



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



In the matter of: )  
)  
) ISCR Case No. 14-05353  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: Laban O. Opande, Esq.

10/05/2015

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleged Applicant was more than \$31,000 past due on his child support obligation and had seven charged-off or collection accounts, which totaled more than \$4,000. It was also alleged Applicant provided false answers on a security questionnaire. The delinquent accounts have been resolved as have the personal conduct security concerns. Clearance is granted.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on November 19, 2014, the DoD issued an SOR detailing financial considerations and personal conduct

<sup>1</sup> Executive Order 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 (AG) effective within the DoD on September 1, 2006.

security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On December 12, 2014, Applicant answered the SOR and requested a hearing. On March 25, 2015, I was assigned the case. On April 22, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on May 5, 2015.

Government's Exhibits (Ex) 1 through 3 and Applicant's Exhibits A through G were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. H through L) was submitted and admitted into the record without objection.<sup>2</sup> On May 13, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied falsifying his January 2014 Electronic Questionnaire for Investigations Processing (e-QIP) and denies or disputes numerous delinquent obligations alleged in the SOR. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 43-year-old developer who has worked for a defense contractor since January 2014, and seeks to obtain a security clearance. (Ex. 1, Tr. 36) Applicant called no witnesses other than himself, and produced no work or character references.

Applicant was divorced in November 2012. (Ex. B, D, Tr. 23) Child support for his two children, then ages 9 and 2, was set at \$2,122 monthly. (Ex. 2, C) He did not appear at the uncontested divorce and did not know child support had been ordered until six months after the divorce. (Tr. 23) He was unemployed at the time of the final decree, and his only income was unemployment compensation. (Tr. 24) The \$1,400 monthly unemployment compensation was put on a credit card. His ex-wife had the card and would send him \$200 each month. (Tr. 52) He made child support payments directly to his ex-wife. (Tr. 50) He had agreed she would stay in the family home, and he would continue paying the \$1,267 monthly mortgage payments. (Tr. 54) He is current on the mortgage payments. (Tr. 55)

Applicant's February 2014 credit report indicated he was \$19,521 and \$18,121 past due on his child support obligations. (Ex. 2) The same credit report also indicated he was \$31,508 past due on his child support obligation (SOR 1.a). (Ex. 3) In September 2013, the state Attorney General relinquished any claim to the \$16,727 which represented all of Applicant's unpaid child support. (Ex. C, Tr. 55) At that time, child support was reduced to \$390 monthly plus \$195 monthly for medical support. (Ex. C) In September 2014, the state Attorney General reviewed the child support order and determined the amount of support should again be lowered. (Ex. E) He is current on his child support payments now set at \$400 every two weeks. (Tr. 29) A court date has not yet been set, for a further review of the correct amount of child support. (Tr. 60) On his

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<sup>2</sup> Although not objecting to the admission of the material, Department Counsel requested the material be given the appropriate weight.

e-QIP, he indicated he had not been delinquent on his child support during the previous seven years. (Ex. 1)

Applicant was 90 days or greater past due on a credit union obligation (SOR 1.b). (Ex. 2) In May 2015, a creditor's letter indicates Applicant was resolving this matter. (Ex. J) His February 2014 credit report lists four additional accounts, all with that same creditor that were being "paid as agreed." (Ex. 2) The credit report listed a \$2,005 student loan charged off (SOR 1.c). (Ex. 2) In April 2015, he made a \$36 payment on the \$586 credit card collection account (SOR 1.e). (Ex. A) His then-wife had obtained the credit card to help improve her credit and then failed to make the payments. (Tr. 49) He agreed to make monthly payments on the debt, and the creditor agreed to reduce the balance to \$175. (Ex. K, Tr. 49, 50, 57)

In February 2015, Applicant settled and paid a \$155 telephone service collection account (SOR 1.g). (Ex. 2, 3) In April 2015, he settled and paid a second telephone service collection account (SOR 1.f). (Ex. A, L, Tr. 34) His February 2014 credit report lists five medical accounts totaling approximately \$650. In April 2015, the \$138 medical debt (SOR 1.h) was paid in full. (Ex. A, Tr. 34) The credit report also lists 32 accounts as "Pays as Agreed." (Ex. 2)

Applicant had a \$777 payday loan account (SOR 1.d) charged off. Prior to the divorce, his then-wife obtained the loan in hopes of improving her credit, but failed to repay the obligation. (Ex. 2, 3, Tr. 46, 48) In April 2015, he made a \$230 payment. (Ex. A) In May 2015, the creditor offered to settle the debt for \$1,110. (Ex. I)

Applicant stated on his e-QIP that he had obtained a master's degree in April 2009. He completed the course work for the degree and participated in the commencement exercise. The student loan servicing center had paid the university, but Applicant had withdrawn from the class and had to retake it. The university charged off \$2,005 (SOR 1.c) related to a class from which he had withdrawn. (Tr. 31) At graduation time, there was a disagreement and misunderstanding as to who was obligated to pay for the course. Applicant participated in the graduation ceremony and, prior to graduation, he received his transcripts. (Ex. G) He believed he would not have been able to obtain his transcripts or attend the graduation ceremony if he owed the university money. (Tr. 30, 61) However, he was not sent his diploma. (SOR Response) In April 2015, he paid the university \$200 and the creditor agreed to reduce the balance due on the debt to \$1,005. (Ex. A, Tr. 33)

## **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 disqualifying conditions and mitigating conditions, which must be considered 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(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 access to classified information will be resolved in favor of 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.

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 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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant was delinquent on his child support and owed less than \$4,500 on seven past-due obligations. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated 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.

In 2012, Applicant received an uncontested divorce. At the time of the divorce, he believed the agreement with his ex-wife was to continue making the house payments and provided support directly to her. Six months later, he discovered he had been ordered to pay more than \$2,000 in monthly child support. A \$16,000 child support obligation was incurred. In September 2013, the state Attorney General dismissed that obligation. The state later reduced the monthly child support obligation. A year later, in September 2014, the state Attorney General agreed the amount of support should be again lowered. Applicant is awaiting a court proceeding to determine the correct amount of child support. His current support obligation is \$400 every two weeks. He is current on his child support obligation.

In addition to Applicant's child support obligation, he had seven delinquent debts. He paid three of the debts and arranged repayment plans on the remaining four. All of his delinquent obligations have been or are being resolved.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by the court-set child support obligation. The amount of support has been adjusted and will be adjusted again when the matter goes before the domestic court. The child support obligation is no longer delinquent. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced the financial burden associated with divorce and unemployment. These are factors beyond his control. He has addressed the child support obligation and has paid or is paying the other SOR delinquent obligations, which resolves his financial problems. AG ¶ 20(c) and ¶ 20(d) apply.

## **Personal Conduct**

When Applicant completed his January 2014 e-QIP, he said he had received a degree and was not delinquent on his child support obligation. He had not received his diploma and a prior child support arrearage had been dismissed. His answers do not prove he deliberately failed to disclose information or lied. He denied any intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

Applicant attended and completed all the required coursework for his master's degree. There arose a \$2,000 dispute over payment for a class from which Applicant had withdrawn and then later retaken. Prior to graduation, he received his transcript, which led him to believe all obligations owed the university had been paid. Although he participated in graduation/commencement ceremonies, he did not receive his diploma. On his January 2014 e-QIP, he was asked if he received a diploma or degree. And he stated he had received a degree. Applicant was not attempting to provide a false answer. There was no deliberate concealment or attempt to hide facts.

When Applicant completed his e-QIP, a prior child support arrearage had been dismissed by the state. In September 2013, four months before Applicant completed his e-QIP, the state Attorney General agreed to dismiss Applicant's child support arrearages. By this action, Applicant assumed that even though arrearage charges had once been assessed the state determined the arrearage was not a valid obligation. Applicant believed he never owed the arrearage. Considering the state Attorney General's action in dismissing the arrearage, Applicant's response to the question was reasonable.

Having observed Applicant's demeanor and listened to his testimony, I find his answers were not deliberate omissions, concealments, or falsifications. I find for him as to personal conduct.

### **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(a):

- (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. When Applicant completed his e-QIP he said he had obtained a degree and had not been delinquent on his child support obligations. When Applicant failed to appear at his uncontested divorce proceeding, the court ordered an inappropriate amount for child support. Action by the state Attorney General dismissed any arrearage, and the correct amount of child support was established. He is current on his child support payments.

Applicant completed all required university course work and obtained his master's degree, but not his diploma due to payment dispute about class he retook. His answers were not falsifications. His child support is current and the seven other delinquent SOR obligations have either been paid or are being paid after a repayment agreements were reached with the creditors.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial consideration and personal conduct 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a—1.h: For Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraphs 2.a and 2.b: For Applicant

### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge