his creditors. AE F is a recommendation letter. AE G and AE H are Applicant's 2017 state and Federal income tax returns, with related payment coupons. AE I and AE J are payment coupons for his 2018 state and Federal income taxes.

22 years old, and working in a low-paying job. (Tr. 33; GE 2 at 12) His plan is to address his debts one at a time, as best he can. (Tr. 34, 44)

SOR ¶ 1.b (\$6,293) is a debt in collection Applicant owes for unpaid rent. He was evicted from the apartment in about 2012. He disclosed the debt on his SCA. (GE 1 at 34) Applicant began living at the apartment in 2013. He fell behind on the debt after his daughter was born. Applicant has taken no action to resolve this debt, and it remains unpaid. (Tr. 31-34, 44)

SOR ¶ 1.d (\$787) is a past-due power bill. Applicant still has an account with the same power company but it is not in his name. Applicant has taken no action to resolve this debt, and it remains unpaid. (Tr. 34-35)

SOR ¶ 1.e (\$29) is a debt to a collection agency. The original creditor is not identified, though there is a partial account number on the November 2017 credit report. Though Applicant admitted the debt in his Answer, he testified that he did not recognize it. (Tr. 34-35; GE 4)

SOR ¶ 1.f (\$860) is a March 2015 judgment in favor of an unidentified medical creditor. Applicant went to the emergency room in 2014. He did not have insurance, and could not afford to pay the bill. Applicant has taken no action to resolve this debt, and it remains unpaid. (Tr. 37-38)

SOR ¶ 1.k (\$1,352) is a similar debt, in collection to an unidentified medical creditor. Applicant disclosed the debt on his SCA, noting that it was an emergency room bill incurred in 2011. (GE 1 at 33) He testified that he thinks this debt is the same as medical debt ¶ 1.f. He acknowledged that he had multiple visits for medical treatment, for two separate issues, both when he did not have insurance. Applicant has taken no action to resolve this debt, and it remains unpaid. (Tr. 49-53)

SOR ¶ 1.g (\$3,043) is a judgment issued against Applicant in January 2015, in favor of a local tolling authority. Applicant incurred the debt on a daily basis while driving across a toll bridge, to and from work to his job at a shipyard. When he did not pay what he owed, the creditor successfully sought a judgment against him in court, and then got the court to order garnishment of his wages. The amount in the SOR is the principal amount owed. The total, including costs and interests, is \$3,812. (AE A) When Applicant answered the SOR, he said he had paid \$1,579 of the debt. He provided a July 1, 2018 paystub reflecting that the full payment of \$3,812 has now been garnished. (AE B; Tr. 22-23) Applicant said he no longer takes toll bridges and no longer works at that job site. This debt is resolved. (Tr. 38-42)

SOR ¶ 1.h (\$7,042) is an October 2012 judgment against Applicant concerning the balance owed the creditor on a repossessed car. Applicant's wife purchased the car in 2010 or 2011, and Applicant co-signed the loan. They tried to keep up with payments but were not able to do so, and the car was repossessed in 2012. Applicant believes this was about the same time he was evicted from his apartment (the creditor for SOR ¶

1.b), though he recalls getting letters about it. This debt was brought to his attention during his background interview. Applicant has taken no action to resolve the debt, and it remains unpaid. (Tr. 42-45)

SOR ¶ 1.i (\$452) is a debt relating to the car Applicant purchased after the repossession in 2012 (¶ 1.h). Applicant has made two \$150 payments on the debt, and has one payment left. The debt is being resolved. (Tr. 46-47; AE C)

SOR ¶ 1.j (\$98) is the only debt Applicant denied. This is a debt Applicant owes to a retailer. The debt was charged off in 2016. (GE 4) Applicant denied the debt because he said he paid it last year. (Tr. 47-49) He attempted after the hearing to get documentation of the payment, but was not able to “because the account was paid off so long ago.” (AE E)

SOR ¶ 1.l (\$1,263) is an unpaid phone bill in collection. Applicant incurred the debt in about 2010. He incurred phone charges he could not pay and the company turned off his cell phone. Applicant has taken no action to resolve this debt, and it remains unpaid. (Tr. 53-54)

SOR ¶ 1.m (\$287) is a cable TV bill in collection. Applicant has taken no action to resolve this debt, and it remains unpaid. (Tr. 44)

Applicant failed to file his Federal and state income tax returns for tax year 2016, as required. (SOR ¶¶ 1.n and 1.o). At hearing, Applicant testified that “I was told I had three years to file my taxes,” at least if he was due a refund. He said he was told that by his friends and parents. (Tr. 56-57)

Applicant said he did not file his 2016 tax returns on time, in part, because he and his wife were living separately for a time, and his wife had claimed their daughter as a dependent. (Tr. 67-72) Applicant said in his Answer that he had filed his 2016 Federal and State income tax returns in April 2018, with his 2017 returns. (Tr. 58, 64)

Applicant acknowledged that he did not get a refund when he filed, and in fact owed both Federal and state taxes. (Tr. 57-61, 73, 91) He said he thought he owed about \$6,000 in past-due Federal income taxes for tax years 2016 and 2017 combined. He is on a payment plan, and had paid \$150 a month for the three months before the hearing. (Tr. 24-26, 66-67, 86-90; AE D; AE H)

In SOR ¶ 1.p, the Government alleged that Applicant owed \$768 in past-due state income taxes. The year was not specified but Applicant disclosed in his Interrogatory Response that he owed \$768 for tax year 2014. The debt remains unpaid. (GE 2 at 1-3; Tr. 76-77, 90-91)

After the hearing, Applicant submitted paperwork regarding his 2017 state and Federal income tax returns and related payments. He owed \$4,521 in Federal taxes for tax year 2017. He provided payment vouchers for \$1,131 per quarter in 2018. (AE H;

AE J) He owed \$525 in state taxes for tax year 2017. (AE G) He provided payment vouchers for \$132 per quarter for state taxes. (AE I) He did not provide documentation that his 2016 Federal and state income tax returns had been filed in April 2018, as he had testified.

One of Applicant's supervisors provided a recommendation letter. He notes that Applicant is one of the few employees at the company who is qualified as a particular kind of inspector. He is motivated and shows initiative by volunteering frequently for extra duties. He is professional and treats co-workers and clients respectfully. He has a bright future with the company. (AE F)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."<sup>3</sup>

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 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

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<sup>3</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

mitigate facts admitted by applicant or proven by Department Counsel and 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.

### **Analysis**

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

The security concern for financial considerations is set out in 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. . . .

The financial considerations guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

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

Notwithstanding Applicant's admission, SOR ¶ 1.e is not established. The debt is to a collection agency. The original creditor is not identified, and there is only a partial credit number listed on GE 4. Applicant testified that he did not recognize the debt, which is also for a small amount, \$29. Applicant's credit reports otherwise reflect that he has incurred numerous unresolved delinquent debts over the last several years. AG ¶¶ 19(a) and 19(c) apply.

Applicant filed his 2016 Federal and state income tax returns late. He said he filed them in April 2018, when he filed his 2017 tax returns, but did not provide supporting documentation. Applicant reported that he owes \$768 in past-due state income taxes for tax year 2014. AG ¶ 19(g) applies.

Conditions that could mitigate 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's delinquencies include debts for unpaid rent, power bill, cable, phone, auto, emergency medical expenses when he did not have insurance, and a large bill to a local tolling authority. To some extent, his debts are attributable to conditions beyond his control, as they are largely attributable to his low income. The first prong of AG ¶ 20(b) has some application. AG ¶ 20(b) does apply to the medical debts (SOR ¶¶ 1.f and 1.k), which occurred because Applicant went to the emergency room and did not have medical insurance.

However, for full application of this mitigating condition, Applicant must show that he has acted responsibly under the circumstances. These debts are largely unresolved. Applicant states that his plan is to pay them off one by one. That is a reasonable plan, but Applicant simply has not established enough of a track record of financial responsibility or of good-faith efforts to repay his debts, to give him full mitigation credit under AG ¶ 20(b), or AG 20(d).

The debt to the tolling authority (SOR ¶ 1.g) has been resolved, but it took a judgment against Applicant, and an order garnishing his wages, to resolve it. Applicant also incurred the debt on a daily basis, while driving to and from his job at a shipyard. Under those circumstances, I cannot credit Applicant with acting in good-faith, or that the debt has been mitigated, even though it has been paid.

Applicant's \$768 unpaid state income tax debt is not resolved, and he did not set forth a plan for resolving it. Applicant also did not provide sufficient documentation that he had filed his 2016 Federal and state income tax returns in April 2018, as he said. These allegations are unresolved. AG ¶ 20(g) does not apply.

Applicant has set up a plan to pay his past-due Federal income tax debt, of between \$4,300 and about \$6,000 from tax years 2016 and 2017. That tax debt is not alleged. I cannot consider that debt as disqualifying conduct, though I can consider it in weighing mitigation.

While Applicant incurred many of his debts several years ago, when he had less income, his debts are largely ongoing and unresolved. His outstanding delinquencies are a “continuing course of conduct.”<sup>4</sup> He did not provide sufficient evidence to establish that his financial problems happened so long ago, were so infrequent, or occurred under such circumstances that they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

### **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 in my whole-person analysis. Applicant simply needs to establish more of a track record of financial stability and of good-faith steady payments towards his debts to meet his burden of showing that he is a suitable candidate for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility for 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:

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<sup>4</sup> ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).



Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraph 1.a:

Withdrawn

Subparagraph 1.b:

Against Applicant

Subparagraph 1.c:

Withdrawn

Subparagraph 1.d:

Against Applicant

Subparagraphs 1.e-1.f:

For Applicant

Subparagraphs 1.g-1.p:

Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge