



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No: 19-01394  
)  
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Applicant for Security Clearance )

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

01/07/2020

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Decision

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DAM, Shari, Administrative Judge:

Applicant failed to resolve a large number of delinquent student loans and debts. Resulting financial security concerns were not mitigated. National security eligibility for access to classified information is denied.

**Statement of the Case**

On April 30, 2018, Applicant submitted a Questionnaire for National Security Positions (SF 86). On June 7, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, (Financial Considerations). The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective on June 8, 2017.

Applicant answered the SOR in writing (Answer) on June 27, 2019, and requested a hearing before an administrative judge. On September 16, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On September 24, 2019, DOHA issued a Notice of Hearing setting the case for November 13, 2019. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified. He offered Applicant Exhibits (AE) A through C. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on November 22, 2019. The record remained open until December 6, 2019, to give Applicant an opportunity to submit additional exhibits. No other exhibits were submitted.

### **Procedural Matters**

Prior to the commencement of this case, Department Counsel withdrew Paragraph 1.d in the Statement of Reasons (SOR).

### **Findings of Fact**

Applicant denied the remaining eleven debts alleged in the SOR. He asserted none of the debts were his, but were the result of his former wife's forging his signature on credit card applications and student loans documents for his stepdaughter.

Applicant is 49 years old. He was married to his first wife from 2001 to 2015. During that time, he adopted her two daughters who were in their teens. He married his second wife three months ago. (Tr. 25-27, 40) He attended college, but did not earn a degree. He used student loans for his education and paid them. (Tr. 30)

Applicant has been working for a federal contractor since April 2017. For three years prior to obtaining his position, he worked as a truck driver. He worked for a federal contractor from 2005 to 2010, during which time he deployed overseas for periods of time. He also worked for federal contractors from October 2013 to May 2014. He has held a security clearance while employed by federal contractors. (Tr. 28; GE 1)

In February 2015, while separated from his first wife, Applicant emailed her about delinquent debts on his credit report that he asserted were not his and wanted her to resolve. He specifically mentioned 16 credit accounts that totaled \$6,474, and student loans that totaled \$70,438. In response, she asked him to give her a list of the credit card debts that he believed to be her responsibility. She stated that the only student loans in his name were related to one daughter's Parent Plus Loans, which she said would be paid by their daughter. (AE C) Applicant said he subsequently discussed the debts with his former wife, but never provided a written response to her with the account names and numbers. (Tr. 69) Their marital settlement agreement did not address the distribution of their debts. (Tr. 77)

In March 2015, Applicant and his first wife were divorced. In September 2015, he filed a police report, over the telephone, alleging that his former wife had opened credit cards in his name that he had not authorized. He told the police that some credit cards

had been in default since 2007. He could not supply the account numbers of the cards because he did not have them. He did not mention the outstanding student loans alleged in this case. (Tr. 45, 52-53; Answer)

Applicant stated that prior to contacting the police in September 2015, he sent 10 to 12 handwritten letters to various creditors, including the Department of Education (DOE), inquiring about the delinquent accounts and loans, and claiming that he was not responsible for the debts. He said every creditor replied to his inquiry and asserted that he was responsible for the debts. (Tr. 55-56)

In his 2018 SF 86, Applicant disclosed delinquent debts that were listed in his name, and again asserted they were accounts opened by his former wife without his consent or authorization. He noted that he requested copies of the signature page opening the accounts from the creditors, but never received them. He indicated that he never signed for any purchase on the accounts. He said he filed a report with the local police department but never received updates on his report. He also stated that he called various law enforcement agencies, but did not receive assistance in resolving this issue. (GE 1)

Based on credit bureau reports (CBR), dated November 2019, April 2019, and August 2018, the June 7, 2019 SOR alleged 11 debts. Five of them were delinquent student loans that totaled \$89,655. They were opened between 2011 and 2013 and became delinquent between 2015 and 2018. Six debts were retail or consumer accounts and totaled \$6,220. They were opened between 2009 and 2011 and became delinquent between 2014 and 2018. (GE 2, 3, 5)

According to GE 4, in July 2011 Applicant executed a promissory note as a parent and agreed to be financially responsible for his daughter's student loans. GE 4 lists Applicant's typewritten name as a guarantor, but the exhibit does not contain the signature page to the promissory note, which Applicant asserted his former wife forged. Applicant denied that he signed that agreement and stated that he would not have done so because he had a strained relationship with his daughter. The last time he spoke to her was when he separated from his former spouse in 2014. Although Applicant disputed the student loans with the DOE, it informed him that he was financially responsible. For the past two years, DOE has intercepted his Federal tax refunds, which have totaled between \$3,000 and \$4,000. He assumed that DOE will continue to do that until the student loan debt is paid. (Tr. 64-67)

After receiving the SOR in June 2019, Applicant contacted an attorney about the forgery and delinquent debts. The attorney was unable to help him. (Tr. 59) In October 2019, he filed an amendment to his September 2015 police report, in which he included the name of the student loan lender and the account number. (Tr. 59-60; AE A) In November 2019, he filed an identity theft report with the Federal Trade Commission (FTC). He listed two fraudulent accounts: one credit card account for \$484, and educational loans for \$70,436. He stated in the report that he learned of the fraud in

September 2015. He said he did not know that he could file an identity theft claim on-line with the FTC. (Tr. 62; AE B)

All of the allegations in the SOR remain unresolved, except one. In October 2019, Applicant paid the \$1,131 judgement alleged in SOR ¶ 1.g. (GE 5 at 1) He acknowledged that he had an account with the jewelry store alleged in SOR ¶ 1.f, but claimed he paid the \$1,239 debt. He did not provide proof that it was resolved. The debt was charged-off in October 2019. He continued to assert that his former wife is responsible for the unpaid debts because she fraudulently opened the accounts without his consent. (Tr. 73-74; GE 5)

Applicant stated that his former wife handled their finances while he was away, sometimes six months out of a year. (Tr. 43) Applicant earns about \$85,000 annually. His wife earns about \$58,000 annually. (Tr. 33-34) He estimated that he has about \$2,300 remaining each month after paying some expenses. (Tr. 38) He did not submit a written budget or proof of credit or financial counseling.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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. 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 information.

Section 7 of Executive Order 10865 provides that an adverse decision 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 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:

Failure or inability 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 information. Financial distress can also be caused by 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 acts to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. The following are potentially applicable in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of not resolving financial obligations that he became aware of in 2014 and are listed in his 2018 and 2019 credit reports. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of

the security concerns. AG ¶ 20 sets out five conditions that could potentially mitigate those financial security concerns under this guideline:

- (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 issues.

In 2014, Applicant became aware of delinquent debts and student loans that creditors determined to be his financial obligation after his inquiry. None of those debts are resolved. The evidence does not establish mitigation under AG ¶ 20(a). Applicant did not provide sufficient documentation to prove that the debt problems were beyond his control. Although there is evidence that his former wife indicated that their daughter would repay her school loans, she did not, and the DOE determined that he is responsible in the event she did not pay. Subsequently, it intercepted two of his federal tax refunds. There is insufficient evidence to establish mitigation under AG ¶ 20(b).

Applicant has not participated in credit or financial counseling, and there is insufficient evidence to find that the SOR allegations are under control. AG ¶ 20(c) does not apply. He paid the debt in SOR ¶ 1.g, showing a good-faith effort to resolve it. AG ¶ 20(d) applies to that debt, but not to the other ten delinquencies.

In 2014, Applicant wrote creditors listed on his credit report and disputed the reported debts on the basis that he never authorized his wife to open the accounts. He also wrote DOE, disputing his responsibility for the delinquent student loans. He stated that all creditors replied and stated that that he was responsible. While he may have a valid basis to dispute the legitimacy of the past-due debts, he did not present documented proof of his assertions or sufficient evidence of the actions he has taken to resolve the

matters. He filed a police report in September 2015, in which he alleged his wife's forgery, but did not provide the police with the necessary details to investigate the complaint further. In October 2019, five years later, he filed an amended police report and listed one retail debt and the specific student loans that he was disputing. The evidence does not establish sufficient mitigation under AG ¶ 20(e).

### **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 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) 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 include 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 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 49 years old and has held a security clearance at times during the years when he was employed by federal contractors. In 2014, he learned that his credit report contained delinquent consumer debts and student loans, which he claimed were not his responsibility and had been opened by his former wife without his authorization. About a month prior to his divorce in March 2015, he raised the issue with her, and she requested details of the accounts in question. He said he spoke to her about the accounts, but never detailed them in writing. Later in 2015, he wrote to the creditors about the issue and they responded, telling him he was responsible. In September 2015, he filed a police report that lacked specific details about the alleged fraudulent debts. After that, he took minimal actions to resolve the delinquent debts. After receiving the June 2019 SOR, he initiated some additional efforts.

The record evidence leaves me with doubts as to Applicant's judgment, reliability, trustworthiness, and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the Financial Considerations guideline.

## 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.c:	Against Applicant
Subparagraph 1.d:	Withdrawn
Subparagraphs 1.e and 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h through 1.i:	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 a security clearance. National security eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge