



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



In the matter of: )  
)  
) ISCR Case No. 18-01884  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, 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 consumer debts and failure to file Federal tax returns. National security eligibility for access to classified information is denied.

**Statement of the Case**

On July 16, 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 June 8, 2017.

Applicant submitted an Answer to the SOR on August 9, 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 August 28, 2018. Applicant received it on September 19, 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 within the time period allotted. Items 1 through 6 are admitted into the record. The case was assigned to me on January 8, 2019.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 46 years old and divorced. He has been employed by a government contractor since March 2017. He worked as a driver for a ride-sharing service from November 2016 to March 2017. He was unemployed from April 2016 to November 2016, after he was "dismissed for absences" from a position with another government contractor that he held from August 2016 to October 2016. He was also terminated from a position he held from September 2015 to April 2016, following "missing time due to health issue[s]." He was employed from November 2011 to September 2015 by another contractor. He was unemployed from November 2010 to October 2011 after being laid off from a position he had held since 1998. (Item 2.)

Applicant is indebted to nine creditors in the total amount of \$26,196 as listed in the SOR. He also failed to file his Federal and state income tax returns for 2013 to 2016. Applicant attributed these debts and his failure to file his tax returns to his divorce. He stated in his security clearance application, "After my ex-wife moved out and we got divorced, it became increasingly difficult to keep up with bills and the[re] was no money available to pay the tax." Applicant indicated that he hired a law group to "discuss strategy for paying back the IRS, debt consolidation and the possibility of filing Bankruptcy." He provided nothing further in this regard. (Item 2.) His debts are as follows.

Applicant is indebted on a charged-off automotive loan in the amount of \$10,977, as stated in SOR ¶ 1.a. This debt has been delinquent since at least May 2014. (Item 5; Item 6.)

Applicant is indebted on a collection account in the amount of \$6,059, as stated in SOR ¶ 1.b. This debt has been delinquent since at least 2013. (Item 5; Item 6.)

Applicant is indebted on a charged-off account in the amount of \$4,209, as stated in SOR ¶ 1.c. This debt was for a credit card account. It has been delinquent since 2013. (Item 5; Item 6.)

Applicant is indebted on a collection account in the amount of \$1,016, as stated in SOR ¶ 1.d. This debt has been delinquent since at least 2016. (Item 5; Item 6.)

Applicant is indebted on a collection account in the amount of \$621, as stated in SOR ¶ 1.e. It has been delinquent since 2013. (Item 5; Item 6.)

Applicant is indebted on a collection account in the amount of \$584, as stated in SOR ¶ 1.f. It has been delinquent since 2011. (Item 5; Item 6.)

Applicant is indebted on a collection account in the amount of \$362, as stated in SOR ¶ 1.g. This debt was for a storage unit. It became delinquent in 2017. (Item 4.)

Applicant is indebted on a collection account in the amount of \$1,342, as stated in SOR ¶ 1.h. This debt became delinquent in 2017. (Item 4.)

Applicant is indebted on a collection account in the amount of \$1,026, as stated in SOR ¶ 1.i. This debt became delinquent in 2017. (Item 4.)

Applicant failed to file his Federal and state income tax returns for tax years 2013 through 2016, as alleged in SOR ¶¶ 1.j and 1.k.

Applicant acknowledged his debt and indicated he was trying to resolve it. He stated:

As pertaining to the financial questions earlier, I would just like to state that these issues came about after my divorce as I was trying to maintain my living situation. The losing of my jobs at both [government contractors], as discussed earlier did not help this situation. Since then I have cut my monthly bills down to almost nothing and I am actively pursuing cleaning up the situation. I am currently working with the [law group] on these matters, and will have the situation resolved in the coming months. It was never the goal to not pay or defraud any financial institution, it was simply being over extended at the time. (Item 2.)

Despite Applicant's claim that he was working with the law group to resolve his debts, he failed to provide any documentation to support his claim or show that he was otherwise working to resolve his delinquent accounts. He produced no evidence of filing his state or Federal tax returns from 2013 to 2016.

### **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;
- (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 over \$26,196 in delinquent debt, which became delinquent between 2011 and 2017. He failed to file his Federal and state income tax returns for tax years 2013 through 2016. He has insufficient income to address these liabilities. There is sufficient evidence to establish disqualification under AG ¶¶ 19(a), 19(c), and 19(f).

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;

(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; 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 has insufficient income to meet all of his financial obligations. There is no evidence that he will be able to avoid delinquent accounts in the future. He remains indebted on consumer loans and has not provided evidence of filing his delinquent tax returns. His debt is ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to unemployment and his divorce. These are circumstances beyond his control. However, he has failed to meaningfully address his delinquent accounts. The record lacks documentation to show he reasonably and responsibly addressed his delinquencies. Mitigation under AG ¶ 20(b) is not fully established.

Applicant provided no documentation of financial counseling. There is no evidence to conclude that his financial problems are under control. He indicated he enlisted the help of a law group, but there is no documentation to show whether any of his debts were addressed or his delinquent tax returns were filed. The evidence does not establish mitigation under AG ¶¶ 20(c) or 20(d).

Applicant did not claim to dispute any of his alleged delinquencies. He admitted all of the allegations on the SOR. AG ¶ 20(e) does not apply.

Applicant failed to resolve his delinquent Federal and state tax returns. AG ¶ 20(g) does not mitigate the security concern.

### **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 efforts to enlist the help of a law group to resolve his debts and file his delinquent tax returns. However, he failed to support his statements with proof of concomitant action. He may be eligible for national security eligibility in the future if he is able to document reasonable and responsible actions toward resolving his outstanding Federal and state tax returns and 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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	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