



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



In the matter of: )  
)  
) ISCR Case No. 18-00614  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

03/18/2019

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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. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 26, 2018, 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 (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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 22, 2018, 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), and Applicant received it on December 5, 2018. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant submitted a timely response and his exhibit is marked as Applicant's Exhibit (AE) A. There were no objections by Applicant or Department Counsel and all Items and AE A are admitted into evidence. The case was assigned to me on February 27, 2019.

### **Findings of Fact**

Applicant admitted all of the SOR allegations except ¶ 1.b, which he believed was a duplicate with ¶ 1.c. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He holds an associate's degree. He served in the Army and was honorably discharged. He married in 1984 and has four children, ages 33, 31, 25, and 22. He has worked for his present employer, a federal contractor, since April 2016.<sup>1</sup>

Applicant disclosed on his August 2016 security clearance application (SCA) that he was unemployed December 2015 to January 2016; September 2013 to January 2014; and July 2009 to November 2009. He explained in his answer to the SOR that he worked as a independent contractor and could not control the duration of the contracts, unexpected cancelations, and whether the contract was renewed. When he was not working on a contract, it impacted his finances. He also explained that he earned more money when he worked as a independent contractor. He has decided to work in a job where he receives a regular salary, where he earns less money than when he worked independently, but he receives a consistent salary with benefits.<sup>2</sup>

Applicant's admissions and credit reports from September 2016 and February 2018, corroborate the delinquent debts alleged in the SOR.<sup>3</sup>

Applicant stated in his SOR answer and provided documents to show that in May 2018, he sought financial assistance with a debt solution company. The company provided him a proposed plan to pay his delinquent debts. Not all of the SOR debts were included in the plan. There is no evidence that Applicant has implemented the plan and made any monthly payments towards resolution of the debts that are alleged in the SOR.<sup>4</sup>

Applicant stated in his answer that the debt in SOR ¶ 1.a (\$15,464) is for a repossessed vehicle. He purchased the vehicle in March 2013, and he fell behind on his monthly payments in about September 2013, because he was in between contracts and

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<sup>1</sup> Item 4.

<sup>2</sup> Items 3, 4.

<sup>3</sup> Items 3, 5, 6, 7.

<sup>4</sup> Item 3.

unemployed. He attempted to catch up payments for the two delinquent months, but the creditor refused to accept his payments and repossessed the vehicle. Apparently, Applicant had an unpleasant encounter with the creditor. In his FORM response, he said he contacted the creditor and was told the account was past the time to collect, and he should leave it alone. It is unknown what this advice means, other than to wait until the statute of limitation runs. In his FORM response, he said that he received a letter indicating there was a lawsuit against this creditor for devious practices. No other information or documents were provided.<sup>5</sup> This debt is not resolved.

Applicant indicated that the debt in SOR ¶ 1.b (\$1,364) is a duplicate of ¶ 1.c (\$974). In the Government's FORM, it advised Applicant that the two allegations were not the same debt and the credit reports reflect they are different accounts. Applicant indicated he was working with the creditor in SOR ¶ 1.c. He did not provide documentation that he has a payment plan, has resolved either of these debts, or substantiated the debts are duplicates. These debts are not resolved.<sup>6</sup>

Applicant had a dispute with the merchant in SOR ¶ 1.d (\$242). He felt he was treated badly when he tried to return merchandise. The debt was charged off in December 2011. He stated that when he contacted the creditor that holds the account, he was advised the account is past the statute of limitation. The debt is unresolved.<sup>7</sup>

Applicant was told that the debt in SOR ¶ 1.e (\$2,140), which was a consumer account, is past the statute of limitations, and he was advised to leave it alone. It is unresolved.<sup>8</sup>

Applicant's response to SOR ¶ 1.f (\$1,230) does not articulate whether he has resolved the account. He wrote "settlement \$1,230," but failed to provide information that shows he has paid the debt or reached a settlement agreement that he has paid. It is unresolved.<sup>9</sup>

Applicant indicated that with the help of his credit counselor, he is still working to resolve the debt in SOR ¶ 1.g (\$384), a cell phone account. He did not provide any other information or documentary evidence. It is unresolved.<sup>10</sup>

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<sup>5</sup> Items 3, 5: AE A.

<sup>6</sup> Items 3, 6, 7.

<sup>7</sup> Items 3, 5, 6, 7.

<sup>8</sup> Items 3, 5, 6, 7.

<sup>9</sup> Item 3.

<sup>10</sup> Items 3, 5, 6, 7.

Applicant stated in his answer to the SOR that he paid the medical debt in SOR ¶ 1.h (\$160) that was in collection. He did not provide documentary evidence to show it is paid. It is unresolved.<sup>11</sup>

Applicant said that he attempted to speak to the creditor in SOR ¶ 1.i (\$57). He said the creditor told him it did not have his social security number showing he had a debt. Applicant did not provide documentary evidence to show he has disputed the debt. It is not resolved.<sup>12</sup>

In Applicant's FORM response he provided a document to show he paid a medical collection account in January 2019. It appears this debt was not alleged in the SOR. Applicant stated that he is not irresponsible or in financial "bad shape." He provided financial documents to corroborate his statement. He said and the documents support that as of January 2019, he had approximately \$18,657 in one of his bank accounts; \$5,723 in another account; approximately \$30,000 in a 401k pension plan; and about \$32,290 in stock options that will vest in about a year. Applicant further stated that he owns a home and has a second investment home.<sup>13</sup>

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>11</sup> Items 3, 5, 6, 7.

<sup>12</sup> Items 3, 5, 6, 7.

<sup>13</sup> AE A.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 EO 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts dating back to approximately 2011 that are unresolved. He provided evidence that he has the financial means to resolve at least some of the debts, but did not provide evidence that he has done so. 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, 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; 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 has not paid or provided evidence that he has resolved any of the debts alleged in the SOR. His delinquent debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to periods of unemployment and to the unreliability of working on government contracts. The unemployment periods were somewhat beyond his control. Applicant was aware of the positive aspect of working as an independent contractor, which is higher pay, and the negative aspect, which is unreliability. Choosing to work as an independent contractor was within his control because he could have better planned for periods he was unemployed and not being

paid, while waiting for a new contract. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant did not provided sufficient evidence to show he has acted responsibly under the circumstances. He failed to provide documentary evidence to support that he has resolved any of his delinquent debts. AG ¶ 20(b) has partial application.

There is evidence Applicant has received financial counseling. He did not provide evidence that his financial problems are under control. There is no evidence he is making good-faith efforts to pay the delinquent accounts alleged in the SOR. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputed some debts, but did not provide documentary evidence of the legitimacy of his disputes or evidence of actions he has taken to resolve them. 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(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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 59 years old. He has worked as a government contractor, which due to the nature of business, he was unemployed in between contracts. He contracted with a debt solution company in May 2018, but failed to provide evidence that he has made monthly payments into the plan to resolve some of his debts. Not all of his delinquent debts were included in the plan. Regarding some of his delinquent debts, it appears he is relying on the statute of limitations to resolve them. The Appeal Board has held that debts

beyond the statute of limitation for collections cannot be mitigated solely because they are not collectable.

The DOHA Appeal Board reinforced its position on statutes of limitations not mitigating financial considerations concerns stating:

In this case, the Judge noted that Applicant explained that he did not owe any of the alleged debts because they had either been deleted from his credit report or soon would be deleted, and he also relied on a state statute of limitations to absolve himself of debts. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. See e.g., ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 03-20327 at 6 (App. Bd. Oct 26, 2006). We also have held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value. ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008) (citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003)).<sup>14</sup>

Applicant provided evidence that he has the financial resources to resolve his delinquent debts, but failed to provide documentary evidence that he has done so. He has not met 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.i:	Against Applicant

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<sup>14</sup> ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016).



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security 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