



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



In the matter of: )  
)  
) ISCR Case No. 19-00843  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

02/05/2020

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**Decision**

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COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On May 9, 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 effective June 8, 2017 (AG).

Applicant answered the SOR on June 3, 2019, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 21, 2019, and the hearing was convened as scheduled on December 18, 2019. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The Government’s exhibit list was

identified as hearing exhibit (HE) I. Applicant testified and offered one exhibit (AE A), which was admitted without objection. The record remained open until January 15, 2020, to allow Applicant to submit documentary evidence. He submitted AE B through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 30, 2019.

### **Findings of Fact**

Applicant admitted all SOR allegations with explanations. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 47-year-old employee of a defense contractor. He has worked for this contractor as an engineer for approximately two and a half years. Before his current position, he owned a small business for 18 years, which provided software support. He has a bachelor's degree. He has been married twice previously. His first marriage was from 1997 to 2010 and his second marriage was from 2011 to 2015. He currently resides with his girlfriend who he has seen since 2015. He has four children. (Tr. 7, 19-20, 22-25, 51; GE 1)

The SOR alleged Applicant had a foreclosed-mortgage account in the amount of approximately \$70,155; five past-due medical accounts totaling approximately \$1,476; and one collection account totaling \$978. The debts were listed in credit reports from September 2017 and November 2018. Credit reports from June 2019 and December 2019 show no delinquent debts, except for the foreclosure. (SOR ¶¶ 1.a – 1.g). (GE 3-5, 8)

Applicant credibly explained that the large mortgage debt was incurred during his first marriage when he and his first wife purchased a house. When the two divorced in 2010, his ex-wife was awarded the house, which apparently had increased in equity during their marriage. His ex-wife was ordered to refinance the property and pay Applicant his share of the equity. She failed to do so. In December 2010, Applicant executed a warranty deed in favor of his ex-wife. His action relieved him of any ownership rights to the property. At that point, he believed his financial responsibility regarding this property was over. He provided documentation showing the executed warranty deed that was filed in February 2012. This is the same property that was foreclosed in 2016. This debt is resolved. (Tr. 18-20, 31-33; GE 6-7; AE A)

Applicant incurred his medical debts (except for SOR ¶ 1.e, which was a dental debt) as a result of his type 1 diabetes. The expenses were largely related to acquiring medical equipment for the treatment of his diabetes. He fell behind with his payments because his girlfriend was diagnosed with cancer and he began assisting her with those expenses. He worked out a verbal agreement with his medical creditor (the same company that supplies his diabetes equipment) and is on a repayment schedule where he is paying \$25 monthly, or more when he is able. He documented making four \$50 payments from August through November 2019. The debts do not appear on his latest credit report. These debts are being resolved. (Tr. 37-39; GE 8; AE D)

The dental debt that went to collection was caused by a mistake. Payment for the service was to be taken out of Applicant's paycheck, but that did not occur. The debt was ultimately paid through a garnishment action in December 2019. This debt is resolved. (Tr. 41; AE E)

Applicant has not incurred any additional delinquent debts. He is expecting a salary raise of approximately \$22,000 this coming year and his current salary is approximately \$104,000 (with overtime). He has not sought financial counseling, but he and his girlfriend utilize a monthly budget. He documented contributing more funds to his health savings account so that he will not incur high out-of-pocket medical costs without a payment source. Applicant provided two years' worth of work appraisals, which reflect that he has "met expectations." (Tr. 28, 42; AE C, F)

### **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; and
  
- (c) a history of not meeting financial obligations.

The evidence showed Applicant accrued several delinquent collection debts and a mortgage foreclosure. I find 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant provided documentation showing that he executed a warranty deed to his ex-wife thereby taking responsible action pursuant to the divorce. He established a payment plan for the unpaid medical debts and documented that he is adhering to the plan. The final debt was resolved through his garnishment payments. The foreclosure was somewhat beyond his control because his ex-wife controlled the property after their divorce. There are clear indications that his financial issues are resolved and that recurrence is unlikely. AG ¶¶ 20(a) and 20(d) are applicable. AG ¶¶ 20(c) and 20(b) are partially applicable.

### **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 federal contractor service, and the circumstances surrounding his indebtedness. I am convinced that Applicant will not incur delinquent debts in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns.

### **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:	FOR APPLICANT
Subparagraphs: 1.a - 1.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge