



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



In the matter of: )  
)  
) ISCR Case No. 14-01675  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

03/17/2015

**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 June 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on July 7, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 7, 2014. The FORM was mailed to Applicant who

received it on November 13, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any further information. The case was assigned to me on February 3, 2015.

### Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a – 1.c and 1.f – 1.h. He denied SOR ¶¶ 1.d and 1.e. Department Counsel conceded SOR ¶ 1.h is a duplicate of SOR ¶ 1.d, therefore, I find in favor of Applicant concerning SOR ¶ 1.h. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 44 years old. He is married and has an adult stepdaughter. He has worked for his current employer since April 2013. He is seeking a position with a defense contractor. He possesses a high school diploma. He has no military service. He had a period of unemployment from May 2012 to April 2013.<sup>1</sup>

The SOR lists a federal tax lien (SOR ¶ 1.a) and six delinquent debts (excepting SOR debt ¶ 1.h) totaling \$71,807. The debts include a past-due home mortgage (SOR ¶ 1.b); a deficiency from a foreclosure on a time-share property (SOR ¶ 1.c); and four credit card or consumer debts (SOR ¶ 1.d - ¶ 1.g). These debts are supported by credit reports from October 2014 and December 2013. Applicant claims he made a payment to the IRS in September of 2013 in the amount of \$12,000 and that his 2012 and 2013 federal tax refunds totaling \$10,000 were withheld and applied against the IRS tax lien reducing the amount of the lien to \$12,000. He failed to supply documentation supporting these transactions.<sup>2</sup>

He also claims he is paying his home mortgage debt and has applied for a loan modification. He failed to supply documentation supporting either assertion. He claims he signed over the deed for the timeshare, which is supported by a notation on the December 2013 credit report. There is no evidence of payment toward any deficiency.<sup>3</sup>

Applicant claims he had no knowledge of the debts listed in SOR ¶¶ 1.d – 1.e, that he paid the debt listed in SOR ¶ 1.f in June 2013 (the December 2013 credit report shows the debt as still unpaid), and that he was resolving the debt listed in SOR ¶ 1.g. He did not provide any documentation disputing the debts, nor proof of payments, or payment plans. These debts are unresolved.<sup>4</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Items 1, 2, 4-5.

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

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

Applicant did not specify what caused his financial problems; however, he was unemployed for about a year from May 2012 to April 2013. The tax lien apparently arose due his failure to pay the proper federal taxes related to a business he and his wife owned. He did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.<sup>5</sup>

## **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.

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<sup>5</sup> Item 2, 6.

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

Applicant has a tax lien and delinquent debts that remain unpaid or unresolved. 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:

- (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 the debts are unlikely to recur. AG ¶ 20(a) does not apply. Applicant provided evidence that he experienced a period of unemployment, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He presented no such evidence of responsible behavior. I find AG ¶ 20(b) does not apply. Applicant presented no evidence of financial counseling and there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. I find AG ¶¶ 20(c) and 20(d) do not apply. He failed to supply documentary evidence to show that he paid part of the tax lien amount or that he paid any other debts. He also failed to document his dispute of SOR ¶¶ 1.d and 1.e. AG ¶ 20(e) does 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. I also considered Applicant's personal situation. However, he 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.g:	Against Applicant
Subparagraph 1.h:	For 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