



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



In the matter of: )  
)  
) ISCR Case No. 18-02154  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

06/05/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 12, 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on November 14, 2018, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2019. I convened the hearing as scheduled on April 16, 2019. The Government offered

exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through R. There were no objections to any exhibits offered, and all were admitted into evidence. The record was held open until May 15, 2019, to allow Applicant to provide additional exhibits. He submitted AE S through W, which were admitted without objection.<sup>1</sup> DOHA received the hearing transcript on April 26, 2019.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶ 1.a through 1.e. He denied the SOR allegations in ¶¶ 1.f through 1.h. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. He graduated from high school in 2005 and enlisted in the military. He served in the military for almost ten years and was honorably discharged as a staff sergeant (E-6) in 2015. Applicant deployed to Iraq in 2007 (5 months) and in 2008-2009 (8 months). He deployed to Afghanistan in 2010 (8 months), 2011-2012 (7 months), and 2013-2014 (9 months). He participated in many major campaigns in Iraq and Afghanistan serving as a helicopter crew chief. He earned the following medals and ribbons: Air Medals (six awards); Navy-Marine Corps Achievement Medal (two awards); Presidential Unit Citation-Navy; Navy Unit Commendation Medal; Navy Meritorious Unit Commendation; Marine Corps Good Conduct Medal (3 awards); National Defense Service Medal; Afghanistan Campaign Medal (two stars); Iraq Campaign Medal (two stars), Global War on Terrorism Service Medal, Sea Service Deployment ribbon (five stars); NATO Medal; Certificate of Commendation-Individual Award; Letter or Appreciation; Meritorious Mast; Expert Rifle Badge; Expert Pistol Badge; and the Naval Air Crew Insignia Badge. He held a security clearance while serving in the military.<sup>2</sup>

Applicant married in 2016. He has a two-year-old child and another child is due to be born in June 2019. He also has a daughter from a previous relationship who is 14 years old.<sup>3</sup>

Applicant's decision to leave the military was due to the well-being of his teenage daughter who was living with her mother. The mother had been repeatedly arrested, and Applicant was contacted in February 2015 by child protective services regarding the welfare of his daughter. He sought legal advice and was told by his attorney that if Applicant continued to serve in the military and with his likely continued overseas deployments, there were minimal avenues for Applicant to pursue regarding obtaining custody of his child. Applicant was concerned about his child's health and safety because

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<sup>1</sup> Hearing Exhibit I is Department Counsel's email.

<sup>2</sup> Tr. 22-25, 89-90; GE 1; AE W.

<sup>3</sup> Tr. 26.

the child's mother had drug and alcohol problems. Based on these factors, he decided to not reenlist so he could better address the matters related to his daughter.<sup>4</sup>

In March 2016, Applicant and his wife moved to another state. His wife has a sister who has cerebral palsy and needs 24-hour care. His wife had custody of her sister and was providing her care. The purpose of the move was to transfer custody of her sister's care to her mother, living in the state where they were moving. Her sister's financial disability assistance was to be also transferred to the mother. Applicant was working at a car dealership.<sup>5</sup> When they moved he was able to stay with the same car company, but he was not earning sufficient income. He attempted to obtain a different job in the new state at the large military base where there were numerous federal contractors, but was unsuccessful. The cost of the move impacted his family's finances. The process of transferring custody of his wife's sister to her mother took longer than expected. Once custody was transferred, Applicant and his wife moved again in August 2016 to Applicant's home state so he could improve his prospects of finding better employment. The cost of this move further impacted his finances.<sup>6</sup>

While Applicant was working for the car company, his child support was automatically deducted from his pay. He had always maintained medical insurance for his daughter, which had been required. It cost approximately \$130. The car dealer required he purchase insurance through their plan, which cost \$320 bi-weekly, and was the only way he could comply with the medical insurance required by the state for his daughter. He was also paying \$320 in monthly child support. Applicant resigned from this job in June 2016 and went to work for a different car dealer, so he could reduce his medical insurance costs for his daughter. During the time he was required to pay the excessive amount for medical insurance, he fell behind on some bills. Also noted is that during the time the car dealer was withholding money for medical insurance, Applicant was still paying the premium for the separate insurance policy he had always maintained for his daughter. Essentially, he was paying for two separate medical insurance policies. He continued to be underemployed with the new car dealer, but he had to remain in the state until his wife's sister's custody transfer was completed.<sup>7</sup>

When Applicant moved to his home state in August 2016, he did not have a job. It took two months for him to get a job. In October 2016, he got a job as operations manager at a health club. His annual income was \$42,000. In November 2016, the mother of his daughter obtained a modification of the child support order increasing it from \$320 to \$560. This did not include the \$130 he was paying monthly for medical insurance.

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<sup>4</sup> Tr. 25-29.

<sup>5</sup> Tr. 28-32. Applicant began working for the car dealership part-time before he was discharged from the military. The child support for his daughter was being deducted from his military pay. When he began the part-time job, the state incorrectly deducted child support from his pay. So he was paying double the required amount. He eventually got the matter corrected.

<sup>6</sup> Tr. 29, 32-34.

<sup>7</sup> Tr. 35-42.

Applicant testified that the mother of his daughter has four other children and none of their fathers were paying child support.<sup>8</sup>

The state where Applicant now lives is the same state where his daughter resides. He received calls from the state's child protective services informing him that his daughter was cutting herself and syringes were found in her backpack. Applicant withdrew money from his Thrift Saving Plan (TSP) and paid the penalty. He paid a \$3,500 retainer to his attorney so he could obtain full custody of his daughter. He was driving every other week to visit his daughter and spending between \$80 and \$100 for the trip, and to purchase necessities for her that her mother was not providing. His attorney advised him that he would be required to show he had a good and stable home environment before pursuing custody of his daughter. He used the remaining money of his TSP to pay the expenses to move into a home in February 2017. During this time, he paid some of his smaller delinquent bills.<sup>9</sup>

In March 2017, Applicant's wife miscarried. They incurred unplanned medical expenses that were not covered by insurance. This impacted their finances.<sup>10</sup>

In August 2017, Applicant got a better paying job with a government contractor. In November 2017, Applicant went to court to obtain full custody of his daughter. His daughter asked him to pursue custody. He was granted custody. The mother was granted supervised visitation. The mother refused to relinquish custody despite the court order and the daughter's wishes that she live with Applicant. In December 2017, the police enforced the court order. The police took her from school. His daughter did not have any of her belongings. Applicant had to purchase clothes and supplies for his daughter. The mother is required to pay \$320 a month for child support and \$120 for insurance. She has never made a payment.<sup>11</sup>

In February 2018, the mother of Applicant's daughter filed for custody of their daughter. Applicant paid a \$2,500 retainer to his lawyer. As of the date of his hearing, he was waiting for a court date. He testified that his daughter does not want to return to the mother's home. Applicant also noted that there are criminal charges pending against the mother's husband, who she no longer lives with, for sexual assault on Applicant's daughter.<sup>12</sup>

Applicant testified that he has attempted to manage his finances throughout these extraordinary events that have had a major effect on him. His wife is pregnant and due to numerous complications, they have incurred additional medical expenses that continue

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<sup>8</sup> Tr. 34, 41-45; AE Q.

<sup>9</sup> Tr. 45-46.

<sup>10</sup> Tr. 52-53.

<sup>11</sup> Tr. 47-51; AE O, R.

<sup>12</sup> Tr. 46, 53-56.

to impact their finances. He indicated that the expendable income that remains at the end of each month has been used to pay the additional medical expenses that are not fully covered by their medical insurance. He prioritized paying the medical bills for his wife. His wife is due to deliver the baby in June. Applicant is hopeful that after a period of adjustment, their medical expenses will be reduced, and their expendable income can be used to resolve more of their debts. He also has prepaid \$4,000 for the upcoming medical bills for the birth of their child. He provided receipts to show his payments.<sup>13</sup>

Applicant enlisted in the National Guard in April 2019. He began paying \$281 monthly for medical insurance through Tricare. He explained that he is entitled to use Tricare, but must pay monthly premiums. He anticipates being reimbursed from Tricare for the amount he prepaid for upcoming medical bills associated with the birth of his child. He plans to use the reimbursement money to make payments toward other debts. Applicant admits that he had intended to make more payments towards his debts, but the intervening child custody costs and his wife's pregnancy complications prevented him from doing so.<sup>14</sup>

Applicant testified that he has paid about \$8,000 toward medical bills associated with his wife's conditions and a credit card in her name. In his new job, he earns about \$79,000. Because he enlisted in the National Guard, he anticipates receiving a \$7,500 bonus in the future. He is also attending college and receives a Pell Grant. His tuition is paid through the GI Bill. He and his wife have one car. His mother purchased a vehicle for Applicant, and he pays her the monthly amount of the loan. Applicant receives about \$500 a month in Veteran's disability compensation. He uses this amount to pay the car note and insurance. He stated that due to the cost of childcare, it is not financially sensible to have his wife work. He has prioritized paying his wife's medical bills.<sup>15</sup>

Applicant has been unable to begin repaying the debts in SOR ¶¶ 1.a and 1.d due to the intervening family matters in his life. He intends to start making payments of \$200 toward the debt in SOR ¶ 1.d once he can determine where to send the money. He credibly stated that he intends to begin payments on the other debt after his wife gives birth and their additional medical expenses are reduced.<sup>16</sup>

The debt in SOR ¶ 1.b is for a vehicle lease that Applicant surrendered. He has discussed a settlement agreement with the creditor. He intends to begin paying this debt after the birth of his child.<sup>17</sup>

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<sup>13</sup> Tr. 66-69; AE I, J, K.

<sup>14</sup> Tr. 65-67; AE S.

<sup>15</sup> Tr. 75-82.

<sup>16</sup> Tr. 56-59, 61-64, 69-70; AE S.

<sup>17</sup> Tr. 59-61, 69-70; AE S, T.

Applicant has one payment remaining on the debt in SOR ¶ 1.c. He is resolving this debt. He testified that the debts in SOR ¶¶ 1.e and 1.h are for the same debt with ¶ 1.e being the collection company for the original creditor in ¶ 1.h. He resolved this debt in March 2017. It is not reflected on his most recent credit reports.<sup>18</sup> Applicant testified he resolved the debts in SOR ¶¶ 1.f and 1.g. They are not reflected on his most recent credit reports and are resolved.<sup>19</sup>

Applicant provided documents to show he was underemployed while working for the car dealerships in 2015 and 2016, and he was unemployed for several months between his moves. He also provided a copy of his budget. He does not have any credit cards. All of his monthly expenses are current.<sup>20</sup>

### **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 adjudicative guidelines 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 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

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<sup>18</sup> Tr. 72-74; GE 3, 4; AE L, U, V. The debt is on his September 2017 credit report, but not the August 2018 or May 2019 credit reports.

<sup>19</sup> Tr. 61-64, 72-74; GE 4; AE U, V.

<sup>20</sup> Tr. 82-85; GE 1; AE C, D, E, M, N, O, T.

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

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 concern relating to the guideline 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. 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 has delinquent debts, which began accruing in approximately 2015. He has been unable to timely pay them, until recently. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems are attributed to several major life crises, which he had little or no control over. He was serving in the military when he made a decision that for the safety and health of his daughter he would not reenlist. He responsibly sought custody of his daughter. He had to hire an attorney and establish a stable home. His wife had a miscarriage and there were medical debts not covered by insurance. She is presently pregnant and has significant medical issues that are not fully covered by insurance. Applicant and his wife moved so they could transfer custody and care of his wife's disabled sister to her mother. His wife had been providing all of her sister's care. Applicant had periods of unemployment and underemployment. His employer required him to purchase costly medical insurance through their plan, which meant he was paying for two separate insurance policies for his daughter. He and his wife moved so Applicant could improve his employment opportunities. When he was awarded custody of his child, after police intervention, she went to live with Applicant. She had no belongings, so Applicant had to purchase her necessities. Her mother is seeking custody of the daughter, and Applicant has again incurred legal expenses. All of these events impacted Applicant's finances and were beyond his control.

Applicant has acted responsibly by moving to find a better paying job; joining the National Guard so he will receive a financial bonus and be eligible for less expensive medical insurance; and prioritizing his wife's medical bills by prepaying them. The circumstances that have affected Applicant's finances are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant has not ignored his debts. He has paid some smaller debts and he intends to begin repaying the larger ones after his child is born and his finances are more stable. AG ¶¶ 20(a) and 20(b) apply. AG ¶ 20(d) partially applies.



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

Applicant is 31 years old. He honorably served our country in war and had numerous overseas deployments. His reason for not reenlisting, after almost ten years of service, was because he was concerned for his daughter's health and safety. He spent a considerable amount of money to obtain legal custody of his daughter, and subsequently provide basic necessities for her after he gained custody. The mother is not paying her court ordered child support for their daughter, and instead is taking Applicant to court to regain custody.

Applicant's wife was providing full-time care for her disabled sister. Applicant and his wife incurred moving expenses so they could transfer the care of her sister back to her mother. He was underemployed and unemployed. They again incurred moving expenses when they moved so he could find better employment prospects. His wife suffered a miscarriage, and some of the medical expenses were not covered. She presently has a high-risk pregnancy, and Applicant has prioritized the payment of her medical expenses. He paid some of his delinquent debts, but others remain. He enlisted in the National Guard and will receive a financial bonus. He is now eligible for less costly medical care through Tricare and should be reimbursed for medical expenses he prepaid. He plans to use these resources to address his remaining debts.

This is not a situation in which Applicant has acted irresponsibly or ignored his financial obligations. Applicant has made responsible and mature decisions concerning

