



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



In the matter of: )  
)  
) ISCR Case No. 18-01044  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

02/08/2019

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, and he mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 4, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on June 11, 2018, and requested a hearing before an administrative judge.

The case was assigned to me on November 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 16, 2018, scheduling the hearing for December 13, 2018. The hearing was convened as scheduled, but was continued and reconvened on January 24, 2019. DOHA received the transcript (Tr.) of the first hearing on January 2, 2019, and the second hearing (Tr. 2) on February 5, 2019.

## Procedural and Evidentiary Rulings

### Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection.

### Motion to Amend the SOR

Department Counsel moved to amend the SOR by adding an allegation identified as SOR ¶ 1.d, as follows:

1.d. You failed to timely file your state and federal income tax returns for tax year 2017.

The motion was granted over Applicant's objection.

### Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer, or a predecessor contractor, since April 2015. He attended college for several years, but he has not earned a degree. He is single with one child. He has custody of his child, and they live at his parents' house.<sup>1</sup>

Applicant had periods of unemployment and underemployment before 2015. The amended SOR alleges two delinquent student loans in the amounts of \$36,479 (SOR ¶ 1.a) and \$26,204 (SOR ¶ 1.b), an unpaid judgment to a credit card provider for \$5,335 (SOR ¶ 1.c), and Applicant's failure to file state and federal income tax returns when they were due for 2017 (SOR ¶ 1.d). However, the two student loans are duplicate accounts.<sup>2</sup>

Applicant stated that the judgment was paid in early 2017 through garnishment of his wages. He provided documentation that the judgment was paid and satisfied at some point before March 2018. Since May 2018, his pay has been garnished \$451 twice a month for his student loan. He paid a total of \$7,667 during that period, and he reduced the balance from \$36,479 to \$30,920.<sup>3</sup>

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<sup>1</sup> Tr. at 29, 41-44, 59; GE 1, 2.

<sup>2</sup> Tr. at 29-30, 33-34, 43-45; Applicant's response to SOR; GE 1-4.

<sup>3</sup> Tr. at 30-31, 43, 49-51; Applicant's response to SOR; GE 3, 4; AE B, C.

Applicant filed his 2017 state and federal income tax returns in January 2019. He is due a \$1,709 refund from the IRS, and he owes his state \$3, which he assures he will pay.<sup>4</sup>

Applicant admitted that he was negligent when he failed to file his tax returns on time. He paid debts that were not alleged in the SOR before the SOR was issued. He stated that his current finances are sound, which is corroborated by the most recent credit report in evidence. He has a good job that enables him to provide for his child. The garnishment of his student loans was recently lifted. He credibly testified that he will continue to pay his student loans, file his tax returns on time, and maintain his financial stability. He has not received formal financial counseling.<sup>5</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2016. He did not report any financial issues on the questionnaire, but he reported derogatory information under other questions. He credibly denied intentionally providing false information on the questionnaire. He stated that he had already made arrangements to pay the debt that resulted in the judgment. The August 2016 credit report listed the student loan as in deferment.<sup>6</sup> I find that he did not intentionally provide false information of the SF 86.

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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(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>4</sup> Tr. at 34; Tr. 2 at 6; AE A.

<sup>5</sup> Tr. at 33-37, 42, 47-48, 51-56; Tr. 2 at 6-9.

<sup>6</sup> Tr. at 37-38, 56-58.

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.

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 EO 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* EO 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;

(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 has a history of financial problems, including an unpaid judgment, a defaulted student loan, and income tax returns not filed on time. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.a and 1.c are duplicate student loans. When the same conduct is alleged twice in the SOR under the same guideline, one of the allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.c is concluded for Applicant.

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;

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

Applicant had periods of unemployment and underemployment before 2015. The judgment has been paid; the student loan is being paid; and the 2017 income tax returns have been filed. Applicant receives less credit in mitigation because the judgment and student loan payments were made by garnishment. However, he also paid debts that were not alleged in the SOR before the SOR was issued. His statement that his current finances are sound was corroborated by the most recent credit report in evidence. The garnishment of his student loans was recently lifted. He credibly testified that he will continue to pay his student loans, file his tax returns on time, and maintain his financial stability. He has a good job that enables him to provide for his child. He

knows that a security clearance is crucial to keeping that job, and financial stability is required for him to keep his security clearance. Security concerns about Applicant's finances are mitigated.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information about his finances on his 2016 SF 86. AG ¶ 16(a) has not been established. SOR ¶ 2.a is concluded for Applicant.

### **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 Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and he mitigated the financial considerations security concerns.

### **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:	For Applicant
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge