



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



In the matter of:  REDACTED  Applicant for Security Clearance	) ) ) ) )	ISCR Case No. 14-06125
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**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

05/27/2015

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to establish his eligibility for continued access to classified information. He incurred delinquent debt following the divorce from his ex-wife in 2010. He did not submit documentation to substantiate his claims of debt repayment or provide a reasonable basis to dispute the outstanding debt. His delinquent debts remain unresolved and total approximately \$35,000. Applicant failed to demonstrate that his financial situation is under control and, despite the presence of some mitigation, security concerns regarding his finances remain. Clearance is denied.

**Statement of the Case**

On December 9, 2014, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that his circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> On December 18, 2014, Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record (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 March 3, 2015, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains four documentary exhibits, which were marked and admitted into evidence as Exhibits (Ex.) 1 – 4.<sup>2</sup> Applicant submitted a response to the FORM, which was marked and admitted into evidence as Ex. 5. On May 21, 2015, I was assigned Applicant's case.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, I make the following findings of fact:<sup>3</sup>

Applicant is in his mid-fifties. He served in the U.S. military from 1976 to 1985, and after his honorable discharge from the military began working as a federal contractor. Since being honorably discharged from the military, he has been continuously employed.<sup>4</sup> Applicant notes in his Answer that he has held a security clearance for a majority of his adult life.

In 2010, Applicant divorced from his wife of over 20 years. He claims that the two delinquent debts listed on the SOR were marital debts that he assumed as part of the divorce. He claimed in his security clearance application that he assumed the debts to help out his now ex-wife financially. He also disclosed on his application that he has been cohabitating with someone else for whom he shares a bond of "affection, obligation, or other commitment" since about 2009.<sup>5</sup>

The debt listed in SOR 1.a was originally for a \$50,000 personal loan that became delinquent when Applicant was unable to afford the monthly payments on his salary alone. The debt was charged off by the original creditor in approximately 2011, and the current balance owed is approximately \$34,000. Applicant admits that he owes the debt, but claims he attempted to resolve the debt in the past and disputes that the collection company listed on the SOR properly acquired the debt. He claims that he sent the collection company correspondence in January 2013, demanding that they comply with provisions of federal law, to include validating the debt. He states in his FORM response that he is "very suspicious of the manner [the collection company] claims to have acquired this debt with the lack of professionalism displayed by that group." He did not submit documentation regarding his past efforts to resolve the debt, dispute of the debt, or of taking any recent action to resolve the debt. The debt remains unresolved.

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<sup>2</sup> Ex. 1 is the SOR copy that was submitted with the FORM. It appears to be the copy that Applicant submitted with his Answer and the date was highlighted. A clean copy of the SOR was not available.

<sup>3</sup> In reaching the above findings of fact, I have made only those reasonable inferences supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

<sup>4</sup> Applicant listed on his security clearance application that he has been employed as a federal contractor since 1980. (Ex. 3 at 10) However, in the same application, he also listed active duty military service from 1976 to 1985. (Ex. 3 at 12) I have resolved this apparent inconsistency in the record to reflect that Applicant began his civilian employment after his honorable discharge in 1985. However, even if Applicant began working as a federal contractor in 1980 such would not change the ultimate conclusion.

<sup>5</sup> Ex. 3 at 16, 31-32.

Applicant states that he originally owed about \$28,000 to the creditor listed for the debt in SOR 1.b. He claims that he negotiated a debt repayment plan with the creditor and has consistently paid per the terms of the plan, bringing the past-due balance down to \$1,550. The SOR reflects a past-due balance for the lesser amount. Applicant did not submit documentation to corroborate his claims regarding the original amount of the debt and debt repayment. The debt remains unresolved.

Applicant claims that his “current financial status continues to improve,” and his current financial difficulties are a “bump in the road” that he will resolve. He requests that his clearance be renewed so he can “continue to do good work” for the U.S. Government.<sup>6</sup> Applicant did not submit evidence of receiving financial or debt counseling, his current financial situation, and past work performance.

### **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 only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

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.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

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, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

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

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<sup>6</sup> Ex. 2.

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.<sup>7</sup>

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.<sup>8</sup>

## **Analysis**

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

The potential security concern regarding an applicant with financial problems 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.

The delinquent debts alleged in the SOR are established through Applicant’s admissions, his security clearance application (Ex. 3 at 30-32), and his credit report (Ex. 4 at 6). Applicant’s delinquent debts establish AG ¶¶ 19(a) (inability or unwillingness to satisfy debts) and 19(c) (a history of not meeting financial obligations).

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

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<sup>7</sup> Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). An administrative judge is required to examine an individual’s past history and current circumstances to make a predictive judgment about an individual’s ability and willingness to protect and safeguard classified information. ISCR Case No. 11-12202; ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

<sup>8</sup> ISCR Case No. 12-04554 at 4 (App. Bd. July 25, 2014) (“an adverse decision under the Directive is not a determination that the applicant is disloyal. Rather, such a decision signifies that the applicant has engaged in conduct or has otherwise experienced circumstances that raise questions about his or her judgment and reliability.”).

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;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's debts are substantial and on-going. Although Applicant's financial situation is, in part, due to the dissolution of his marriage, he has not presented sufficient evidence to establish that he has acted responsibly in managing his personal financial affairs in the five years that have passed since the divorce. Individuals seeking a security clearance are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include delinquent debts listed on their credit reports.<sup>9</sup> Applicant failed to present any documentation to corroborate the bare assertions in his Answer and FORM response that he has a reasonable basis to dispute and is resolving the delinquent debts listed in the SOR.

Furthermore, setting aside the relatively minor debt referenced in SOR 1.b, the substantial delinquency referenced in SOR 1.a raises on its own substantial questions about Applicant's eligibility. Applicant did not present documentation regarding his purported past attempts to resolve the debt or basis for disputing the debt. Moreover, even if I credit his statement that he disputed the debt with the creditor in January 2013, he has taken no discernible action to resolve the debt in over two years. The record evidence strongly suggests that he has simply disregarded a legitimate debt after it was charged off. Applicant's disregard of a lawful financial obligation, while fully employed as a federal contractor, raises serious security concerns that he may also disregard his security obligations.

Applicant also did not present evidence of receiving financial or debt counseling. An individual's bare assertions, without corroborating documentation, of debt resolution, financial reform, or other claim of mitigation will generally be insufficient to carry their heavy burden of persuasion in mitigating security concerns raised by their accumulation of delinquent debt. Applicant failed to meet his heavy burden of persuasion and, thus, I find that none of the mitigating conditions apply.

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<sup>9</sup> ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008).

## **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 nine factors listed at AG ¶ 2(a).<sup>10</sup> I gave due consideration to Applicant's honesty in revealing his delinquent debts on his security clearance application and that he has served the nation, in and out of uniform, for over 35 years. However, this and other favorable record evidence does not mitigate the security concerns raised by his financial situation.<sup>11</sup> Overall, the record evidence leaves me with doubts about Applicant's continued eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):      **AGAINST APPLICANT**

Subparagraphs 1.a – 1.b:      **Against Applicant**

### **Conclusion**

In light of the record evidence and for the foregoing reasons, 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>10</sup> The non-exhaustive list of adjudicative 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.

<sup>11</sup> ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (An individual's honesty and "years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").