



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



In the matter of: )  
)  
) ISCR Case No. 12-11440  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

01/12/2016

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On April 24, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD 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 (AG) implemented by the DOD on September 16, 2006.

Applicant answered the SOR on July 6, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 30, 2015. The evidence included in the FORM

is identified as Items 3-5 (Items 1-2 are pleadings). The FORM was mailed to Applicant who received it on October 9, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to submit any further information. Items 3-5 are admitted into evidence. The case was assigned to me on November 10, 2015.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted ¶¶ 1.b and 1.c. He denied the remaining allegations. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 42 years old. He is married and has two children from former relationships. He has worked for a federal contractor since January 2012. He has an associate's degree. He has never served in the military.<sup>1</sup>

The SOR lists 10 delinquent debts totaling approximately \$53,340 and Applicant's failure to file federal and state income tax returns for years 2009 through 2012. The largest delinquent debts are for a student loan account (\$26,029) and a child-support collection account (\$24,484). The debts are supported by a credit report from July 2012, Applicant's security clearance application, his admissions to a defense investigator, and his admissions to the SOR.<sup>2</sup>

The status of the debts is as follows:

#### **SOR ¶ 1.a (student loan collection debt \$26,029):**

The last action on this debt was in April 2012. Applicant claimed he originally made \$100 monthly payments on this account from 2005 to 2008 until he could no longer afford to make these payments. No documentation supporting these payments was offered. In his answer, he claimed that from 2014 to 2015 he made payments totaling \$2,180 towards this debt. No documentation supporting these payments was offered. This debt is unresolved.<sup>3</sup>

#### **SOR ¶¶ 1.b – 1.c (credit card collection debts \$446; \$1,105):**

As for ¶ 1.b, Applicant acknowledged this debt and that he had not made any payments. The date of last action for this debt was February 2007. As for ¶ 1.c, Applicant claims he made some payments on this debt, but stopped because of lack of

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<sup>1</sup> Item 3.

<sup>2</sup> Items 2-5.

<sup>3</sup> Items 2, 4-5.

funds. No documentation was provided to support these payments. The date of last action on this debt was April 2012. This debt is unresolved.<sup>4</sup>

**SOR ¶¶ 1.d - 1.f (three medical collection accounts \$594; \$164; \$136):**

Applicant denied all these debts, but they remain on his credit report. He presented no proof of payment, evidence of payment plans, or evidence supporting disputes of the debts. These debts are unresolved.<sup>5</sup>

**SOR ¶¶ 1.g - 1.i (three collection accounts \$42; \$170; \$170):**

Applicant denied all these debts in his answer, but admitted them in his interview with a defense investigator in July 2012. He further claimed payment, but provided no supporting documentation. These debts are unresolved.<sup>6</sup>

**SOR ¶ 1.j (child support collection debt \$24,484):**

Applicant acknowledged owing back child support for his two children from previous marriages in his security clearance interview. In his answer to the SOR, he disputed the amount owed, but offered no supporting documentation. This debt is unresolved.<sup>7</sup>

**SOR ¶¶ 1.k - 1.l (failure to file federal income tax returns (2009-2011) and state tax returns (2009-2012):**

Applicant explained he was unable to file his federal and state tax returns because of the divorce he was going through at the time. He either lost or misplaced the necessary documentation to file his returns. In his answer to the SOR, he claimed he filed his federal and state tax returns for years 2009-2011 and intended to file his 2012 state tax return by July 2015. He failed to present documentation supporting the filing of his tax returns. His tax return filings are unresolved.<sup>8</sup>

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling. He stated that his financial difficulties resulted from his divorces and limited employment opportunities.<sup>9</sup>

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<sup>4</sup> Items 2, 4-5.

<sup>5</sup> Items 2, 4-5.

<sup>6</sup> Items 2, 4-5.

<sup>7</sup> Items 2, 4-5.

<sup>8</sup> Items 2-3, 5.

<sup>9</sup> Items 2, 5.

## 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(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 access to classified information will be resolved in favor of 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 Executive Order 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 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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 or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has delinquent debts that remain unpaid or unresolved and unfiled federal and state income tax returns. 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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 debts 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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that the debts were due to circumstances beyond his control, namely his divorces and limited employment opportunities. He failed to present evidence showing he acted responsibly under the circumstances. I find AG ¶ 20(b) partially applies. He did not provide documentation showing that any debts were paid, that he established any payment plans, or that he filed his federal and state tax returns. There is no evidence of credit counseling or evidence supporting disputes of any of the debts. AG ¶¶ 20(c), 20(d), and 20(e) 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(a):

(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. Applicant has not shown a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.l:	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.

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Robert E. Coacher  
Administrative Judge