



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00521
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

12/26/2018

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**Decision**

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Curry, Marc E., Administrative Judge:

Although Applicant has made some progress in satisfying his delinquent debts, it is too soon to conclude he has mitigated the financial considerations security concern given the amount of delinquencies that remain outstanding. Clearance is denied.

**Statement of the Case**

On March 14, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On April 21, 2018, Applicant answered the SOR allegations, admitting subparagraphs 1.a through 1.m, and 1q through 1.t, and neither admitting, nor denying

subparagraphs 1.n through 1.p. He requested a decision based on the written record rather than a hearing. On June 5, 2018, Department Counsel prepared a file of relevant material (FORM). Applicant received the FORM on June 21, 2018, and was notified that he could file a reply, together with attachments supplementing the information in the FORM, if desired. He did not file a reply. The FORM was assigned to me on August 6, 2018.

### **Findings of Fact**

Applicant is a 47-year-old man. He and his wife have been married since 1995, but separated since 2009. (Item 3 at 25) They have three adult children and one teenager. Applicant and his girlfriend with whom he has been living since 2016, have a one-year-old child.

Applicant is a veteran of the U.S. Marine Corps, serving from 1988 to 2009. He retired honorably. (Item 3 at 21) He earned an associate's degree in 2007, a bachelor's degree in 2009, and a master's degree in 2012. Since 2016, he has worked for a defense contractor as a program manager, where he earns \$140,000 annually. (Item 4 at 13) He has held a security clearance since 1991. (Item 3 at 2)

Between 2009 and 2016, Applicant incurred approximately \$61,000 of delinquent debt, consisting of automobile loans, student loans, consumer debt, utilities, and medical accounts. Applicant also failed to timely file his federal and state income tax returns for tax years 2010, and 2012 through 2015. (Item 3 at 3)

Applicant attributes his financial problems to the challenge of maintaining his estranged wife's household by sending her \$1,500 per month after they separated. (Item 3 at 5 ; Item 5 at 4) The failure to file federal and state income taxes, as mentioned in the previous paragraph, occurred because of a lack of communication with his estranged wife, as unbeknownst to him, she was filing her tax returns individually. (Item 3 at 5)

Subparagraphs 1.a and 1.b are auto loans, with balances totaling approximately \$56,000. Applicant used the loan account alleged in subparagraph 1.a to finance the purchase of a car for \$42,000 in 2014. (Item 7 at 1) He used the loan account alleged in subparagraph 1.b to finance the purchase of a car in 2016 for \$25,000. (Item 8 at 10) Applicant paid the past due balances on these bills in March 2018 after receiving the SOR. (Item 3 at 12, 14) They are no longer in delinquent status.

The debts alleged in subparagraphs 1.c, 1.d, 1.f through 1.h, and 1.j are delinquent student loan accounts. Their collective balance totals approximately \$29,000. Applicant caught up on these accounts with a \$461 payment in March 2018, after receiving the SOR. (Item 3 at 18)

The debt alleged in subparagraph 1.e, totaling \$4,349, is a credit card account. In March 2018, after receiving the SOR, Applicant pre-authorized recurring \$150 bi-weekly payments, scheduled to have begun in April 2018. (Item 3 at 15)

Subparagraph 1.i, totaling \$1,191, is a utility bill. Applicant paid \$500 toward its satisfaction in March 2018, after receiving the SOR. (Item 3 at 20) Subparagraph 1.k, totaling \$596, is a phone bill. Applicant satisfied this debt in its entirety in March 2018, after receiving the SOR. (Item 3 at 22)

Applicant's federal income tax delinquency, totaling \$32,273, is alleged in subparagraph 1.l. He filed the delinquent tax returns in approximately April 2017. (Item 6) At or about that time, he arranged a payment plan under which he was to pay the IRS \$1,800 per month. (Item 6) Six months later, in October 2017, he renegotiated the payment plan. Under the new agreement, the IRS reduced the payments from \$1,800 monthly to \$800 monthly, to be deducted from his checking account. (Item 3 at 24) He presented no evidence of compliance with either plan. Applicant provided no evidence that he ever filed his delinquent state income tax returns.

Applicant owes the debt alleged in subparagraph 1.m, totaling \$587, to a credit union. He satisfied it in March 2018. (Item 3 at 23).

Subparagraphs 1.n through 1.p, totaling approximately \$12,000 are loan accounts that Applicant and his wife used to purchase furniture before their separation in 2009. As of July 2017, he was working with a credit counseling agency to help him resolve these debts. (Item 1 at 10-11; Item 5 at 6)

Subparagraphs 1.q and 1.r are medical bills totaling approximately \$137. These bills have been outstanding since 2014. (Item 8 at 21) Applicant is attempting to ascertain which of his dependents incurred these bill so that he can file them with the appropriate insurer. (Item 3 at 3) Currently, Applicant is preparing to obtain a legal separation from his wife, in order to minimize further confusion with respect to management of his finances.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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.” 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

## **Analysis**

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

The security concerns about financial considerations are set forth 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. . . .

Applicant’s delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s failure to file his state and federal income taxes for tax years 2010, and 2012 through 2015 triggers the application of AG ¶ 20(f), “failure to file or fraudulently filing annual federal, state, or local income tax returns, or failure to pay federal, state, or local income tax, as required.”

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Applicant attributes much of his financial problems to his marital separation. However, this occurred nearly ten years ago. Since then, he has financed the purchase of two new cars, one of which was in excess of \$40,000. Under these circumstances, AG ¶ 20(b) does not apply.

Applicant has brought his car loan accounts and his student loan accounts current by satisfying the respective delinquencies, as alleged in subparagraphs 1.a through 1.d, 1.f through 1.h, and 1.j, and he has satisfied the debts alleged in subparagraph 1.i. and 1.m in their entirety. The satisfaction of these debts is sufficient to apply AG ¶ 20(d) and to resolve these SOR allegations in Applicant's favor.

Applicant provided evidence that he filed his delinquent federal income tax returns, and provided evidence of a payment plan and a revised payment, but he provided no evidence that he has complied with either plan. Moreover, he provided no evidence that he has filed his delinquent state income tax returns. Consequently, AG ¶ 20(g) is inapplicable to the issue of Applicant's non-filed state income tax returns, and it is only applicable to his delinquent federal income tax returns insofar as he has filed them and made arrangements to satisfy them.

Applicant's failure to provide evidence of either federal tax payment plan compliance or of filing his delinquent state income taxes undercuts any positive inference from his work with a credit counselor or the progress made at debt reduction. Therefore, I conclude that only the first prong of AG ¶ 20(c) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>1</sup> They are as follows:

- (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;

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<sup>1</sup> The factors under AG ¶ 2(d) are as follows:

- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Applicant deserves credit for initiating payment plans and for satisfying some of his debts. However, he did not make plans to pay many of these debts until after the issuance of the SOR. Moreover, he has yet to file his delinquent state income tax returns, and he has provided no evidence that he is complying with the payment plan for his federal income tax delinquencies. Failure to file tax returns or to pay income tax debts are serious transgressions as they suggest that an applicant has a problem with complying with well-established government rules and regulations. (ADP Case No. 16-03595 (August 27, 2018) at 4) Under these circumstances, any indicia of financial rehabilitation is outweighed by the nature and seriousness of the problem. Consequently, I am unable to conclude Applicant has mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings for 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:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n – 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge