



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-00209
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

03/04/2016

**Decision**

WHITE, David M., Administrative Judge:

Applicant’s creditors charged off two credit card debts and a home equity loan, totaling more than \$59,000. He demonstrated neither sufficient explanation for their origin, nor changes to avoid recurring financial problems. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on December 10, 2012.<sup>1</sup> On August 19, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*

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<sup>1</sup>Item 3.

<sup>2</sup>Item 1.

(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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on September 14, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on October 16, 2015. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was received by Applicant on November 2, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no additional material in response to the FORM. I received the case assignment on February 4, 2016.

### **Findings of Fact**

Applicant is 37 years old. He started work as a software engineer for a defense contractor in 2000, shortly after earning his bachelor's degree. He has held a security clearance in connection with that employment since 2004. He has no military service. He is married, with a ten-year-old daughter and seven-year-old twins.<sup>5</sup>

In his response to the SOR, Applicant formally denied each allegation, explaining that each debt had been charged off as alleged but had been forgiven.<sup>6</sup> The allegations concern two credit card accounts and one home equity line of credit. Their delinquency and subsequent charged-off status are confirmed in the record credit reports dated December 13, 2012, and December 8, 2014.<sup>7</sup>

SOR ¶ 1.a concerns a credit card account with a major bank that Applicant opened in February 2001. The reported date of last activity on the account was August 2010, and it was charged off with balance due of \$26,383. Applicant received a letter from the creditor, dated January 17, 2014, stating that they were no longer attempting to collect the debt and would issue an IRS Form 1099-C reporting the cancelled principal balance (excluding interest and fees) of \$23,590 to the IRS as income for tax year 2013. Applicant provided no further information concerning the status of this account, or whether he paid the Federal income taxes due on this sum.<sup>8</sup>

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<sup>3</sup>Item 2.

<sup>4</sup>Department Counsel submitted five Items in support of the SOR allegations.

<sup>5</sup>Item 3.

<sup>6</sup>Item 2.

<sup>7</sup>Items 4 and 5. The amounts due were not alleged in the SOR, but are taken from Items 2 and 5.

<sup>8</sup>Items 2 and 5.

SOR ¶ 1.b concerns an account with a different major credit card company that Applicant opened in October 2000. The reported date of last activity on the account was March 2013, and it was charged off with a balance due of \$6,819. Applicant received a letter from a law firm with whom the debt had been placed for collection, dated April 29, 2015, stating that this account had been “settled in full.” However, Applicant neither claimed to have paid this debt nor offered any documentation of the terms of this settlement.<sup>9</sup>

SOR ¶ 1.c concerns a home equity line of credit that Applicant opened in August 2006 with the lender holding the first mortgage on his home. He had brought his payments current on this loan by November 2012, after it had been more than 120 days delinquent as recently as September 2012. The reported date of last activity on this account was March 2013, and it was charged off with a balance due of \$25,857. Applicant received a letter from the lender, dated June 2, 2014, stating that he had been approved for full loan forgiveness of the charged-off amount and that he would be issued an IRS Form 1099-C reporting that sum to the IRS as income for tax year 2014. Applicant provided no further information concerning the status of this account, why he failed to pay it as agreed, or whether he paid the Federal income taxes due on this income.<sup>10</sup>

On his December 2012 SF-86, Applicant disclosed the two delinquent credit card accounts alleged in SOR ¶¶ 1.a and 1.b. He said that the reason(s) for, current status of, and actions taken to resolve his financial issues were:

Wife and Children unexpected medical issues. Medical issues of wife cause her to go on medical leave and bring in no income while still having to provide daycare for children. [Concerning ¶ 1.a:] Still being worked to be paid off. Getting financial obligations together to start making payments to resolve debt after new year. . . . Getting a budget worked out to start making payments as wife medical issues are beginning to be resolved and resuming work. [Concerning ¶ 1.b:] In agreement with [creditor] to payoff with payments every month. Monthly payments are being made to [creditor] to payoff.<sup>11</sup>

Applicant provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling, savings or retirement investments, or other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant’s professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his

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<sup>9</sup>Items 2 and 5.

<sup>10</sup>Items 2, 4, and 5.

<sup>11</sup>Item 3 at 26-28.

credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or 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.

## Analysis

### Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant admittedly failed to repay two credit card accounts and a home equity line of credit, between 2010 and 2013. These debts totaled more than \$59,000 and were charged off by the creditors. They arose despite his continuous employment in his current position throughout the period involved. His pattern and history of inability or unwillingness to pay these substantial lawful debts raise security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 incurred substantial delinquent debts over the past five years. He did not demonstrate that delinquent indebtedness is unlikely to recur, or that his financial situation is under control. He provided a letter stating that the debt alleged in SOR ¶ 1.b was settled in full, so mitigation under AG ¶ 20(d) was established concerning that debt. However, the creditors who charged off and cancelled the other two debts, totaling more than \$49,000, reported that amount as additional income for him in 2013 and 2014. Applicant demonstrated neither the ability, nor any effort, to pay the resulting Federal tax obligations. He failed to demonstrate how his wife's and children's medical conditions contributed to his financial problems, or that he acted responsibly under such circumstances. Applicant admitted incurring and formerly owing the debts alleged in the SOR. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions. Department Counsel pointed out the absence of such updated information in the FORM. Although Applicant was afforded the opportunity to address those concerns by filing additional information, he chose not to do so.

### **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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and conduct that

caused the financial problems underlying the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past decade, and were voluntarily incurred. He enjoyed continuous employment throughout that period. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge