



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03369
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

09/30/2015

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted insufficient documentary evidence to mitigate Guideline F security concerns. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On August 27, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 (AG) effective within the DOD on September 1, 2006. Applicant received the SOR on September 8, 2014.

In a response to the SOR, dated September 22, 2014, Applicant admitted 34 of 35 of the allegations raised. He also requested a determination based on the written record in lieu of a hearing. On April 6, 2015, the Government issued a File of Relevant Material (FORM) that contained eight attachments (“Items”). Applicant did not respond to the FORM within the 30 days provided. The case was assigned to me on September 17, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

## **Findings of Fact**

Applicant is a 46-year-old defense contractor who has worked for the same employer since 2013. He came to his present position after a period of unemployment lasting from late 2011 until early 2013. He earned a high school diploma and attended some college. He divorced in 2000. His two children reside with his ex-wife.

At issue are 35 delinquent accounts amounting to approximately \$39,593 in delinquent debt. Applicant admits all the debts except for one, at SOR allegation 1.g for \$1,123. He wrote that he denies this entry because he opened the telecommunication account for his nephew, who irresponsibly did not pay its bills when due. Applicant did not comment on the other enumerated accounts. Rather, he submitted a brief letter explaining his situation.

In his September 2014 letter, Applicant attributed his financial distress to not having “had a consistent work ethic, work has become hard to find and has caused [him] a great deal of [e]xpenses” that he has not paid. (FORM, Item 3, Response to the SOR, Letter of Sep. 22, 2014). Despite a desire to meet his obligations, he is unable to do so. He knows he can be a responsible citizen and, with sufficient income, be able to honor his debts. He plans on entering into a program to help him address his delinquent debts. He referenced this same program as being something he hoped to utilize when he was interviewed by investigators in April 2013. (FORM, Item 6 at 3) He provided no documentary evidence indicating any attempt to work with the cited program.

## **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 are used 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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 as to 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**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant incurred close to \$40,000 in delinquent debts. This is sufficient to invoke two financial considerations disqualifying conditions:

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

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

Five conditions could mitigate these finance-related security concerns:

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.

There is no evidence of any progress on the numerous debts at issue, nor is there evidence Applicant has received financial counseling. There is insufficient evidence to conclude that any of the debts are the result of unforeseeable circumstances or emergencies, or that Applicant acted reasonably in the face of such circumstances. At best, it may be argued that his ability to address some or all of his delinquent debts was attributable to his period of unemployment from late 2011 until early 2013. There is, however, no evidence Applicant acted reasonably at the time in terms of his situation and his debt. At most, AG ¶ 20(b) applies in part. However, with no realistic strategy for addressing these debts in place, and no indication of progress on the debts, none of the available financial considerations mitigating conditions apply.

### **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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 46-year-old defense contractor who has worked for the same employer since 2013. He experienced a period of unemployment lasting from late 2011 until early 2013. He has attended some college. Divorced, Applicant is the father of two children.

