



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



In the matter of: )  
)  
) ISCR Case No. 15-00626  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Strzelczyk, Esq., Department Counsel  
For Applicant: *Pro se*

06/06/2016

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**Decision**

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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 August 20, 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 September 18, 2015, and elected to have his case decided on the written record. On November 23, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on December 3, 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 1 through 6 are admitted into evidence. The case was assigned to me on March 31, 2016.

### **Findings of Fact**

Applicant denied all of the allegations in the SOR. 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 has completed some college courses, but has not earned a degree. He served on active duty in the military from 2002 to 2011 when he was honorably discharged in the paygrade E-5. He married in 2003 and divorced in 2008. He has three children, ages 16, 12, and 10. He has worked for his current employer, a federal contractor, since November 2013. Applicant disclosed periods of unemployment from January 2012 to April 2012, October 2012 to November 2012, and August 2013 to November 2013.<sup>1</sup>

The SOR alleged nine delinquent debts totaling approximately \$22,956. Applicant admitted all of the debts in his answer to the SOR, except one that he disputed. In May 2014 Applicant was interviewed as part of a background investigation. Applicant acknowledged that the debts in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, 1.h and 1.i belonged to him. He stated there were no delinquent or past-due balances owed on these debts, and they were all current. He acknowledged the debt in SOR ¶ 1.g (\$4,887), which was a debt for cell phone service that was incurred when he was married to his ex-wife. He intended to begin making \$100 payments toward the debt starting in June 2014.<sup>2</sup>

Applicant attributed his financial difficulties to the death of his aunt in 2009. He was close to her and took out personal loans to help pay for her funeral and burial expenses. He then found it difficult to pay his monthly living expenses and started using credit to meet his financial obligations. He indicated during his background interview that he is now more mature and financially stable.<sup>3</sup>

Applicant indicated in his answer to the SOR that all of the debts in the SOR, except ¶ 1.g, were paid or settled. He indicated that the debt in SOR ¶ 1.g was being investigated. He did not provide any documents to show the debts are paid, resolved, or disputed. All of the debts are documented by credit reports from February 2014,

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<sup>1</sup> Item 2.

<sup>2</sup> Item 3.

<sup>3</sup> Item 3.

December 2014, and July 2015. Applicant's delinquent debts began accruing in at least 2011.<sup>4</sup> No other evidence was provided.

### **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.

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.

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<sup>4</sup> Items 1, 3, 4, 5, 6.

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>5</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 has approximately \$22,956 in delinquent debts that he began accruing in about 2011. 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

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<sup>5</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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 failed to provide any supporting evidence that his delinquent debts are paid, settled, or resolved. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address the delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to the death of his aunt in 2009, after which he took out personal loans to help pay for the funeral expenses. Although he did not state such, I have considered that his periods of unemployment also affected his finances. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant stated during his background interview, and in his answer the SOR, that the debts alleged are paid, settled, or resolved. During his background interview he acknowledged owing the debt in SOR ¶ 1.g, and was going to begin making payments. In his answer to the SOR, he denied this debt and indicated it was being investigated. Applicant failed to provide any supporting evidence that the SOR debts are paid, resolved, or disputed. He has been steadily employed since November 2013. He received the FORM on December 3, 2015, which stated: "Applicant did not, however, provide any evidence to substantiate any of these assertions." There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

There is no evidence Applicant received financial counseling or that his financial problems are being resolved or are under control. There is no evidence that he made good-faith payments to creditors or otherwise resolved his delinquent debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant denied the debt in SOR ¶ 1.g, and indicated that it was being investigated. He did not provide evidence of the results of the investigation or actions he has taken to resolve the debt. 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 received an honorable discharge. He has had financial difficulties since 2011. He has been steadily employed since November 2013. Applicant had an opportunity to provide substantiating documentation of actions he may have taken to resolve his delinquent debts, but did not provide anything. 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
Subparagraphs 1.a-1.i:	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