



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05578
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

11/24/2015

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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 January 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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.

On February 4, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On August 20, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on September 2, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections or submit additional material. The Government's exhibits (Items 4 through 8) are admitted. The case was assigned to me on November 9, 2015.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He married in 1997, separated from his wife in 2004, and divorced in 2010. He has a 13-year-old child from the marriage. He served on active duty in the military from 1994 to 1999, and in the inactive reserve from 1999 to 2005. He received an honorable discharge. Applicant was unemployed from April to September 2010. He has been employed by various federal contractors throughout his career. He has been employed by his present employer since September 2010.<sup>1</sup>

The SOR alleges 12 delinquent debts totaling approximately \$37,858. The debts are verified and supported by credit reports from June 2014, October 2014, and August 2015.<sup>2</sup> Applicant attributed his financial difficulties and delinquencies to his marital separation in 2004 and subsequent divorce in 2010. He indicated in his answer to the SOR that he was maintaining two separate household when he separated. He did not provide any specifics regarding his expenses and whether he maintained two households for the entire six-year separation.<sup>3</sup>

The debts in SOR ¶¶ 1.b (\$4,942), 1.e (\$11,939), and 1.k (\$4,005) are delinquent student loans. In his answer to the SOR, Applicant indicated that he had consolidated the debts and was currently repaying them. He failed to provide any documentary proof of his actions. During his background investigation, he indicated that he had a deferment on the loans, and he paid the loans for about a year after the deferment expired. He then arranged for reduced payments on two different occasions, but each time he failed to maintain the payments and the loans became delinquent.<sup>4</sup>

The debt in SOR ¶ 1.a (\$9,059) is for a broken lease. Applicant admitted signing the lease and indicated he later transferred the lease to his wife's name, and then his wife broke the lease. He stated that the management company did not have the transfer paperwork and Applicant is liable for the amount owed. Applicant indicated in his

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<sup>1</sup> Item 4.

<sup>2</sup> Items 5, 6 and 7.

<sup>3</sup> Item 2 and 8.

<sup>4</sup> Item 2 and 8.

answer to the SOR that he would begin paying this debt. He failed to provide any supporting documents to show he has made any payment arrangements to satisfy the debt.<sup>5</sup>

Applicant indicated in his answer to the SOR that he was unaware of the debts in SOR ¶¶ 1.c (\$161), 1.d (\$145), and 1.j (\$95), and he would be repaying them in the next month. He did not provide documentary proof of any action to pay or resolve these debts.<sup>6</sup>

The debts in SOR ¶¶ 1.f (\$1,147), 1.g (\$2,464), 1.i (\$508), and 1.l (\$2,223) are credit card debts. Applicant indicated in his answer to the SOR that he has been paying these debts for the past year and a half through a collection agency, and he is actively eliminating the debts. Applicant did not provide proof of payments or supporting documents.<sup>7</sup>

The debt in SOR ¶1.h (\$1,173) is a collection account that Applicant indicated in his answer to the SOR was transferred to him because he co-signed on the credit card while he was married. He indicated he would begin paying this debt, but did not provide any proof of his actions or supporting documents.<sup>8</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.

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

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<sup>5</sup> Items 2, 4, and 8.

<sup>6</sup> Items 2 and 8.

<sup>7</sup> Items 2 and 8.

<sup>8</sup> Item 2.

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 has 12 delinquent debts totaling approximately \$37,858. Some have been delinquent for several years. Applicant was unable or unwilling to satisfy his debts in the past. The above disqualifying conditions have been established.

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 admitted all of the debts alleged in the SOR. None the debts have been paid or resolved. He stated in his answer to the SOR that he had consolidated his student loans and was paying them, and he was making payments to a collection agency on other delinquent debts. He failed to provide any supporting evidence to substantiate his position.

Applicant indicated his financial problems are due to his marital separation in 2004 and subsequent divorce in 2010. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He has been employed with his present employer since September 2010. He experienced six months of unemployment before then, but has been steadily employed otherwise. He did not provide specific information about why he was unable to make some payments to his creditors. Some of Applicant's debts are less than \$200 and remain unpaid. AG ¶ 20(b) partially applies.

AG ¶ 20(a) does not apply because Applicant has numerous delinquent debts that are unresolved, which casts doubt on his current reliability, trustworthiness, and good judgment. There is insufficient evidence to conclude that future financial problems are unlikely to recur. AG ¶ 20(c) does not apply because there is no evidence Applicant has received financial counseling or that his financial problems are under control. There is no evidence he has made a good-faith effort to pay his overdue creditors. AG ¶ 20(d) does not apply. AG ¶ 20(e) was not raised by the evidence and 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 39 years old. He served in the military and was honorably discharged. He has had financial difficulties since he separated from his spouse in 2004 and divorced in 2010. He failed to provide sufficient evidence to show how his finances were impacted and what actions he may have taken to ensure he paid his delinquent debts. Applicant has not provided any documentary evidence to show he is paying his delinquent accounts or taking meaningful action to resolve his debts. He has not provided evidence regarding his current finances. He has not provided information to show a reliable track record of financial stability. His financial problems raise questions about his trustworthiness, reliability, and good judgment. 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.k:                      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