



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



In the matter of: )  
)  
) ISCR Case No. 15-02298  
)  
Applicant for Security Clearance )

**Appearances**

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

06/21/2016

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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 October 19, 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 November 4, 2015, and elected to have his case decided on the written record. On December 8, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on December 16, 2015. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government evidence and did not offer any additional information within the time period of 30 days after receipt of a copy of the FORM. The Government's documents identified as Items 1 through 5 are admitted into evidence. The case was assigned to me on May 2, 2016.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.n, 1.o, 1.p, 1.q, and 1.w. He denied the remaining 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 42 years old. He is a high school graduate. He attended a trade school and received a certificate. He served in the Marine Corps Reserve from 1999 to 2007 and was honorably discharged. He was married from 1995 to 2001. He has two children, ages 21 and 17, from this marriage. He was married from 2010 to 2011. He has a 12-year-old child from a former relationship. He has cohabitated with a woman since December 2012.<sup>1</sup>

In 2000 Applicant had approximately \$18,000 of debt discharged in Chapter 7 bankruptcy. The SOR alleges 24 delinquent debts totaling approximately \$40,091. Applicant admitted that he owed the debts in SOR ¶¶ 1.a (\$8,058-repossessed vehicle from 2008), 1.n (\$4,800-student loan), and 1.o (\$3,500-student loan),<sup>2</sup> and 1.w (\$961-medical). He did not provide any information about action he is taking to resolve these debts.<sup>3</sup>

Applicant denied the remaining debts in the SOR. In his answer to the SOR, he stated that all of the accounts alleged, except those he admitted, have been dismissed "due to length of accounts time period" and/or "dropped," and/or "no longer on credit" report. He further stated: "I have not opened any credit or store accounts since 2008, so I have not accrued any positive or negative accounts since. Also since working at [employer], I have not had any debts or monetary issues."<sup>4</sup>

During Applicant's background investigation interview with a government investigator in September 2014, he acknowledged that the debts in SOR ¶¶ 1.e (\$1,187), 1.h (\$844), 1.i (\$1,917), 1.j (\$680), 1.l (\$221) and 1.m (\$903) belonged to him. In his answer to the SOR, he denied these debts and all of the other debts alleged, except as noted above. He also indicated in his answer that he contested the debt in SOR ¶ 1.j because the "job wasn't finished." In his answer, he indicated the debts

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<sup>1</sup> GE 2.

<sup>2</sup> Applicant admitted the debts in SOR ¶¶ 1.n and 1.o, but explained the student loan debts ¶¶ 1.p and 1.q are duplicates. I concur and will only address the two student loan debts alleged in ¶¶ 1.n and 1.o.¶

<sup>3</sup> GE 2.

<sup>4</sup> GE 1.

alleged in SOR ¶¶ 1.l and 1.m did not belong to him, which contradicts the acknowledgement he made to the investigator. Regarding the other debts, he attributed them to identity theft.<sup>5</sup>

Applicant attributed his early financial problems to his first wife's spending habits and their divorce. He attributed his later financial problems to periods of unemployment, low income and difficulty supporting his family, expenses from his former girlfriend, and identity theft.<sup>6</sup>

During his background interview, Applicant stated he now had a good job and is financially stable and able to support his family. He intended on contacting all of the creditors holding his delinquent debts and working out payment plans, because he was now steadily employed. Applicant was interviewed again in November 2014 by a government investigator. He stated that since his last interview he was provided information on how to file a criminal complaint about the previously-discussed identity-theft issue. He had not filed the complaint and did not know when he would do so. He further indicated he was working toward financial stability, but had no timeline for resolution.<sup>7</sup>

Applicant did not provide any documentary evidence to show he paid, resolved, or disputed any of the debts alleged in the SOR. Credit reports from February 2015 and July 2014 substantiate the debts alleged in the SOR.<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.

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<sup>5</sup> GE 3.

<sup>6</sup> GE 3.

<sup>7</sup> GE 3.

<sup>8</sup> GE 4, 5.

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.

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>9</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 had his delinquent debts discharged in bankruptcy in 2000. He has 24 delinquent debts totaling about \$40,091. 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 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 evidence that any of the debts in the SOR have been paid, resolved, or disputed despite being put on notice in 2014 during his background interview. There is insufficient evidence to conclude that his financial problems are

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<sup>9</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

unlikely to recur. His failure to timely address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant had debts discharged in bankruptcy after his first divorce. He attributed his latest financial problems to unemployment, underemployment, his girlfriend's expenses, and identity theft. His unemployment and underemployment were conditions beyond his control. He provided limited information regarding the other reasons, but I will consider that they had an impact on his finances. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. He has not. He indicated to the government investigator he would contact his creditors and make payment arrangements to resolve his delinquent debts. He failed to provide any evidence that he did so. He relies on the fact that the debts are no longer on his credit report due to the age of the debts. He did not provide documentary evidence in that regard. He claimed some of the debts were the result of identity theft, but admitted during his interview that some belonged to him. He was made aware of how to file a criminal complaint regarding his belief his identity was stolen, but had not done so and failed to provide any information to show he is actively pursuing that course. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he has received financial counseling. There is insufficient evidence to conclude he made good-faith payments to any creditors or otherwise resolved his delinquent debts. There are not clear indications that Applicant's financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant indicated he disagreed with some debts. He did not provide documented evidence regarding the basis of his dispute debts or evidence to resolve it. 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 42 years old. He has worked for a federal contractor since 2014. He has a history of financial delinquencies. He failed to provide evidence that he has paid, resolved, or disputed any of the debts. He did not provide evidence supporting his belief some of his debts are no longer being reported on his credit report. Although some of the debts may no longer be legally enforceable because of their age, it does not show Applicant has acted responsibly in paying his just debts. To the contrary, it reflects Applicant's long history of irresponsibility regarding his fiscal duties. Applicant's financial track record is unstable and unreliable. He has 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.o:	Against Applicant
Subparagraphs 1.p-1.q:	Duplicates-For Applicant
Subparagraphs 1.r-1.z:	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