



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



In the matter of: )  
)  
) ISCR Case No. 18-00246  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: Tokay Hackett, Esq.

05/08/2019

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

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

**Statement of the Case**

On March 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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 (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on June 4, 2018, and elected to have the case decided on the written record in lieu of a hearing. At a date not in the record, Applicant requested a conversion to a hearing. The case was assigned to me on September 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on September 25, 2018, scheduling the hearing for October 30, 2018. On October 23, 2018, without objection, I granted Applicant's request for a continuance so

that he could retain an attorney. DOHA issued a second NOH on November 1, 2018, scheduling the hearing for November 29, 2018.

On November 28, 2018, Department Counsel submitted a motion to amend the SOR, pursuant to ¶ E3.1.17 of the Directive, to add two allegations numbered ¶¶ 1.o and 1.p under Guideline F.<sup>1</sup> Applicant objected to the motion and indicated that he desired to proceed with the hearing as scheduled. Prior to the hearing on November 29, 2018, I overruled Applicant's objection and granted Department Counsel's motion. I presented Applicant with three options: (1) continue the hearing for another date to allow him additional time to prepare in light of the amended allegations; (2) proceed with the hearing as scheduled, with the option of returning for a second hearing to address any additional matters, to include the amended allegations; or (3) proceed with the hearing as scheduled, with the option of keeping the record open to allow him the opportunity to provide additional documentary evidence. Applicant did not respond. At the hearing, I reiterated my ruling concerning Department Counsel's motion. Applicant chose option three and we proceeded with the scheduled hearing. He also reiterated that he wanted to have a hearing, rather than an administrative determination as indicated in his response to the SOR.<sup>2</sup>

Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant Exhibits (AE) A through L, which I admitted in evidence without objection. At Applicant's request, I kept the record open until December 21, 2018, for additional evidence. By that date, Applicant submitted additional documentation, which I marked as AE M through Q and admitted in evidence without objection.

At the close of the hearing, Department Counsel moved to amend SOR ¶¶ 1.c and 1.d to conform to the evidence. Without objection, I amended SOR ¶ 1.c to replace "April 2014" with "October 2016," and SOR ¶ 1.d to replace "April 2014" with "October 2017".<sup>3</sup> DOHA received the hearing transcript (Tr.) on December 7, 2018.<sup>4</sup>

### **Findings of Fact**

Applicant admitted all of the allegations with the exception of SOR ¶ 1.p, which he denied. He is 53 years old, married since 1990, and he has two adult children.<sup>5</sup>

Applicant was born in Guyana. He immigrated with his family to the United States at age six. He became a naturalized U.S. citizen in 2002. He graduated from high school in 1982 and subsequently attended a technical school, but did not earn a degree.

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<sup>1</sup> I marked the Government's motion to amend the SOR as Hearing Exhibit (HE) III.

<sup>2</sup> Tr. at 6-12.

<sup>3</sup> Tr. at 133-134.

<sup>4</sup> Tr. at 6-12.

<sup>5</sup> Applicant's response to the SOR; Tr. at 13-14, 49-50; GE 1; AE J.

He worked for previous DOD contractors from 2009 to 2017. He has worked for his current employer, a DOD contractor, since November 2017. He was first granted a DOD security clearance in 2011.<sup>6</sup>

The SOR alleges the following delinquent accounts: a \$25,789 federal tax lien and a \$5,303 state tax lien, both from 2018 (SOR ¶¶ 1.o-1.p); five consumer debts totaling \$137,027 (SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.k); and seven medical accounts totaling \$4,161 (SOR ¶¶ 1.g-1.j, 1.l-1.n). The SOR also alleges two mortgage foreclosures in 2016 and 2017 (SOR ¶¶ 1.c-1.d). The debts and foreclosures are established by court records and credit reports from 2016 and 2017. Applicant also disclosed his debts in his 2016 security clearance application (SCA).<sup>7</sup>

Applicant attributed his delinquent debts to his family's moves, beginning in 2005, from state A to state B to state C. He did not receive correspondence as a result of his moves, and he was unaware of a number of his debts, to include his wife's medical expenses, until he received the SOR.<sup>8</sup>

Three months after moving his family from state A to state B, Applicant moved to state C because he was unable to find comparable work in state B. He subsequently moved his family to state C when it became too difficult for them to live apart. They initially rented, and then they bought a home in state C in 2007. He rented his home in state B, but the tenants did not pay the equivalent of his monthly mortgage so he was responsible for paying the difference.<sup>9</sup>

In 2008, the housing market crashed. In 2009, Applicant rented his first home in state C and purchased another home in state C, because his first home was too small for his family. He had three separate renters for his first home in state C; each of them did not pay the equivalent of his monthly mortgage for that home, so he was responsible for paying the difference. His last renters for his first home in state C eventually stopped paying their rent.<sup>10</sup>

In 2011, Applicant's tenants moved out of his home in state B, and he was responsible for the mortgages on his homes in both states B and C. He became unemployed for approximately four to six months in 2014 or 2015, and he supported his family with money solely from his savings and 401k retirement plan. In approximately October 2016, Applicant's second home in state C was foreclosed, and Applicant's

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<sup>6</sup> Tr. at 29-38, 47-51, 116; GE 1; AE K.

<sup>7</sup> GE 1-7.

<sup>8</sup> Tr. at 37, 50, 52-59, 61-66, 70-108, 116-124; GE 1.

<sup>9</sup> Tr. at 37, 50, 52-59, 61-66, 70-108, 116-124; GE 1.

<sup>10</sup> Tr. at 37, 50, 52-59, 61-66, 70-108, 116-124; GE 1.

family moved back to their home in state B. He moved back to his first home in state C, and that home was foreclosed in October 2017.<sup>11</sup>

Applicant wife's medical issues started in approximately 1998, after the birth of their second child. Her issues progressively worsened over the years. He earned approximately \$80,000 to \$90,000 annually when his wife's medical issues began. Though they have had health insurance, they incurred significant out-of-pocket costs for the specialists his wife has seen over the years.<sup>12</sup>

SOR ¶ 1.a is for a mortgage account for the home Applicant owns in state B. The account is \$28,320 past due with a total loan balance of \$391,740. He purchased this home in 2005 for \$365,000, and he refinanced it several months later for \$417,000. Applicant testified that he completed two loan modifications: the first in 2007 or 2008, when he was first delinquent on his mortgage, and the second in April 2018. During the second loan modification process, the initial mortgage holder sold the account to the current mortgage holder and the \$39,000 past-due amount was forgiven. He provided documentation, executed by both himself and his mortgage holder, to corroborate his claim. His total loan balance was \$360,000, for which he was paying \$3,100 monthly. He testified that he made a total of four to five monthly mortgage payments between April 2018 and the date of the hearing. He acknowledged that he was \$6,000 to \$9,000 delinquent on this mortgage.<sup>13</sup>

SOR ¶ 1.b is for an \$83,301 charged-off home equity line of credit (HELOC) from Applicant's home in state B. He obtained the HELOC in approximately 2007, to pay for his family's moving expenses from state B state C. He also used \$55,000 as a down payment for his first home in state C. He testified that he made three to four payments towards the HELOC, but stopped until he completed the first loan modification for SOR ¶ 1.a. He became delinquent on the HELOC in 2011. He testified that he worked with the Lexington Law Firm to verify the debt; he then made several monthly payments of \$250 towards the HELOC in accordance with a payment plan beginning in the summer of 2018. He provided documentation reflecting such monthly payments from June to November 2018. He acknowledged that he missed some monthly payments. He testified that the total balance remaining of the HELOC was approximately \$81,000.<sup>14</sup>

SOR ¶¶ 1.c and 1.d are for mortgage accounts that were foreclosed in approximately October 2016 and October 2017, respectively, after Applicant defaulted on both loans. SOR ¶ 1.c is the mortgage for his second home in state C, and SOR ¶ 1.d is the mortgage for his first home in state C. He purchased his first home in state C in 2007 for approximately \$299,000. He moved out of his first home in 2009, when he

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<sup>11</sup> Tr. at 37, 50, 52-59, 61-66, 70-108, 116-124; GE 1.

<sup>12</sup> Tr. at 37, 50, 52-59, 61-66, 96-97, 116-124.

<sup>13</sup> Tr. at 52-54, 74-79, 108, 121-124, 131-132; GE 1; AE D, P.

<sup>14</sup> Tr. at 54-56, 79-82; GE 1; AE Q.

purchased his second home in state C for approximately \$409,000, with his father-in-law as a cosigner. His second home was foreclosed in approximately October 2016.<sup>15</sup>

Applicant testified that he was in the process of a loan modification when his second home was foreclosed, and he unsuccessfully attempted to settle the mortgage account when he contacted the creditor. He stayed in his second home in state C until June 2017, when he then returned to live in his first home in state C. In October 2017, his first home in state C was foreclosed. He lived in the home until December 2017. He indicated that he had not been contacted by either creditor about any deficiency balances for his first or second homes in state C, and he was working with the Lexington Law Firm to attempt to remove both mortgage accounts from his credit report.<sup>16</sup>

SOR ¶ 1.e is for a \$21,761 charged-off account. Applicant testified that he was unsure about this debt. He did not recall having a credit card with this creditor since 1992, and he did not realize that the indebtedness on the card was \$21,000. He testified that he was working with the Lexington Law Firm to validate it. If the account is validated, he intends to work out a payment plan with the creditor to resolve this debt.<sup>17</sup>

SOR ¶ 1.f is for a \$3,195 charged-off account. Applicant testified that he was also working with the Lexington Law Firm to validate this debt, as he did not recall having a credit card with this creditor since 2010.<sup>18</sup>

SOR ¶¶ 1.g to 1.j and 1.l through 1.n are for seven delinquent medical accounts totaling \$4,161. Applicant testified that these debts are a result of his wife's medical issues, as previously discussed. He contacted a debt-resolution company, Freedom Debt Relief, to assist him with resolving his wife's medical expenses once he saw them reported on his credit report. He paid the medical debts in SOR ¶¶ 1.g, 1.l, 1.m, and 1.n, for which he testified that Freedom Debt Relief successfully negotiated a settlement. He also testified that Freedom Debt Relief referred him to the Lexington Law Firm, who is working to validate the remaining medical debts in SOR ¶¶ 1.h, 1.i, and 1.j, before he pays them.<sup>19</sup>

SOR ¶ 1.k is for a \$450 charged-off department-store credit card. Applicant testified that he was unaware of this debt because he did not receive correspondence from the creditor due to his family's various moves. He worked with Freedom Debt Relief and paid this debt.<sup>20</sup>

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<sup>15</sup> Tr. at 56-60, 70-74, 82-92, 133-134; GE 1.

<sup>16</sup> Tr. at 56-60, 70-74, 82-92, 133-134; GE 1.

<sup>17</sup> Tr. at 60, 92-94; AE O.

<sup>18</sup> Tr. at 60-61, 92-94; AE O.

<sup>19</sup> Tr. at 61-66, 85-86, 94-97; AE E, G, H, I, O.

<sup>20</sup> Tr. at 66, 85-86, 95-96, 125-127; AE F, L.

SOR ¶ 1.o is for an August 2018 state tax lien of \$5,303, and SOR ¶ 1.p is for a September 2018 federal tax lien of \$25,789. Applicant testified that he has timely filed all of his federal and state income tax returns. He indicated that the liens in SOR ¶¶ 1.o and 1.p are for outstanding federal and state taxes for tax year 2016, because he claimed more dependents that tax year so that he could receive more money per paycheck to apply towards his debts. He testified that he started making payments towards his outstanding federal and state taxes, but stopped when he had to pay other debts, to include his wife's medical expenses. He testified that he was paying his outstanding federal taxes through a payment plan with the IRS in 2017, but he stopped when he was locked out of his account. He testified that he was unaware that liens were filed against him until he received the amended SOR. He was going to verify the balance of his outstanding liens and then attempt to negotiate a payment plan to resolve them. He was also going to adjust his withholdings, as he had not yet done so as of the date of the hearing.<sup>21</sup>

Applicant's gross monthly pay as of the date of the hearing was between \$6,000 and \$9,000. He previously grossed \$4,000 to \$7,000 monthly from 2014 to 2017. He has approximately \$8,000 in his 401k retirement plan and he does not have any savings. His wife has not worked outside of the home since 1996. His motorcycle was repossessed in September 2018, and he drives a rental car for which he pays \$185 weekly. He pays \$3,100 monthly for his home in state B where his family lives; he also pays \$500 monthly for a rental apartment in state C where he lives. His wife manages the family's finances. While he initially neglected to develop a budget, he provided documentation reflecting that he compiled one. He acknowledged that there are times when he finds himself with a monthly negative net remainder.<sup>22</sup>

Applicant testified that he began working with Freedom Debt Relief in approximately 2015 to negotiate settlements and payment plans with his creditors. He had a second job that enabled him to pay Freedom Debt Relief \$1,012 monthly. He paused his payments in the summer of 2018 when he no longer had the second job, and he planned to resume payments once he obtained another. He testified that he has been working with the Lexington Law Firm since approximately 2016 to validate his debts, and he pays them \$99 monthly. He testified that he has not received financial counseling.<sup>23</sup>

Applicant's direct supervisor since November 2017 testified that he met Applicant in 2011, when they worked together for another employer, and he recruited Applicant for their current contract. He interacts with Applicant daily. He was aware that Applicant had significant financial concerns affecting Applicant's security clearance, as Applicant disclosed them to him several months prior to the hearing date. He suggested that Applicant seek legal assistance for his financial problems. He has rated Applicant's performance as successful. He described Applicant as trustworthy, "one of the hardest

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<sup>21</sup> Tr. at 66-68, 97-106, 119-121, 129-130; AE L, M, N, Q.

<sup>22</sup> Tr. at 56, 68-70, 85-86, 92-94, 106-119, 130-131; AE Q.

<sup>23</sup> Tr. at 56, 68-70, 85-86, 92-94, 106-118, 124-128, 130; GE 1; AE O.

working people I've ever met in my life," and an individual who has never exhibited any questionable behavior.<sup>24</sup>

Applicant's coworker since February 2018 testified that he met Applicant in 2012, when they worked for a previous employer until 2014. He described their relationship as primarily a professional one, but indicated that they also became personally acquainted when they worked for their prior employer. He learned in 2012 about Applicant's wife's medical issues, and testified that he would not be surprised if they amassed medical bills as a result. He testified that he had recently learned there were questions about possible financial stability affecting Applicant's security clearance, but he was unaware of the amount of Applicant's financial indebtedness. He described Applicant's performance for their prior employer as superior. He testified that he had not witnessed Applicant's performance for their current employer because he works in a different department. He described Applicant's work ethic as without question, and Applicant as a trustworthy individual. Additional character references, to include previous coworkers, described Applicant as a reliable and trustworthy individual.<sup>25</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 to be 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, administrative judges apply the guidelines 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(a), 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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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<sup>24</sup> Tr. at 27-38; AE B, C.

<sup>25</sup> Tr. at 38-47; AE B.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations; and
  
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant was unable to pay his debts, to include his federal and state taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f) as disqualifying conditions.



Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He started working with Freedom Debt Relief in 2015 and the Lexington Law Firm in 2016. As he paid SOR ¶¶ 1.g, 1.k, 1.l, 1.m, and 1.n, I find that AG ¶ 20(b) applies to these five debts.

The debts in SOR ¶¶ 1.e, 1.f, 1.h, 1.i, and 1.j, as well as the liens in ¶¶ SOR 1.o and 1.p, remain outstanding. Applicant is also delinquent on his mortgage for his home and the HELOC from that home in state B (SOR ¶¶ 1.a, 1.b). He provided no evidence that he successfully disputed, paid, began paying, or was working out a payment plan for any of his remaining delinquent debts. He has not received credit counseling. Though he compiled a budget, he did so after the hearing date. He acknowledged that there are times when he finds himself with a monthly negative net remainder. Moreover, the foreclosures of his homes in state C occurred, in part, because of his poor financial

judgment. I find that AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) are not established as to SOR ¶¶ 1.a through 1.f, 1.h through 1.j, 1.o, and 1.p.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude he has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

### **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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h – 1.j:	Against Applicant
Subparagraphs 1.k – 1.n:	For Applicant
Subparagraphs 1.o – 1.p:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge