



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-02393
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

02/16/2016

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by his past-due debt. He repeatedly claimed that he either paid or was in the process of paying the debt. Despite being provided multiple opportunities to provide documentation to support his claims, he failed to do so. Accordingly, security concerns raised by his past-due debt remain. Clearance is denied.

**History of the Case**

On June 12, 2015, 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 July 17, 2015, Applicant answered the SOR (Answer). He initially elected to have his case decided on the written record.

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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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

On January 11, 2016, Applicant requested a hearing to establish his eligibility for classified information. Without objection, I granted his belated request and scheduled his hearing for February 2, 2016.<sup>2</sup>

At hearing, Department Counsel offered Exhibits 1 – 5. Applicant testified and offered Exhibits A – C. I granted his request for additional time post-hearing to submit documentation. He timely submitted Exhibit (Ex.) D, an e-mail dated February 8, 2016. All exhibits were admitted into the record without objection.<sup>3</sup> The transcript (Tr.) was received and the record closed on February 8, 2016.

### **Findings of Fact**

Applicant is a high school graduate with two years of college. He started working for his employer over 20 years ago as a security guard. He worked his way up to his present position as president of the company. He is highly regarded by his employer who supports his request for a security clearance. (Ex. A) His current “annual compensation is in excess of \$200,000 per year.” (Answer) Although Applicant previously received unescorted access to secure facilities, this is his first application for a security clearance. He submitted a security clearance application (SCA or application) in May 2014.

Applicant is married, but has been legally separated from his wife since 2001 or 2002. (Tr. at 24, 35)<sup>4</sup> In June 2014, Applicant was interviewed as part of his security clearance background investigation. He told the background investigator that many people are unaware he is married. He also told the investigator that he has a girlfriend. His wife is unaware of his girlfriend, but his co-workers have all met her. (Ex. 3 at 3) He travels frequently for his job and “maintains residences in other cities to accommodate his work and travel schedule.” (Ex. 3 at 1-2)

Applicant listed only one delinquent debt on his SCA. A delinquent \$4,000 credit card that he paid after the debt was turned over to a collection agency in 2010. Applicant stated on his application that the debt was caused by “financial difficulties with spouse.” (Ex. 2 at 35) He explained during his background interview that his wife did not pay the account, let bills “stack up”, and he was unaware of the debt until it went to collection. He told the background investigator that he paid the debt after he received notice of the delinquent debt from the collection company. (Ex. 3 at 5)

After discussing the above debt with the investigator, Applicant was asked about two delinquent credit card accounts reflected on his 2014 credit report, Ex. 5. The two debts are owed to the same creditor and total approximately \$10,000. They are the

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<sup>2</sup> See Hearing Exhibits I – IV (correspondence and administrative documents).

<sup>3</sup> Additionally, the file of relevant material (FORM) that Department Counsel prepared and sent to Applicant on September 18, 2015, was marked Hx. V and made a part of the record.

<sup>4</sup> *But see*, SCA, Ex. 2 at 17 (does not disclose separation).

debts listed on the SOR. Applicant told the background investigator he was unaware of the debts, but would look into them and resolve them. (Ex. 3 at 5)

Over a year after the background interview, Applicant admitted both SOR debts in his Answer. Applicant signed the Answer after swearing to its contents truth “before a person authorized by law to administer oaths.” In his Answer, Applicant states:

- (1) A “known family member” incurred the two credit card debts without his permission.
- (2) The creditor for the \$8,500 past-due credit card debt referenced in SOR 1.a secured a judgment against him in June 2015.
- (3) He entered into a payment plan with the judgment creditor and would fully pay the debt “on or before September 1, 2015 in accordance with the court decision.” (Answer)

Applicant submitted no documentation with his Answer or in response to the File of Relevant Material that was sent to him in September 2015, to corroborate his claims of having resolved the judgment.

At hearing, Applicant testified that his wife had fraudulently reactivated one of his credit cards and created the debt that eventually resulted in the judgment. He also testified that he has taken action to sever financial ties with his wife in order to prevent this situation from reoccurring. He now disputes the debt referenced in SOR 1.b. He submitted no documentation to substantiate the basis of his dispute, but notes the debt is no longer listed on his 2015 credit report, Ex. 4.

Applicant testified that he has repeatedly demanded from the creditor a list of the charges for the past-due credit card debt listed in SOR 1.a, but has never received it. He admits he did not pay the judgment as promised in his Answer. He claims that his attorney had an agreement with the creditor to pay the judgment after receiving a list of the charges. He provided no documentation to corroborate his claim of such an agreement (or, the legal basis upon which he could continue to refuse to pay a final judgment). When he did not receive the “backup documentation” from the creditor, he did not pay the judgment. (Tr. at 30)

On January 27, 2016, Applicant received a settlement offer from the judgment creditor. The creditor agreed to settle the \$8,700 judgment for \$5,000. Applicant testified that, as of the hearing, he had nearly \$50,000 in his banking account. He promised to pay the debt per the terms of the settlement offer by the close of the record. He submitted an e-mail claiming that he paid the debt via a \$5,000 cashier’s check that was sent to the creditor by overnight mail. He did not provide a copy of the check, nor any other documentation to corroborate his current claim of having resolved the debt. (Tr. at 27-36; Ex. C – D) He was repeatedly advised over the course of the security clearance

process of the need to provide supporting documentation, including documentation to corroborate his claims of debt resolution.<sup>5</sup>

Applicant's efforts in resolving the judgment debt was summarized in the following exchange with Department Counsel at hearing:

Department Counsel: Okay. And to date, have you made any payment towards that settlement offer?

Applicant: No.

Department Counsel: So just --

Applicant: No.

Department Counsel: -- so we're clear: You're confronted about this specific account in June of 2014 during your investigation. A year later, you have a judgment entered against you in court, after losing the case where you were disputing that account with [the creditor], and now some seven, almost eight months later, there's still no payment that's been made on that account. Is that correct?

Applicant: That is correct.

(Tr. at 29-30)

## 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 for a security clearance, 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

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<sup>5</sup> See, e.g., Hx. II (Applicant was informed that he could submit "Documentation to support your claim as to each debt alleged in the SOR (e.g., that you have paid, are paying down, settled, or have a good-faith basis to dispute the alleged debt(s), unusual circumstances causing debt or hindering your ability to repay the debt, etc.). **As you bear the burden of establishing your eligibility for access to classified information, you are expected to submit documentation to substantiate any claim of debt resolution, reasonable basis to dispute an alleged debt, and any other claim of mitigation or refuting the alleged debt(s).**") (emphasis in original). See also, Hx. V, FORM at 3 ("Absent compelling documentation that Applicant has made financial arrangements and carried them out to meet his past due financial obligations," he has failed to meet his burden.).

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. . . .

The financial considerations security concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money

to satisfy his or her debts. The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.<sup>6</sup>

The record evidence, which includes Applicant's admissions in his Answer and the credit reports (Ex. 4 and 5), establish by substantial evidence that he incurred approximately \$10,000 in debt that has been past due for some time.<sup>7</sup> This record evidence is sufficient to raise the financial considerations security concern. It also establishes the disqualifying conditions listed at AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

The financial considerations guideline also lists a number of mitigating conditions. I have considered all the mitigating conditions and the following warrant additional discussion:

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 and provides documented proof to substantiate the basis of the dispute.

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<sup>6</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See also ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

<sup>7</sup> ISCR Case No. 14-03910 at 3 (App. Bd. Jan. 7, 2015) ("A credit report itself is often sufficient to meet the Government's burden of producing evidence of security concern.") See also, ISCR Case No. 14-03910 at 2 (App. Bd. June 24, 2015) ("it is well settled that adverse information from a credit report" will generally shift the burden to an applicant "to either establish that [they are] not responsible for the debt or that [other] matters in mitigation apply."); ISCR Case No. 05-02422 at 2 (App. Bd. Apr. 9, 2007) (Defining substantial evidence standard as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.").

Assuming *arguendo* that the SOR debts were the result of matters beyond Applicant's control and the debt referenced in SOR 1.b was incorrectly reported on his past credit report, Applicant failed to establish that he has acted responsibly in addressing the past-due debt listed in SOR 1.a.<sup>8</sup> His initial action to determine the accuracy of the debt and whether he was liable for the debt was reasonable. However, after a court found him liable for the debt, Applicant's continued refusal to satisfy the judgment, despite having the apparent means to pay it, raises a serious security concern that he may be unwilling to follow rules and regulations – a pertinent character trait required of those granted access to classified information. ISCR Case No. 13-00311 (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.”)

Additionally, Applicant submitted a sworn statement (i.e., Answer) during the course of the present security clearance process claiming that he had agreed to a payment plan with the creditor to resolve the judgment. Six months after submitting his Answer, Applicant admitted during his hearing testimony that he had still not complied with the court order to satisfy the judgment and made no payments towards the judgment's resolution. His failure to follow through with his promise raises questions about his reliability and trustworthiness – other essential character traits required of clearance holders.

Applicant has been aware of the SOR debts since his 2014 background interview. He repeatedly promised during the security clearance process to resolve his delinquent debt. As already noted, he provided a sworn statement claiming that he had agreed to a payment plan to resolve the judgment as required by court order and promised to have it satisfied by September 2015. He did not satisfy the judgment as promised and, even after being provided additional time post-hearing, failed to provide corroborating documentation of satisfying the judgment. In light of this record, I have afforded Applicant's post-hearing statement that he resolved the judgment little weight. As of the close of the record, Applicant's delinquent debt and the security concerns raised by his past-due debt remain.<sup>9</sup> AG ¶¶ 20(a) – 20(e) do not apply.

### **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

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<sup>8</sup> See, e.g., ISCR Case No. 13-00786 (App. Bd. Mar. 28, 2014) (notwithstanding that past-due debts were the result of wife's fraudulent acts, applicant failed to show responsible action in addressing the debt and mitigating concerns raised by his financial situation).

<sup>9</sup> See, e.g., ISCR Case No. 14-05366 (App. Bd. Feb. 5, 2016) (adverse decision upheld because applicant failed to provide corroborating documentation of his efforts to address the single debt alleged in the SOR, a debt with a past-due balance of a little over \$10,000).

nine factors listed at AG ¶ 2(a).<sup>10</sup> I hereby incorporate my comments under Guideline F. I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's work history and strong character reference. Applicant's life story of working his way up from a security guard to president of his company is compelling and would seem to indicate that he holds the pertinent qualities sought in those granted access to this nation's secrets. He also made a favorable impression at hearing and, by all accounts, appeared to understand the security concerns at issue. He again promised to present documentation to corroborate his testimony and would (belatedly) address the past-due debt at issue. Yet, once again, he failed to do so. After weighing all the evidence, both favorable and unfavorable, I find that Applicant failed to mitigate the security concerns raised by his financial situation. Overall, the record evidence leaves me with doubts about his 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 and 1.b:	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 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 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.