



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03328
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

07/29/2020

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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 February 11, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented on June 8, 2017 (AG).

Applicant answered the SOR on February 28, 2020, 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 April 28, 2020. The evidence included in the FORM is identified as Items 4-10 (Items 1-3 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on May 26, 2020. Applicant submitted documents (AE A-D) in response to the FORM. Both the Government's and Applicant's documents are admitted into evidence without objection. The case was assigned to me on July 21, 2020.

### **Findings of Fact**

In his SOR answer, Applicant admitted his 2013 Chapter 7 bankruptcy filing and resulting discharge, but denied the three charged-off debts and one collection account alleged in the SOR. The four delinquent debts totaled approximately \$31,000. His admission is adopted here as a finding of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 61 years old. He has worked for federal contractors since September 2014. He had periods of unemployment from August to November 2013 and from January to July 2012. He served in both the Navy and Army for approximately 10 years and received honorable discharges. He completed his bachelor's degree in 1985. He was married for the fifth time in February 2018. The dates of his earlier marriages are: 1979-1981; 1982-1987; 1989-1992; and 1992-2018. He has five adult children. (Item 4)

Applicant's financial difficulties began when he was laid off from a senior executive position, which led to his filing Chapter 7 bankruptcy in 2013. The largest debt included in the bankruptcy was his mortgage. He was unable to pay his mortgage as a result of his job loss. Applicant claims that the remaining SOR debts were incurred by his fourth ex-wife. She revealed a drug addiction to opiates and several of the accounts were opened to fund her drug usage. Applicant was unaware of the accounts until he was made aware of these debts during his background investigation. This ex-wife faced several felony charges for criminal behavior. Applicant sought a divorce, which was finalized in 2018. All the debts appear on Applicant's credit reports. (Items 3, 6, 8-10; AE A)

Applicant documented that he enrolled into a debt resolution program (DRP) in December 2017 to address his delinquent debts. Under the DRP, Applicant began paying \$542 monthly into a fund held by the DRP, which then would negotiate settlements with Applicant's creditors. Applicant has paid into this account monthly since February 2018. An account activity statement shows that the DRP has made regular payments on three of the SOR debts (SOR ¶¶ 1.b-1.d). All these payments predated the SOR. Additionally, payments were made on an account not listed in the SOR. Applicant's credit report documents that he disputed the debt listed in SOR ¶ 1.e. His credit report also shows that he is current on his student loan payments. (Item 3; AE A-D)

## 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.

Applicant had delinquent debts that were unpaid or unresolved. He also had debts discharged through a Chapter 7 bankruptcy in 2013. I find both 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:

- (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;
- (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 issue.

Applicant's bankruptcy filing resulted from a loss of a job, which was a condition beyond his control. Additionally, he divorced his fourth wife in 2018 when he discovered she had become addicted to opioids and had opened and charged several credit cards to fund her addiction. This was also a condition beyond Applicant's control. He acted responsibly by hiring a DRP to arrange settlements for his delinquent accounts. Since February 2018, he has made continuous monthly payments into the DRP, which have been used to make payments on three of his SOR debts. Applicant acted responsibly by seeking out the DRP to address his delinquent debts. He continues to make good-faith efforts to pay his delinquent debts. Applicant has formally disputed the fourth SOR debt with his credit reporting service. Even if he loses this dispute, he can include this debt into his DRP payment plan. I find AG ¶¶ 20(b), 20(d), and 20(e) all 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 the facts and circumstances surrounding this case. I considered Applicant's honorable military service, his job loss that led to bankruptcy, and his ex-wife's actions, which resulted in the SOR debts. Applicant established a reliable track record of financial stability by making his DRP payments since February 2018 and staying current on his student loan payments.

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

### **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.e:	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