



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-07061
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

04/19/2016

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on August 5, 2015, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 31, 2015. The evidence

included in the FORM is identified as Items 2-5 (Item 1 includes pleadings and transmittal information). The FORM was mailed to Applicant, who received it on November 23, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence nor did he object to any of the Government's evidence. Items 2-5 are admitted into evidence. The case was assigned to me on March 29, 2016.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the SOR allegations. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 31 years old. He is divorced and has one minor child for whom he is obligated to pay child support. He has worked for a federal contractor since April 2013. He served approximately 10 years in the Air Force before receiving an honorable discharge in June 2012. He experienced periods of unemployment from March 2013 to April 2013, and from June 2012 to August 2012. He worked in the private sector from August 2012 to March 2013. He is a high school graduate. He held a security clearance while in the Air Force.<sup>1</sup>

The SOR lists eight delinquent debts totaling approximately \$25,679 (SOR debts ¶ 1.f and ¶ 1.h are duplicate debts, even though the amounts are different due to a transposition error, and I find in favor of Applicant on ¶ 1.h). The debts include three collection accounts, two charged-off accounts, one past-due account, and a delinquent child support debt. The debts are supported by credit reports from April 2014 and November 2014, Applicant's statement to a defense investigator in May 2014, and by Applicant's admissions.<sup>2</sup>

Applicant attributes his financial problems to his periods of unemployment of one to two months in 2013 and two to three months in 2012 and his divorce in August 2013.<sup>3</sup>

The status of the debts is as follows:

#### **SOR ¶ 1.a – (charged-off automobile repossession account \$13,780):**

Applicant admitted he owed this charged-off account for a vehicle. His last action on this account was in April 2013. He could not make the payments because he was unemployed in April 2013. The vehicle was sold and Applicant was responsible for the deficiency. He claims he talked to the company about working out a payment plan and

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<sup>1</sup> Item 2.

<sup>2</sup> Items 1, 3-5.

<sup>3</sup> Item 1.

is waiting for an agreed payoff amount. There is no evidence of payment or settlement. This debt is unresolved.<sup>4</sup>

**SOR ¶ 1.d – (delinquent child support debt \$4,861):**

Applicant claims his wages are garnished from his weekly paycheck to pay his child support obligations. Although he provided no documentation to support these assertions, the two credit reports in evidence show that his balance owed decreased from \$6,722 in April 2014 to \$4,894 in October 2014. Both reports indicate that the monthly payment amount is \$565. There is some evidence Applicant is involuntarily resolving this debt.<sup>5</sup>

**SOR ¶¶ 1.c – 1.g (a charged-off account, a past-due account, and three collection accounts \$4,894; \$117; \$585; \$279; \$856):**

Applicant admitted that he owed these debts. He has not paid the debts or set up any payment plans. He claimed that he would make payment arrangements for SOR ¶ 1.c by August 2015, but failed to provide supporting proof. He also committed to paying the remaining debts by September 2015, but failed to present proof of any such action. These debts are unresolved.<sup>6</sup>

**SOR ¶ 1.h – (collection account \$297):**

Duplicate debt with SOR ¶ 1.f. Resolved in favor of Applicant.<sup>7</sup>

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.<sup>8</sup>

**Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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>4</sup> Items 1, 3-5.

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

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

<sup>7</sup> Items 1, 3, 5.

<sup>8</sup> Items 1, 4.

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.

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 to obtain 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 about 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**

AG ¶ 18 expresses the security concern for financial considerations:

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 all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented some evidence that the debts were due to circumstances beyond his control (unemployment for a few months in 2012 and 2013, and experiencing a divorce), but he failed to provide documentation showing that he acted responsibly under the circumstances. I find AG ¶ 20(b) partially applies. He did not

provide documentation showing that the debts had been paid or that he established payment plans. There is no evidence of financial counseling. Although there is some evidence Applicant is paying his child support through an involuntary court-ordered wage garnishment, this does not equate to a good-faith effort to pay. Since Applicant failed to produce evidence of the terms of the garnishment, there is insufficient evidence to determine whether the garnishment will otherwise resolve the debt. AG ¶¶ 20(c) and 20(d) do not apply. He did not produce documentary evidence to support a dispute of any debts. 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 guideline 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 considered his military service, his periods of unemployment, and his divorce. Applicant has not established a track record of financial stability.

Overall, 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.g:	Against Applicant
Subparagraph 1.h:	For 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.

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Robert E. Coacher  
Administrative Judge