



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



In the matter of: )  
)  
) ISCR Case No. 14-06095  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

02/19/2016

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On April 23, 2015, the Department of Defense (DOD) issued to 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 19, 2015, and elected to have his case decided on the written record. On August 10, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on August 27, 2015, and it was received on September 15, 2015. Applicant was afforded

an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and did not offer any additional information. The Government's documents identified as Items 2 through 8 are admitted into evidence. The case was assigned to me on January 19, 2016.

### **Findings of Fact**

Applicant admitted the allegations in SOR with explanations, except ¶ 1.j. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He is a high school graduate. He married in 2002 and has a seven-year-old daughter. He enlisted in the military in 2002 and was honorably discharged in April 2014. Applicant was deployed on numerous overseas combat missions. He has worked for his current employer, a federal contractor, since 2014.

Applicant has numerous delinquent debts. He attributed his financial difficulties to the birth of his daughter, multiple deployments, and military moves overseas. He indicated that while he was stationed overseas, he was overwhelmed with debt and did not have the income to keep up with it. When he was transferred overseas he could not sell his house, so he was required to pay for two households. When he was discharged from the military he had a period of unemployment. He indicated in his answer to the SOR that now he is employed and able to pay his bills and live within his means. His wife has a part-time job and is actively seeking full-time employment, and they are dedicated to resolving their delinquent debts. He indicated he had consulted a financial counselor who helped them put together a realistic budget and assist them in managing their money. The debts alleged are supported by credit bureau reports from March 2014 and August 2014.<sup>1</sup>

Applicant provided documentation to show the mortgage loan in SOR ¶ 1.b (total balance \$124,989, past-due amount \$48,540) was satisfied by a short sale of the home and the subsequent deficiency balance was written off by the creditor.<sup>2</sup>

Applicant acknowledged the delinquent student loans in SOR ¶¶ 1.k (\$3,330) and 1.l (\$5,576). He indicated in his answer to the SOR that he was told by his recruiter that upon 10 years of successful service or three enlistments that the military would pay off his student loans. When he reached the ten-year mark and requested the loans be paid, he was told by his commander that the program was no longer available, and he was responsible for satisfying his student loan obligation. In his answer, he stated he arranged to pay \$100 a month on the aggregate amount owed. When he became

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<sup>1</sup> Items 6, 7, and 8; Answer to SOR with attachments.

<sup>2</sup> Answer to SOR with attachments.

unemployed, he received a deferment until July 2015. He did not provide documentary proof that he resumed payments in July 2015.<sup>3</sup>

In his answer to the SOR, Applicant indicated that he had two car loans (SOR ¶¶ 1.a - \$6,286 and 1.g - \$5,796) and the cars were voluntarily repossessed. He indicated he had settlement agreements with both creditors. For the debt in SOR ¶ 1.a, he agreed to make payments of \$250 on June 1, 2015; \$250 on July 1, 2015; \$3,000 on July 25, 2015; \$500 on September 15, 2015; \$500 on October 15, 2015; and \$500 on November 15, 2015. Applicant did not provide proof that he made any of those payments. Regarding the debt in SOR ¶ 1.g, he indicated the creditor agreed to accept \$2,632 as a settlement payment, to be paid with monthly payments of \$263 beginning in July 2015. Applicant did not provide evidence to verify the terms of the settlements or proof of any payments.

Applicant indicated in his answer to the SOR that the debt in ¶ 1.f (\$4,456) was the loan for a car that was in an accident. Applicant provided documents to show his insurance company settled a claim on his behalf. The documents do not reflect the amount alleged in the SOR nor can it be verified that it is the same debt as alleged. Applicant indicated the creditor was notifying the credit bureau that the debt was resolved. Applicant did not provide additional documents to substantiate the debt is no longer delinquent or on his credit report.<sup>4</sup>

Applicant indicated he had a settlement agreement to resolve the debt in SOR ¶ 1.c (\$432). He was to pay \$289 to settle the debt. He indicated he was waiting for the creditor to acknowledge he paid the settlement. Applicant failed to provide documentary evidence that he paid the settlement.

Applicant indicated he settled the debt for a delinquent utility account alleged in SOR ¶ 1.d (\$388). He provided a document showing he had a payment plan to pay \$100 a month until the debt was satisfied. Applicant did not provide proof he made any payments.

Applicant indicated he had a payment plan to resolve the debt in SOR ¶ 1.e (\$1,122). He stated the creditor would accept monthly payments of \$93 for 12 months to pay the balance in full. Applicant failed to provide documentary proof that he made any payments.

Applicant indicated he settled the debt in SOR ¶ 1.h (\$329) for \$300. At the time of his answer, he was waiting to receive a receipt to show the account was settled. He failed to provide documentary evidence of his payment or that the account is settled.

Applicant indicated the creditor for the debt in SOR ¶ 1.i (\$435) agreed to settle the account for the amount owed with a payment on July 1, 2015. Applicant provided a

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<sup>3</sup> Answer to SOR with attachments.

<sup>4</sup> Answer to SOR with attachments.

document from the creditor dated May 18, 2015. It verified that Applicant had contacted the creditor to settle the debt that had been charged off in November 2011. The creditor advised Applicant it does not accept settlement agreements. No other information was provided regarding Applicant's actions to pay the debt.<sup>5</sup>

Applicant indicated that the debt in SOR ¶ 1.j (\$118) was fraudulently placed in his name without his knowledge. He indicated the creditor was conducting an investigation. He did not provide any documentary evidence of his actions to dispute the debt.

Applicant indicated the creditor for the debt in SOR ¶ 1.m (\$421) has agreed to accept two payments of \$210 that were to be paid on June 1, 2015, and July 1, 2015, to resolve the debt. Applicant did not provide proof he made the payments.

Applicant indicated that the creditor for the debt in SOR ¶ 1.n (\$6,286) agreed to accept a payment plan for which he would make monthly payments of \$102 for 34 months and accept the total amount of \$3,468 to resolve the debt. Applicant did not provide documentary proof of the terms of the agreement or proof of any payments he has made.

Applicant provided a document of a civil action against him whereby he participated in a consent judgment with a creditor to pay \$100 a month on a \$4,207 judgment beginning in July 2015. Unfortunately, he failed to explain or detail which debt on the SOR this pertains to as the amount does not match any of the alleged SOR debts. If it does pertain to any of the SOR debts, he failed to provide proof he made any payments in accordance with the order.<sup>6</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

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<sup>5</sup> Answer to SOR with attachments.

<sup>6</sup> Answer to SOR with attachments.

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 avoided drawing 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 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**

The security concern relating to the guideline for financial considerations is set out in 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>7</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred approximately \$34,948 in delinquent debt since 2008. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

Applicant resolved his delinquent mortgage loan through a short sale, and the deficiency was written off by the mortgage lender. The remaining debts alleged in the SOR have not been paid or resolved. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address delinquent debts

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<sup>7</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant indicated his financial problems are attributed to the birth of his daughter, deployments, moving overseas subject to military orders, his inability to sell his house at that time, and unemployment. These problems began occurring in 2008 and were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant stated in his answer to the SOR that he had payment plans, settlement agreements, and he had resolved certain debts, but he failed to submit proof of any of the payments. Except for the documents that pertain to his mortgage loan, none of the other documents provided verify that he has made payments toward resolving his delinquent debts. He received the FORM on September 15, 2015, which stated the “record was devoid of sufficient documentary proof of payments on Applicant’s delinquent accounts detailed in the SOR, nor documentary proof that Applicant is not responsible for the delinquent account he disputes.” He was given 30 days to respond to the FORM. He did not submit additional information. There is insufficient evidence to conclude he acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant stated in his answer to the SOR that he received financial counseling, has a budget, and is learning to manage his money. There is insufficient evidence to conclude he made good-faith payments to creditors or otherwise resolved his delinquent debts. There are not clear indications that Applicant’s financial problems are being resolved or under control. AG ¶¶ 20(c) partially applies, and 20(d) does not apply.

Applicant disputed the debt in SOR ¶ 1.j indicating he did not have any knowledge about the account and it was being investigated by the creditor. He did not provide documentary evidence of the results of the investigation or actions he has taken to resolve the issue. AG ¶ 20(e) does not 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 the 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. I have incorporated my comments under Guideline F 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 32 years old. He served in the military and deployed on numerous combat missions. He received an honorable discharge. He has had financial difficulties since 2008 that are attributed to the birth of his daughter, deployment, overseas assignments, and unemployment. Applicant had an opportunity to provide substantiating documentation of actions to resolve his delinquent debts, but did not provide it. He failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.n:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge