



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01213
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

01/16/2019

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. He failed to provide sufficient documentation to establish mitigation with respect to his delinquent consumer debt. National security eligibility for access to classified information is denied.

**Statement of the Case**

On May 17, 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented effective June 8, 2017.

Applicant submitted an Answer to the SOR on June 11, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on September 19, 2018. Applicant received it on October 12, 2018. The Government's evidence is identified as Items 1 through 6. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Items 1 through 6 are admitted into the record. The case was assigned to me on January 10, 2019.

### **Findings of Fact**

Applicant denied all of the allegations in the SOR. The credit reports dated April 3, 2018, and October 27, 2017, establish the allegations. (Item 4; Item 5.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 40 years old. He served on active duty in the Navy between March 1998 and February 2012, and was honorably discharged. He is divorced since 2008 and resides with a cohabitant. He listed four children born in 1999, 2002, 2008, and 2013 on his security clearance application. (Item 3; Item 6.)

In 2014, Applicant learned he fathered a fifth child, born in 2001, which he forgot to disclose on his security clearance application. Applicant attributed his delinquencies to the garnishment of his wages for support of that child, and child support payments for other children totaling \$1,290.46 monthly. He also attributed his debts to unemployment and underemployment from 2012 to 2016 while he earned two associate degrees. (Item 6.)

Applicant is indebted on a charged-off account in the amount of \$11,654, as stated in SOR ¶ 1.a. Applicant's April 2018 credit report reflects this debt became delinquent in 2016. Attached to his Answer, Applicant provided a letter from this creditor documenting "the post-dated check you provided to this office for \$50.00 on the 31<sup>st</sup> of May will be deposited" and credited toward his account. His balance as of May 21, 2018, was \$11,554.11. (Item 4; Answer.)

Applicant was indebted on a past-due vehicle loan in the amount of \$371, as stated in SOR ¶ 1.b. Applicant's April 2018 credit report reflects this debt became delinquent in February 2018. Applicant provided a screenshot of a pending payment and confirmation number from this creditor's online account system in the amount of \$376.35, dated June 12, 2018. This debt is resolved. (Item 4; Answer.)

Applicant is indebted on a charged-off account in the amount of \$7,291, as stated in SOR ¶ 1.c. Applicant's April 2018 credit report reflects this debt has been delinquent since July 2017. Applicant submitted letters from this creditor documenting a payment of \$91.15 was received on March 23, 2018, and \$65 was received on April 30, 2018. The letters also document an agreement to accept \$65 per month toward resolution of this debt. (Item 4; Answer.)

Applicant was alleged to be indebted on a collection account in the amount of \$6,011, as stated in SOR ¶ 1.d. Applicant's April 2018 credit report reflects this debt became delinquent in March 2017. Statements from the creditor document two \$225 payments were made in March and April 2018, and that Applicant's overall account balance has been reduced to \$5,812. (Item 4; Answer.)

Applicant was alleged to be indebted on a charged-off account in the amount of \$4,933, as stated in SOR ¶ 1.e. Applicant's April 2018 credit report reflects this debt became delinquent in August 2017. Applicant made payment arrangements with this creditor to make monthly payments of \$60 until this debt is resolved. He documented one payment under this agreement. His balance has been reduced to \$4,873. (Item 4; Answer.)

Applicant was alleged to be indebted on a retail store credit-card account that was charged off for the amount of \$3,332, as stated in SOR ¶ 1.f. Applicant's April 2018 credit report reflects this debt has been delinquent since November 2017. Applicant documented payment arrangements with this creditor to resolve this debt through \$30 payments until it is resolved. He provided no proof of payments under this agreement. (Item 4; Answer.)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 AG ¶ 2 describing 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

Finally, 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 under the financial considerations guideline 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; and
  
- (c) a history of not meeting financial obligations.

Applicant accumulated over \$30,000 in delinquent debt. His debts became delinquent between 2016 and 2018. Despite being fully employed since 2016, he has insufficient income to address these liabilities. There is sufficient evidence to establish disqualification under AG ¶¶ 19(a) and 19(c).

The guideline also includes conditions that could mitigate security concerns arising from Applicant's 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.

All of the debts listed on the SOR became delinquent after Applicant was fully employed in his current position. Applicant did not establish a nexus between the unemployment and underemployment he experienced prior to 2016 and his inability to resolve these debts as they became due in 2016 through 2018. Further, his debts were incurred at least two years after the child-support garnishment began. Applicant failed to meet his burden to show that these were circumstances beyond his control. Additionally, Applicant provided no evidence of adjusting his budget or lifestyle to live within his means. There is no evidence that he will be able to avoid delinquent accounts in the future.

The record lacks documentation to show he reasonably and responsibly addressed his delinquencies in a timely manner. Applicant provided no documentation of financial counseling. He is credited with resolving SOR ¶ 1.b. He has payment agreements with all of this remaining creditors and has documented a payment or two, made to all but one creditor under those agreements. This is a good first step, but without

a more substantial track record of payments, he failed to establish a good-faith effort to resolve his debts. His debt is ongoing. The above mitigating conditions are not fully established.

### **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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is credited with his military service and his recent efforts to make payment arrangements to resolve his delinquencies with his limited income. However, he failed to support his statements with proof of concomitant action and a developed track record of repayment. He may be eligible for national security eligibility in the future if he is able to document reasonable and responsible actions to maintain solvency. 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.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Subparagraph 1.e:  
Subparagraph 1.f:

Against Applicant  
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 grant Applicant access to classified information. National security eligibility is denied.

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Jennifer I. Goldstein  
Administrative Judge