



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01151
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

01/23/2019

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant owes \$105,258 on six delinquent accounts. The obligations remain unpaid. He provided no documentation showing any efforts to address the debts. Clearance is denied.

**Statement of the Case**

On April 30, 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, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue 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 National Security Adjudicative Guidelines (AG) effective June 8, 2017, for all adjudications for national security eligibility or eligibility to hold a sensitive position.

On May 19, 2018, Applicant responded to the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 26, 2018, the Government submitted a File of Relevant Material (FORM), consisting of five exhibits (Items 1-5). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant's response was due on August 12, 2018. No response was received. On October 26, 2018, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant.

### **Evidentiary Ruling**

Department Counsel submitted as Item 3 a summary of a subject interview of Applicant conducted on December 14, 2017. The summary was part of the DoD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DoD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summary did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

**IMPORTANT NOTICE TO APPLICANT:** The attached summary of your Personal Subject Interview (PSI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was

advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. Applicant is a college graduate, who can reasonably be held to have understood the footnote, and he did not object to the PSI or indicate that it contained inaccurate information. Accordingly, I accepted Item 3 in the record, subject to issues of relevance and materiality in light of the entire record.

### **Summary of SOR Allegations**

The SOR alleges that, as of April 30, 2018, Applicant had six delinquent obligations totaling more than \$105,000. When Applicant answered the SOR, he admitted the allegations. He provided no explanation of his delinquent accounts when he responded to the SOR.

### **Findings of Fact**

After considering the FORM, which includes Applicant's response to the SOR as Item 1, I make the following findings of fact.

Applicant is 58 years old and has worked for a defense contractor since July 2012. He has not held a DoD security clearance. In June 1981, he married his wife. They have a 35-year-old daughter and a 33-year-old son. (Item 2) From May 2009 until November 2017, he was a pastor. He had previously served as a pastor from June 2001 through October 2008. Between October 2008 and May 2009, he was the Director of Operations for an association of churches.

On Applicant's Electronic Questionnaires for Investigation Processing (e-QIP), he indicated he lived in Canada from August 2012 through November 2017. (Item 2) He estimated his financial problems at \$125,000 and listed the reason was because his wife was prohibited from working while they lived in Canada. (Item 2) When interviewed by an authorized investigator for the Office of Personnel Management (OPM) in January 2018, he indicated his wife was now working for a doctor as a medical secretary. (Item 3) On his e-QIP, he indicated the "Debts were forgiven." He did not further explain this statement or provide documentation supporting this assertion.

Applicant's December 2017 credit report lists the debts in SOR 1.a (\$50,658), SOR 1.b (\$20,627), SOR 1.c (\$15,534), and SOR 1.f (\$276) as being in collection. (Item 4) The report also lists the debts in SOR 1.d (\$13,451) and SOR 1.e (\$4,712) as being charged off by the creditor. Applicant's June 2018 credit report lists the debts in SOR 1.b (\$20,627), SOR 1.c (\$15,534), and in SOR 1.d (\$13,451) as being charged off by the creditor. (Item 5)

Applicant indicated in his January 2018 interview, his financial delinquencies resulted from his diagnosis and treatment for cancer twice. (Item 3) He did not list this as a reason for his financial problems when he completed his e-QIP. He asserted, even though he had health insurance, all of his treatment was not covered by his insurance. His income as a pastor was insufficient to pay his medical bills. Additionally, his wife was not allowed to work while in Canada.

Applicant indicated the credit card accounts listed in SOR 1.b, SOR 1.d, SOR 1.e, and SOR 1.f were used to pay medical bills. There is no indication in the record as to when he was diagnosed or treated for cancer or the cost of treatment. The delinquent obligation listed in SOR 1.a (\$50,658) was a student loan he took out for his son's education. The delinquent obligation listed in SOR 1.c (\$15,534) was a department store account he used to buy appliances and clothing. As of the date of his personal statement, January 2018, he had not received financial counseling. During the interview, he did not indicate an intent to pay any of the delinquent obligations.

### **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. 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." 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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are set forth 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.

Applicant is not required to be debt free, but he is required to manage his finances in a way as to exhibit sound judgment and responsibility. The concern under Guideline F is broader than the possibility that an individual might knowingly compromise classified information in order to raise money to address debts. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information.

Guideline F security concerns are established by Applicant’s delinquent obligations of more than \$105,000. Disqualifying conditions AG ¶¶ 19 (a), “inability to satisfy debts, 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” and 19(c), “a history of not meeting financial obligations,” primarily apply. During his subject interview, Applicant failed to indicate he would make payment on these obligations.

Financial delinquencies are potentially mitigated under one or more of the following conditions under AG ¶ 20:

(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 person has received or is receiving 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.

AG ¶ 20(a) does not apply because there are numerous unpaid obligations. Applicant's failure to take any steps to repay the department store debt, the student loan debt, and other credit card accounts continues to cast doubts on his judgment and reliability.

Concerning AG ¶ 20(b), some of Applicant's delinquent obligations were apparently incurred due to him being treated twice for cancer. Medical treatment is a factor largely beyond a person's control. However, Applicant provided no information on when the treatment was received, the cost of the treatment, documentation as to the treatment and cost, and what efforts he made to address the medical costs. There is no indication that he communicated with his creditors or attempted to repay any of the past-due debts. Even the \$276 medical debt (SOR 1.f) remains unpaid. For AG ¶ 20(b) to fully apply, he must have acted responsibly under the circumstances, and there is no evidence he has done so.

Neither AG ¶ 20(c) nor AG ¶ 20(d) is established without some effort on his part to address the debts. A creditor charge-off is an account transfer made when a creditor no longer expects to be repaid. Debts remain legally enforceable even after they are charged off. There is no evidence of financial counseling or evidence of him having made any payments on the delinquent obligations in the SOR.

Appeal Board precedent requires that “a person acts in such a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.”<sup>1</sup> Concerns persist about his financial judgment.

### **Whole-Person Concept**

In assessing the whole person, 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). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant’s personal debts. Rather, it involves an evaluation of an applicant’s judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). At the same time, Applicant has the burden of presenting evidence of relevant facts and circumstances to show why he should be granted security clearance eligibility notwithstanding the delinquent debt information on his credit record.

In January 2018, Applicant was first questioned about his delinquent obligations during his PSI. In April 2018, the SOR put him on notice of the Government’s concern over his past-due debts. In June 2018, the FORM restated the Government on-going concern about his finances. Even though he was put on notice of the concern, he failed to document any payment of his past-due debts.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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<sup>1</sup> The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

## **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, Financial Considerations:	Against Applicant
Subparagraphs 1.a-1.f:	Against Applicant

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Claude R. Heiny  
Administrative Judge