



On February 5, 2019, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and received by him on March 12, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's Items. Hence, Items 1 through 7 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on May 29, 2019.

### **Findings of Fact**

Applicant admitted that he owed a portion of the debt alleged in SOR ¶ 1.a, and denied the remaining amount. He admitted the allegations in SOR ¶¶ 1.b, 1.c, and 1.e. He denied the allegations in SOR ¶¶ 1.d, 1.f, 1.g, and 1.h.

Applicant is 52 years old and unmarried. He has a 24-year-old son from a previous relationship. He began his current job with a defense contractor in January 2018. Prior to that he had worked for another defense contractor since April 2017. (Items 4, 5)

In December 2017, Applicant submitted a security clearance application (SCA). In it, he disclosed numerous periods of unemployment: August 2008 through April 2013; November 2013 to March 2014; July 2014 to October 2014; December 2014 to November 2015; January 2016 to March 2016; and September 2016 to April 2017. (Item 4)

During an April 2018 interview with an investigator, Applicant discussed his periods of unemployment. He indicated that after he was laid off from a position in August 2008, he stopped working for several years and traveled around this country on his motorcycle with his girlfriend. He initially used unemployment benefits to support himself during those years, and was subsequently supported by his girlfriend. He also discussed other periods of unemployment and his delinquent debts. (Item 5 at 2-6)

Based on a credit bureau report (CBR) from January 2018, the SOR alleged eight debts that totaled \$52,588. They included unpaid child support arrears totaling \$42,542.<sup>1</sup> The other seven debts became delinquent between 2015 and 2017, and include unpaid credit cards and medical bills. (Items 6, 7)

In his November 2016 Answer, Applicant stated that he did not owe the entire \$42,542 child support arrears alleged in SOR ¶ 1.a, but only \$12,901. He said the remaining amount is assessed interest (SOR ¶ 1.a). He indicated this debt became delinquent while he was unemployed. He made no mention of when he would resolve the debt. He stated that the debts in SOR ¶¶ 1.b, 1.c, and 1.e also arose when he was unemployed. He said he intended to resolve them. (Item 3) He denied owing the medical

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<sup>1</sup> Applicant's son reached his majority in 2012, so Applicant is no longer responsible for child support. The record is unclear as to what period of time that the alleged arrears covers. (Item 5)

debts in SOR ¶¶ 1.d, 1.f, 1.g, and 1.h because he said he had insurance which he used to cover the medical bills.

Applicant did not submit evidence that he paid, resolved, or is resolving any of the alleged debts. He did not produce evidence that he is formally disputing them. He did not provide evidence that he participated in financial or credit counseling. He did not provide a budget or other information related to his financial obligations from which to determine his current financial reliability.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.<sup>2</sup>

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant has a history of being unable to meet financial obligations, which began before 2015 and continues to date. The evidence raises security concerns under the

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. 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, or 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's financial delinquencies are ongoing and continue to cast doubt on his judgment and reliability. Although he stated he experienced periods of unemployment, some of which may have been beyond his control, he acknowledged that after being laid off in August 2008, he decided to travel for years rather than work, which was a decision within his control. He has been fully employed since August 2017. There is no evidence that he acted responsibly under the circumstances. He has not participated credit counseling or demonstrated a clear indication that the eight alleged debts are under control. He has not established repayment plans with any creditors, including the state that manages his child support payments. He disputes the total amount of the child support arrears, but did not provide proof to substantiate his dispute or evidence of actions he has taken to resolve it. He did not provide sufficient evidence to establish the above mitigating conditions.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to 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 applicable 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, including those discussed in the analysis of the financial considerations guideline. Applicant is a mature individual, who is aware of the Government's security concerns. He was informed after receipt of the FORM that the evidence he submitted in response to the SOR was insufficient to mitigate the allegations. Despite that notice, he did not provide additional proof of actions he has taken to resolve the delinquent debts. Overall, the absence of evidence creates sufficient doubt as to Applicant's judgment, reliability, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

**AGAINST APPLICANT**

Subparagraphs 1.a through 1.h:

**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 for access to classified information is denied.

SHARI DAM  
Administrative Judge