



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06883
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina Marine, 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 April 30, 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 May 27, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On August 26, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on September 1, 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 3 through 6) are admitted. The case was assigned to me on November 9, 2015.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.d, 1.g and 1.h with explanations. He denied the remaining allegations. 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 43 years old. He married in 1982 and divorced in 2009. He has a 17-year-old child from the marriage. He remarried in 2009. He served in the Air Force from 1990 and retired honorably in 2010. Applicant had periods of unemployment from January 2013 to February 2013 and November 2011 to March 2012. He has been employed full-time with his present employer since March 2014 and also has been employed part-time since March 2013.<sup>1</sup>

The SOR alleges eight delinquent debts totaling approximately \$68,963. The debts are verified and supported by credit reports from August 2014 and July 2015.<sup>2</sup> SOR ¶ 1.a (\$11,421) is a judgment issued in September 2013. In September 2014, Applicant indicated during his background interview with a government investigator that he could not recall this debt. He did not provide any information about what actions he has taken to research and resolve this judgment.<sup>3</sup>

Applicant admitted the collection account debts in SOR ¶¶ 1.b (\$10,236) and 1.d. (\$1,099). He did not provide any information about what actions he has taken to resolve them. He admitted the debt in SOR ¶ 1.h (\$12,339) for a repossessed time-share vacation property that he and his ex-wife purchased. During his background interview, he acknowledged defaulting on the loan and believed his ex-wife was responsible for this debt. He did not provide any evidence verifying he is no longer responsible for the debt. Applicant denied the collection account debt in SOR ¶ 1.c (\$915). He did not provide any information regarding what actions he has taken to dispute or resolve the account.

Applicant denied the collection account in SOR ¶ 1.e (\$291) for medical services. He indicated in his answer to the SOR that he contacted his medical insurer and was told it was not covered. He believed this debt should have been included in a hospital bill. He has not provided any documentary information about actions he may have taken

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<sup>1</sup> Item 3.

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

<sup>3</sup> Item 4.

to dispute or resolve this debt. He denies the debt in SOR ¶ 1.f (\$77) indicating during his background interview that he did not recall the account. In his answer to the SOR, he indicated he was not aware of the account. Applicant failed to provide information of what actions he may have taken to dispute, research, or resolve the debt.<sup>4</sup>

The debt in SOR ¶ 1.g (\$32,585) is for child support arrearages. Applicant indicated that when he divorced he was on active duty in the military. He was ordered by a court to pay \$1,100 monthly for child support. When he retired from the military his income was reduced, and he was unable to make the ordered payments. He has attempted to get the order modified and was advised to contact the appropriate agency where the child resides. In July 2014, he contacted an attorney who provided him guidance on how to apply for modification and reduction of child support. During Applicant's background interview in September 2014, he indicated he was completing the paperwork to request a modification and reduction of the child support order. He indicated that his pay from his part-time job was being garnished to pay his child support.<sup>5</sup> In his answer to the SOR, he indicated he was still attempting to get the order modified and payment reduced. He stated that his part-time job wages were still being garnished. He did not provide any supporting documents to show his attempts to have the order modified or proof that he is making payments through garnishment. The debt is not resolved.<sup>6</sup>

Applicant attributes his financial issues to a reduction in income after he retired from the military in 2010. He did not provide any financial information to substantiate his past income, current income, retirement pay, or expenses. He did not provide information about whether his wife contributes to the household expenses. Applicant's credit report reflects he purchased a new vehicle in 2013 for approximately \$24,000. No current financial information was provided.<sup>7</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

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<sup>4</sup> Items 5 and 6. Applicant's credit reports indicate two new accounts from the same creditor in the amounts of \$2,204 and \$1,867 that are charged off. I have not considered these delinquent accounts for disqualifying purposes, but will consider them when analyzing the whole-person.

<sup>5</sup> Item 4.

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

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

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 has eight delinquent debts totaling approximately \$68,963. 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.

None the debts alleged in the SOR have been paid, resolved, researched, or disputed. Applicant admitted the delinquent debts in SOR ¶¶ 1.b, 1.d and 1.h. He did not provide evidence of actions he may have taken with the creditors to arrange payments plans or resolve the debts. He did not provide information as to what action he may have taken to pay the judgment in SOR ¶ 1.a. During his background interview

he was made aware of the debts alleged in the SOR. Some he indicated he could not recall. Others he disputed and was going to research. Applicant did not provide any substantive evidence of his actions or attempts to resolve the delinquent debts. Applicant indicated his financial problems are the result of an income reduction after he retired from the military. This was somewhat beyond his control, but not an unexpected event. He also went through a divorce, which was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He indicated that he is attempting to have his court ordered child support payments modified and reduced, but did not provide any substantive evidence of his actions. He has not provided any information as to what actions he has taken to resolve any of the other delinquent debts. AG ¶ 20(b) partially applies.

AG ¶ 20(a) does not apply because he has numerous delinquent debts that are unresolved, which cast doubt on his current reliability, trustworthiness, and good judgment. There is insufficient evidence 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. His child support payments are being garnished. Applicant disputes certain debts, but failed to provide the basis of his dispute and information about what actions he has taken to research the debt, contact the creditor, or other evidence of actions 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 43 years old. He retired from the military. He has had financial difficulties since his retirement due to a reduction in income. 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.h:	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