



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00310  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

12/11/2019

---

**Decision**

---

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 15, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 June 25, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on September 11, 2019. The evidence included in the FORM is identified as Items 3-7 (Items 1-2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on

September 16, 2019. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections, but submitted exhibits (AE) A-D. Items 3-7 and AE A-D are admitted into evidence without objection. The case was assigned to me on November 21, 2019.

### **Findings of Fact**

In his SOR answer, Applicant admitted all the allegations, with explanations. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 54-year-old employee of a defense contractor. He began working at his present job in November 2017. He is a standardization and evaluations assistant. He served in the Air National Guard from 1984 to 2015, attaining the grade of master sergeant (E-7). He has a high school diploma. He has been married three times (1990-1997; 1998-2005; 2016-present) and has three adult children. (Item 3)

The SOR alleged that Applicant filed a Chapter 7 bankruptcy in April 2019; that he owed delinquent federal taxes for 2015 (\$1,713) and 2016 (\$5,019); and that he accumulated 25 delinquent debts (mortgage debts, credit card debt, consumer debts, medical debt; and various other debt) totaling approximately \$52,791. The debts were listed in credit reports from March 2018 and January 2019 (SOR ¶¶ 1.a – 1.bb). (Items 1, 6-7)

Applicant pointed out in his statement to a defense investigator that his financial troubles mounted when he accepted an overseas job, which paid about \$25,000 less than what he was earning. Additionally, his wife was unable to secure employment at the overseas location in her skill area and settled on taking a lesser-paying job. These decisions were voluntarily made by Applicant because he wanted to experience living overseas with his wife. (Items 2, 4 (August 2018 subject interview))

Applicant stopped paying a home improvement loan in approximately October 2017, when he took the overseas job. His credit reports show that several other debts became delinquent around this time. He contacted several creditors about payment plans, but he could not afford the payments they were seeking. In September 2017, he signed an agreement with an attorney to pursue bankruptcy proceedings. The record is silent as to any further dealings with that attorney. In April 2019, Applicant used a different attorney to file a Chapter 7 petition. All the SOR debts were included in the bankruptcy. The debts were discharged in August 2019, except that Applicant's 2015 and 2016 federal tax debts were not discharged and his mortgage on his residence remained enforceable. (Items 2, 4-7; AE B)

Applicant claims that his 2015 federal tax debt was either paid with his 2018 tax refund or "charged-off" through bankruptcy. He failed to supply documentation supporting either of these actions. He claims to be making \$200 monthly payments on his 2016 federal tax debt, but again failed to supply supporting documentation. Applicant supplied documentation showing that in May 2019, he listed his home for sale

with a realtor in an attempt to execute a short sale of the property. There is no evidence showing the result of this attempted sale. Applicant completed the required bankruptcy financial counseling course. He disclosed to a defense investigator that his net monthly income is approximately \$5,343, with expenses of approximately \$4,550, leaving a remainder of approximately \$800. (Items 2, 4)

Applicant provided a recommendation letter from his current supervisor who is a retired Air Force officer. His supervisor recommends that Applicant retain his security clearance citing his overall excellent duty performance and his observed trustworthiness. (AE C)

### **Policies**

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 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(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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 accumulated 25 delinquent debts, which he resolved through Chapter 7 bankruptcy, and he failed to pay his 2015-2016 federal taxes. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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

(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's debts are recent and were resolved by a discharge in bankruptcy. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant's decision to take a lower paying job because he wanted the opportunity to work overseas is not a condition beyond his control. His wife's inability to gain employment in her chosen field and thereby having to take a lower paying position is a condition beyond Applicant's control. However, he did not act responsibly by failing to take any action to resolve his debts until he filed for bankruptcy protection in April 2019. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant completed his required bankruptcy financial counseling. Given the recency of Applicant's bankruptcy discharge, it is too soon to determine whether Applicant's financial problems are under control. Although bankruptcy is a legally permissible way to rid one of debts, it does not equate to putting forth good-faith efforts to pay or resolve the debts in the security context. Applicant failed to document any payments or agreements to the IRS concerning his unpaid 2015-2016 taxes. AG ¶ 20(c) partially applies, but 20(d) and 20(g) do not apply.

## 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's military service, his federal contractor service, his supervisor's recommendation, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts, besides availing himself of bankruptcy protection. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his future debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

## 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
Subparagraphs: 1.a – 1.bb	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Robert E. Coacher  
Administrative Judge