



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 15-01057  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

03/15/2016

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by personal conduct allegations, but he did not mitigate concerns raised by his financial issues. He accumulated a significant amount of delinquent debt after receiving a Chapter 7 bankruptcy discharge over 10 years ago. He has not responsibly addressed his past-due debts, nor taken control of his financial situation. Applicant’s financial issues continue to raise a security concern. Clearance is denied.

**Statement of the Case**

On May 16, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his purported conduct and circumstances raised security concerns under the financial considerations and personal conduct guidelines.<sup>1</sup>

<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 June 10, 2015, Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer). Department Counsel was ready to proceed on October 16, 2015 and, after coordinating with the parties, I scheduled the hearing for December 10, 2015.<sup>2</sup>

At hearing, Department Counsel offered exhibits (Ex.) 1 – 6. Applicant testified, and offered Ex. A – C.<sup>3</sup> I granted his request to keep the record open for the submission of additional evidence. He timely submitted Ex. D. All exhibits were admitted into the record.<sup>4</sup> The hearing transcript (Tr.) was received on December 18, 2015, and the record closed on January 7, 2016.

### **Findings of Fact**

Applicant, who is in his late forties and a college graduate, has been employed as a federal contractor for over a decade. He has been with his current employer since 2008. He holds a public trust position to handle sensitive, unclassified U.S. Government information related to his current work as a federal contractor.

This is Applicant's first application for a security clearance. When approached about applying for a security clearance, Applicant told his employer "no, thank you. . . . I've got financial issues that I know I have to deal with and it's hard for me to deal with it because of my, my spouse support, child support situations." (Tr. at 25)

Notwithstanding Applicant's initial hesitation, he submitted a security clearance application in February 2013. He answered questions about his financial record, disclosing a number of past-due debts. He noted his financial issues were related to a 2002 divorce and the high cost of court-ordered child and spousal support. He also stated that he was receiving credit counseling. (Ex. 1)

In 2005, or three years after the divorce, Applicant discharged his debts through a Chapter 7 bankruptcy. After the bankruptcy, Applicant was unable to pay his debts because of the financial strain from the court-imposed support obligations. The SOR lists 24 debts for judgments and delinquent accounts placed for collection or charged off by the creditor for nonpayment. These 24 debts are established by Applicant's admissions and the credit reports, Ex. 2 – 5, admitted into the record.<sup>5</sup>

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<sup>2</sup> See Hearing Exhibit (Hx.) I (scheduling correspondence and case management order); Hx. II (hearing notice).

<sup>3</sup> Department Counsel and Applicant's exhibit lists were marked Hx. III and IV, respectively.

<sup>4</sup> Applicant did not object to the offered exhibits, except Ex. 6, which he objected to on grounds of authenticity, reliability, and relevancy. Applicant's objection was overruled and Ex. 6 was admitted as a DOD CAF business record, reflecting an interrogatory was sent and a response was purportedly not received. The interrogatory itself, to include the summary of background interview, was not considered.

<sup>5</sup> Applicant admits the debts listed at 1.a, 1.b, 1.d, 1.f, 1.i – 1.l, and 1.s. These nine SOR debts total over \$10,000 and remain unresolved. SOR 1.n, which was also admitted, has now been satisfied

In October 2015, Applicant satisfied one of the SOR debts, a 2010 judgment for the nonpayment of legal fees related to his divorce. (Ex. 5; Ex. A) He submitted no documentation reflecting any efforts on his part to reach out to his other overdue creditors to settle and pay his longstanding debts. Instead, with the assistance of a debt validation firm, he recently filed form letters disputing each of the SOR debts, including those debts he admits in his Answer. (Ex. D) As of the close of the record, the debt validation process had yet to run its course and the remaining 23 SOR debts, totaling over \$25,000, remain unresolved.

Applicant has received financial counseling, but testified that “going forward” he was unsure of the best way to address his past-due debts. (Tr. at 41-42) His future plans depend in large measure upon the outcome of a family court hearing to modify his support obligation. The family court hearing was scheduled to take place shortly after his security clearance hearing, but before the record closed. If Applicant was successful in the family court matter, he anticipated having an additional \$800 - \$1,200, which he would use to resolve his delinquent debts. He did not submit any matters post-hearing indicating that his attempt to modify the court-mandated support obligation was successful or of having resolved any additional SOR debts.

Applicant has taken some steps to reduce his recurring monthly expenses, such as by moving to less expensive housing. Notwithstanding these efforts to cut back on expenses, Applicant testified that he was currently “living paycheck to paycheck, without really being able to save much money.” (Tr. at 25)

Applicant received an interrogatory from the DOD CAF, seeking further information to process his case. Applicant received the interrogatory in September 2014. He sent in a response, but the DOD CAF never received it. Subsequently, the DOD CAF issued the SOR alleging, *inter alia*, that Applicant refused to cooperate with the processing of his security clearance application. No evidence was submitted that any efforts were taken before the issuance of the SOR to check with Applicant’s facility security manager (FSO) to see if an interrogatory response was submitted and, if not, to provide Applicant a last chance opportunity to respond.

### **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 difficulty at times in making suitability determinations and the paramount importance of protecting national security, 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.

The security concern under Guideline F goes beyond whether an individual might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an individual’s financial circumstances cast

doubt upon their judgment, self-control, and other qualities essential to protecting classified information. ADP Case No. 14-01479 at 3 (App. Bd. Mar. 4, 2016).

The record evidence raises the financial considerations security concern. Applicant has a long history of not paying his financial obligations, as evidenced by the accumulation of a significant amount of past-due debt after receiving a Chapter 7 bankruptcy discharge over a decade ago. As of the close of the record, Applicant's delinquent debts total over \$25,000. This evidence also establishes the following disqualifying conditions:

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

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

The financial considerations guideline lists conditions that can mitigate the security concern. I have considered all the mitigating conditions in assessing Applicant's case, including the following:

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;

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 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.

Applicant receives partial credit under AG ¶¶ 20(c) and 20(d) for receiving financial counseling and satisfying the debt referenced in SOR 1.n. However, the extent of mitigation arising from this favorable evidence is heavily undercut by Applicant's own testimony and current circumstances, which reflect that his receipt of financial counseling has had limited positive effect. He has yet to come up with a viable plan to address the multitude of past-due debts he has incurred since receiving a bankruptcy discharge. Furthermore, Applicant's resolution of the debt referenced in SOR 1.n

occurred only after his overdue creditor secured a judgment against him. Satisfaction of a debt only after a creditor is forced to take legal action to require payment does not rise to the level of good-faith compliance with an individual's financial obligations contemplated by AG ¶ 20(d). Nor is it consistent with the good judgment, reliability, and other pertinent character traits expected of clearance holders.<sup>6</sup>

Applicant's past-due debts are numerous, substantial, and ongoing. Under the circumstances, his recent action to dispute the SOR debts by filing form letters with the creditors requesting that they validate the debts is insufficient to call into question the validity of the debts. Even if Applicant's disputes are ultimately validated or some of the SOR debts are found unenforceable, he has yet to reach out to the creditors for those debts he acknowledges. None of the other mitigating conditions apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.<sup>7</sup> Applicant failed to meet his burden.

### **Guideline E, Personal Conduct**

The personal conduct security concern is explained at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Individuals applying for a security clearance are required to cooperate with the processing of their application, to include responding to official requests from the DOD CAF for further information. Failure to cooperate with the security clearance process "will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility." AG ¶ 15(a).

Here, the Government failed to establish a *prima facie* case for disqualification under Guideline E. Although Applicant was initially hesitant to apply for a security clearance, he complied with his employer's request and submitted an application. He was honest about his financial problems from the start of the security clearance process

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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 *a/so*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

<sup>7</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

and cooperative during the ensuing background investigation. (Tr. at 16, 42) Furthermore, contrary to the negative implications raised by the allegation, in all of Applicant's interactions with the Defense Office of Hearings and Appeals he has been cooperative and responsive. Accordingly, I find that Applicant submitted an interrogatory response, but it was not received by the DOD CAF or otherwise misfiled or lost.<sup>8</sup>

### **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). I hereby incorporate my comments under both guidelines at issue, and highlight some additional whole-person factors.

I gave due consideration to Applicant's work as a federal contractor and that he holds a public trust position. I also took into account the financial constraints imposed on him by his circumstances. However, the circumstances that he labors under have existed since at least 2002, when he divorced and court orders for spousal and child support were put in place. He was subsequently granted a bankruptcy discharge and failed to take advantage of the financial reprieve to put his financial house in order. Instead, he started to accrue delinquent debts, which currently stand at over \$25,000.

Applicant has yet to find a way to manage his finances in a manner that will allow him to meet his court-mandated obligations and pay his other debts. It appears that he has finally started to take some financially prudent steps. For instance, he recently satisfied a large judgment and filed disputes to verify his debts. However, it has been over three years since he submitted a security clearance application – an application he knew would be called into question due to his finances – and still his financial situation is far from under control. Notwithstanding Applicant's recent efforts and other favorable record evidence, his finances continue to raise a security concern. Overall, the record evidence leaves me with doubts about his present 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:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.y:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

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<sup>8</sup> It is beyond the scope of this decision whether this issue could have been resolved during the adjudication phase.

## **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 access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge