



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



In the matter of: )  
)  
) ISCR Case No. 14-03508  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

06/29/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On November 25, 2014, the Department of Defense (DOD) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 23, 2014, and elected to have his case decided on the written record. On April 6, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on April 17, 2015, and was received by him on May 10, 2015. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation. There were no objections and all documents were admitted into the record. Applicant submitted additional information. Department Counsel had no objections, and those documents were admitted into the record. The case was assigned to me on June 5, 2015.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He served in the military from 1971 to 1992 when he retired with an honorable discharge. He married in 1972 and divorced in 1989. He remarried the same year. He has four children, ages 39, 37, 23, and 19. He earned a bachelor's degree in 2005 and a master's degree in 2007. He continues to take college courses. He did not disclose any periods of unemployment and has worked for different federal contactors since 2004.<sup>1</sup>

The SOR alleges eight delinquent debts and one judgment totaling approximately \$31,897. Credit Bureau Reports (CBR) dated January 2013; June 2014; and April 2015, support the SOR alleged debts.<sup>2</sup>

Applicant was taking college courses to further his career opportunities. He miscalculated the effect student loan payments would have on his finances when they became due. He was unaware of the defaults on his accounts as they occurred because his wife handled the family finances, and she was reluctant to tell him they were having financial difficulties. When Applicant became aware of the financial problems, he was able to refinance his house, secure a lower monthly payment, use his 2013 tax refund to pay some debts, and obligate the remainder to address other delinquent debts.<sup>3</sup>

Applicant indicated in his answer to the SOR that he paid or settled all of the alleged SOR debts either with a lump sum payment or through monthly installment payments. He made these payments from March 2013 through January 2015. He provided a detailed log showing each alleged SOR debt; the type of debt; the loan or account number; the current status of the debt; when it became delinquent; the year and month it was expected to be resolved; and a description of action he had taken to satisfy the debt, such as withdrawals, and frequency and amount of payments.<sup>4</sup> Applicant also provided a spread sheet showing each monthly payment and the amount

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<sup>1</sup> Item 3.

<sup>2</sup> Items 4, 5, and 6.

<sup>3</sup> Item 2.

<sup>4</sup> Item 2, enclosure 2.

made toward an SOR debt; the amount and date a lump sum payment was made on an SOR debt; and when the final installment payment was made and the debt was satisfied.<sup>5</sup>

Applicant indicated in his answer to the SOR that he paid the full amount owed or completed installment payments on the full amount owed as follows: SOR ¶1.a, paid \$3,622, full amount, March 2013 with 2013 income tax refund; ¶ 1.c, made installment payments from February 2013 until April 2014, paid in full \$3,114; ¶ 1.d, made installment payments from July 2013 to October 2014, paid in full \$4,871; ¶ 1.e, made installment payments from December 2012 to November 2014, paid in full \$10,218; ¶ 1.f, made installment payments from February 2013 to January 2014, paid in full \$1,582; ¶ 1.g, made \$95 installment payments from February 2013 to February 2014, paid in full \$1,142; ¶ 1.h, made installment payments from January 2013 to January 2015, paid in full \$3,945;<sup>6</sup> and ¶ 1.i, made installment payments from February 2013 to December 2014, was to complete final payment in January 2015 and have paid full amount \$5,053.

Applicant indicated in his answer to the SOR that he settled and paid the debt in SOR ¶1.b (\$296 was the amount requested by the creditor and was satisfied in February 2013).<sup>7</sup> This debt remains on his most recent credit report dated May 2015. He disputes the debt because he paid the amount that the creditor agreed to accept to satisfy the debt, but the creditor did not acknowledge his payment and sold the debt to another company. He provided a copy of his February/March 2013 bank statement to show he paid the amount he said was agreed upon.

Applicant's recent credit report shows he does not have any collection accounts on his credit history. He credibly indicated in his response to the SOR that many creditors did not provide written statements of resolutions of the debts. The bank statement he provided verified automatic monthly payments made to some creditors and other lump sum payments to creditors.<sup>8</sup> A further review of Applicant's credit report shows his student loans are being paid timely.

## **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.

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<sup>5</sup> Item 2, enclosure 3.

<sup>6</sup> Item 2, enclosure 4.

<sup>7</sup> Item 2, enclosure 4.

<sup>8</sup> Response to SOR.

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.

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.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant had eight delinquent debts and one judgment totaling approximately \$31,897 that remained unpaid for a period. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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's financial problems arose because he miscalculated the effect repaying student loans would have on his budget, and he was unaware of his financial problems because his wife, who managed the finances, did not tell him. Since learning

of the delinquent debts, Applicant refinanced his home, so as to have more monthly expendable income and used his income tax refund to resolve delinquent debts. He has either made lump sum payments or used installment agreements to satisfy the debts. He provided a detailed log of his actions and a current credit report to document that the debts are no longer included on it. Applicant is current on repaying his student loans. Applicant's financial problems occurred under unique circumstances and are unlikely to recur. He aggressively addressed his debts, and they do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant's miscalculation of the effect repaying his student loans would have on his ability to pay his other expenses was within his control. His wife handled the finances and did not tell him of their financial problems. This was somewhat within his control. For AG ¶ 20(b) to be fully applicable, Applicant must have acted responsibly under the circumstances. Once he learned about the delinquent debts he began to repay and resolve them. AG ¶ 20(b) has some application. Applicant made good-faith lump sum payments or monthly payments to resolve delinquent debts. He has no collection accounts on his most current credit report. There are clear indications that his financial problems are being resolved and under control. AG ¶¶ 20(c) and 20(d) apply.

Applicant disputes one debt, claiming he negotiated a settlement, paid the settlement amount, but then the creditor sold the debt after Applicant completed the payment. He provided proof of the payment and his attempt to resolve the debt. I am satisfied that he acted on the agreement with the creditor and completed the terms. AG ¶ 20(e) applies to this debt, and it is resolved in Applicant's favor.

### **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 53 years old. He retired from the military after 21 years of service. He has worked for federal contractors since 2004. Applicant got behind on paying his bills when he miscalculated his student loan repayment plan. He was unaware his wife was withholding information about the problematic state of their financial affairs. Once he learned it, he took aggressive action and resolved his delinquent debts. He is paying his student loans on time. He provided a stable and consistent track record to show his finances are under control. Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge