



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-05588
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

02/29/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate the security concerns raised by a history of living beyond his means. Instead of paying his mortgage, taxes, and other financial obligations, he used his income to finance a lifestyle that he could not otherwise afford. He failed to establish that he has reformed the financial habits that led to concerns about his eligibility for access to classified information. Clearance is denied.

**History of the Case**

On March 7, 2015, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging that his conduct and circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> On March 17, 2015, Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information. (Answer)

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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 DOD on September 1, 2006.

On July 1, 2015, Department Counsel indicated that the Government was ready to proceed to hearing. I was assigned the case on October 1, 2015, and after conferring with the parties, scheduled the hearing for November 17, 2015.<sup>2</sup>

At hearing, Department Counsel offered Exhibits (Ex.) 1 – 9. Applicant testified and offered Ex. A – C. I granted his request for additional time post-hearing to submit documents in support of his case, to include documents to corroborate his testimony of addressing the tax-related debt referenced in SOR 1.c.<sup>3</sup> He timely submitted Ex. D. All exhibits were admitted into the record without objection. The hearing transcript (Tr.) was received on November 30, 2015, and the record closed on December 11, 2015.

### **Findings of Fact**

Applicant, who is in his late forties, is married and has three children. He is a high school graduate with some college-level coursework to his credit. He served in the U.S. military from 1985 to 1991, receiving an honorable discharge. He has worked as a federal contractor for the past 25 years, with no reported periods of unemployment. Currently, he is a senior information technology engineer. He initially received a security clearance in 1991 and, as part of the periodic reinvestigation of his background, submitted a security clearance application (SCA) in 2014. (Tr. at 8, 25-28; Ex. 1)

On his SCA, Applicant disclosed two past-due debts, a delinquent mortgage and a judgment. The two debts total over \$300,000. At hearing, Applicant explained that his financial problems began in about 2001. He had recently gotten married and assumed \$30,000 in past-due debt that his wife incurred prior to the marriage. Shortly thereafter, his house started having structural issues. Applicant estimates he spent about \$65,000 trying to fix the home and bring it up to code. He financed the construction cost by refinancing the mortgage on his former home. He had purchased the home for approximately \$144,000 in 1996, and by the time he submitted the SCA in 2014, the mortgage balance had increased to about \$309,000. (Tr. at 29-44, Ex. 1 at 33-34)

Applicant attempted to renegotiate the terms of the mortgage, but was unsuccessful. In 2008, he stopped paying the mortgage to improve his negotiating position with the lender. He used the money to pay for his son's college, satisfy the debts his wife incurred prior to their marriage, and to purchase several vehicles. (Tr. at 29-44, 54-66) At one point, Applicant had seven motorcycles. (Tr. at 63)

The judgment Applicant listed on the SCA is for the remainder owed on a leased vehicle. Applicant was involved in a car accident in 2008 that resulted in the leased vehicle being totaled. The creditor secured a judgment against him in 2011 for the remainder owed on the contract. (Tr. at 51-54; Ex. 8) Applicant testified as follows regarding the circumstances leading to the judgment:

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<sup>2</sup> See Hearing Exhibit (Hx.) I, scheduling correspondence, notice of hearing, and case management order. See also, Hx. II, documents establishing that, at the time of the hearing, Applicant was being sponsored for a clearance.

<sup>3</sup> See Tr. at 66-68.

Applicant: . . . in 2007, I bought the brand new Dodge Avenger that came out, the R-2 model. It was fine from (sic), nice car, it had everything laid out into the car, had the DVD systems so my daughter can sit in the back and relax. Nice car. Not beyond my means. Payments were fine. I rolled the car on its side in 2008. The company asked me if my insurance company paid off the damages to the car and everything is paid off the car in full. Apparently, they wanted the rest of the contract on lease contract. I said if the insurance paid off the car, why am I paying off the rest of the lease contract? Apparently, they can go to court and say if you don't show up, then yes, you miss the court date, you go, they judge against you. That is where we were with that. I have been fighting that, trying to appeal and I have been denied every appeal I turned up.

Department Counsel: So you lost the default judgment?

Applicant: Yes, I did.

(Tr. at 52-53)

In late August 2015, Applicant resolved the past-due mortgage and the judgment through a short-sale of his former home. (Ex. A; Ex. B) These debts are referenced in SOR 1.a and 1.b. Both debts are resolved, as are the \$265 in traffic tickets referenced in SOR 1.d and 1.e. (Answer)

The SOR also lists a \$6,400 judgment lien for past-due state taxes from 2009 (SOR 1.c). Applicant explained that in 2009, he switched his employment designation from a salaried employee to an independent contractor. He did not save a sufficient amount of his income to pay his federal or state taxes. In 2010, a judgment lien was entered against him for the past-due state taxes. (Tr. at 44-51, 66-68; Ex. 6)

Applicant testified that he became aware of the overdue state taxes in about 2012. (Tr. at 51, 67) But, on his 2014 SCA, Applicant denied having any liens or judgments for failing to pay his taxes. (Ex. 1 at 33-35)<sup>4</sup>

In his Answer, Applicant states that he started to repay the state tax debt, but stopped paying it to help his son pay for college. At hearing, Applicant testified that he restarted payments on the state tax debt. (Tr. at 66-68) He did not present any documentation at hearing or post-hearing to corroborate his testimony that he was resolving the state tax debt. The state tax debt, SOR 1.c, remains unresolved.<sup>5</sup>

Applicant has not received financial counseling. His net monthly income is approximately \$6,800. He testified about out-of-pocket medical expenses for his wife's

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<sup>4</sup> Applicant's apparent falsification of the SCA was not alleged and is only being considered in assessing his mitigation case and whole-person factors.

<sup>5</sup> The record does contain information that Applicant resolved a separate state tax lien for over \$1,800 in 2014. (*Compare*, Ex. 5 at 1, *with*, Ex. 7)

debilitating illness. He also discussed some of the steps he has taken to reduce his expenses, including downsizing to a smaller home that he co-owns with his mother. (Tr. at 54-66) Notwithstanding these efforts, Applicant testified that he is still essentially “broke.” (Tr. at 54) He did not provide documentation regarding his current finances.

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants 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.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). 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.

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 are responsible for ensuring that due process proceedings are conducted “in a fair, timely, and orderly manner.” Directive ¶ E3.1.10. Judges make certain that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the paramount importance of protecting national security in all suitability determinations, the Supreme Court has held that “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

The financial considerations security concern is explained at 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's financial problems were primarily caused by his inability to live within his means. Instead of paying his mortgage, taxes, and other financial obligations, he used his income to finance a lifestyle that he could not otherwise afford. Accordingly, the record evidence raises the financial considerations security concern and the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

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

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

The guideline also lists a number of conditions that could mitigate the concern. The mitigating conditions that are potentially relevant in this case are:

AG ¶ 20(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;

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, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant receives partial credit under AG ¶ 20(d) for resolving four of the SOR debts. He also receives partial credit under AG ¶ 20(b), because the structural issues that afflicted his former home and his wife's medical issues were matters beyond his control. However, he did not meet his burden in establishing the full applicability of either of these mitigating conditions or any of the other mitigating conditions, as more fully explained below.

First, for several years, Applicant refused to pay a judgment entered against him. The fortuitous circumstance under which the judgment was recently satisfied does not mitigate the serious security concerns raised by his failure to pay the judgment.

Second, even after being provided ample opportunity to provide documentation to corroborate his testimony that he was addressing the past-due state tax debt, he failed to provide such evidence. Applicants for a security clearance are expected to present documentation to corroborate their claims of debt resolution. ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008). Applicant's failure to provide such documentation and evidence regarding the current state of his finances raises unresolved questions about whether he presently manages his finances in a responsible manner.

Third, although Applicant's desire to help his children attain a college education is both understandable and laudable, he was only able to achieve his personal goals by neglecting his other financial obligations. Of note, Applicant stopped paying his mortgage in 2008 and has yet to resolve past-due state taxes from 2009. This record evidence raises concerns that Applicant may similarly neglect his security obligations if it poses a conflict with his personal goals, desires, or interests.

A security clearance determination is not a debt collection process. Instead, it is intended to evaluate whether an individual holds the judgment, reliability, and other pertinent character traits required of those granted access to this nation's secrets.<sup>6</sup> Applicant failed to mitigate the serious security concerns raised by a history of living beyond his means. He has not received financial counseling, or submitted sufficient evidence of genuine financial reform. In light of Applicant's history of financial irresponsibility and lack of sufficient evidence of financial reform, I am not convinced that similar financial issues are unlikely to recur. Applicant's finances continue to raise questions about his suitability for access to classified information.<sup>7</sup>

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<sup>6</sup> ISCR Case No. 13-00311 at 3 (App. Bd. Jan. 24, 2014) ("In a Guideline F case, a Judge must evaluate an applicant's financial condition for what it may reveal about the applicant's self-control, judgment, and other pertinent qualities."). See *also*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

<sup>7</sup> See, *e.g.*, ISCR Case No. 11-13984 (App. Bd. Feb. 20, 2014) (notwithstanding evidence that individual satisfied SOR debts, adverse decision sustained because s/he did not mitigate security concerns raised by a history of financial issues). See *also*, ISCR Case No. 14-04300 at 3 (App. Bd. Dec. 30, 2015) (Board sustains adverse decision because individual did not produce "sufficient evidence to establish an improvement in financial health, habits, or practices.")

## **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the whole-person factors listed at AG ¶ 2(a).<sup>8</sup> I hereby incorporate my comments under Guideline F and highlight some additional whole-person factors.

I gave due consideration to Applicant's past military service and years of work on behalf of the U.S. Government as a federal contractor. Furthermore, I took into account that he has held a security clearance for years without apparent issue, other than those listed in the SOR. However, he has a lengthy history of placing his personal financial interests above his legal financial obligations, to include the obligation of all citizens to pay their taxes. After considering and weighing all the evidence, both favorable and unfavorable, I find that Applicant's financial situation continues to raise a security concern. Overall, the record evidence leaves me with doubts about 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):	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant

## **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>8</sup> The non-exhaustive list of factors are: (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.