



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04460
	)	
Applicant for Security Clearance	)	

**Appearances**

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

06/28/2016

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On February 28, 2015, the Department of Defense (DOD) issued to 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 adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 2, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on September 15, 2015. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation. Applicant did not object to the Government evidence and did not offer any additional information within the 30-day time period after receipt of a copy of the FORM. The Government's documents identified as Items 2 through 7 are admitted into evidence. The case was assigned to me on May 2, 2016.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR except ¶¶ 1.c, 1.l, and 1.m, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He attended college for a short period, but did not earn a degree. He served in the military from October 1986 to March 1988 and was honorably discharged. He married in 2002 and divorced in 2008. He has two children from the marriage, ages 10 and 13. He has another child, age 20, from a previous relationship. Applicant was employed from August 2002 to October 2011. He was unemployed from October 2011 until he began work for his present employer, a federal contractor, in August 2012.<sup>1</sup>

The SOR alleges 21 delinquent debts. Applicant admitted all of the debts except SOR ¶¶ 1.c (\$1,138), 1.l (\$399) and 1.m (\$106). The total amount owed on all of the alleged debts is about \$33,650. All of the debts are supported by credit reports from August 2012, July 2014, and July 2015.<sup>2</sup>

In Applicant's answer to the SOR, he disclosed that the debt in ¶ 1.a (\$9,471) is for a voluntarily repossessed car. He purchased a car after his divorce. He later decided the payments were too high. His parents then purchased new car for him, and he returned the other car to the dealer. He indicated he was never told the car would be considered repossessed. He did not provide evidence of action he has taken to resolve the debt.<sup>3</sup>

The debt in SOR ¶ 1.b (\$2,305) is for rent owed on a defaulted lease. Applicant broke his lease because he found a house he wanted to live in. He stated in his SOR answer: "I had to act quickly to secure the house with deposits, etc., so I had to break my lease contract with the complex." He was unaware that the final amount he would owe would be over \$2,300. He stated he was never notified that he owed the complex money. He did not provide evidence of action he has taken to resolve the debt.<sup>4</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Items 5, 6, 7.

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

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

The debt in SOR ¶ 1.d (\$545) is a credit card account Applicant opened when he was trying to establish credit. He was unable to pay it consistently and he defaulted on the account. He did not provide evidence of action he has taken to resolve the debt.<sup>5</sup>

The debts in SOR ¶¶ 1.e (\$439), 1.f (\$313), 1.g (\$286), 1.h (\$56), 1.i (\$48) and 1.j (\$40) are medical accounts. He indicated in his answer to the SOR that he paid some of his medical bills and is not certain why he has others. He believes some could possibly be fraudulent, but he could not afford to investigate their validity. He failed to provide proof of payment on any of these debts or evidence that they could be fraudulent.<sup>6</sup>

The debt in SOR ¶ 1.k (\$470) is for a cell phone contract Applicant terminated early. He did not provide information of any action he has taken to resolve it.<sup>7</sup>

Applicant denied owing the debts in SOR ¶¶ 1.c (\$1,138), 1.l (\$399), and 1.m (\$106) because he did not recognize the creditors. He did not provide evidence of any actions he has taken to contact the creditors or dispute the debts with the credit bureaus.

Applicant indicated that the debts in SOR ¶¶ 1.n (\$1,466), 1.o (\$9,787), 1.p (\$995), 1.q (\$1,079), 1.r (\$1,168), 1.s (\$794), 1.t (\$1,831) and 1.u (\$914) were accumulated during the period he was married to his ex-wife. He stated in his answer to the SOR that his ex-wife had a spending problem, and she was putting his name on accounts. He stated he was advised by his divorce attorney in 2008 to not pay the debts and wait for them to be charged off or to file bankruptcy. When he was interviewed by a government investigator in 2012, he acknowledged many of the alleged debts and told the investigator that in 2006 or 2007 he became overwhelmed by debt and was unaware of many of the charge cards that his wife opened that he was going to ultimately be responsible for paying. Once he became aware of the credit cards he had no choice but to begin using the cards for his own purchases. He told the investigator the credit cards had all been charged off. He advised the investigator that he had not made any attempt to recover from his financial problems and did not have any future plans to clear up his financial record.<sup>8</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

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

<sup>6</sup> Item 2.

<sup>7</sup> Item 2

<sup>8</sup> Item 4.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 as to 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**

The security concern relating to the guideline for financial considerations is 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information.<sup>9</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 21 delinquent debts totaling about \$33,650 that he is unable or unwilling to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;

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<sup>9</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 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 failed to provide evidence that any of the debts in the SOR have been paid, resolved, or disputed despite being put on notice in 2012 during his background interview. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant acknowledged he is responsible for most of the alleged debts and attributed many of them to his ex-wife's spending habits. He also acknowledged he is individually responsible for several debts. He was unemployed for a period in 2011 to 2012. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. He has not. Although he attributed his ex-wife's spending habits as a reason for his financial problems, he indicated when he learned he would be responsible for many of the accounts, he began using them also. He has made no effort to pay any of his delinquent debts and instead has chosen to let the creditors charge off the accounts instead of responsibly making payments for the purchases he made. AG ¶ 20(b) marginally applies.

Applicant did not provide evidence that he has received financial counseling. He failed to provide evidence that he has made any efforts to pay his creditors or otherwise resolve his delinquent debts. There are not clear indications that Applicant's financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant indicated he disagreed with some debts. He did not provide documented evidence regarding the basis of his disputed debts or evidence to resolve them. 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 guidelines 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old. He has worked for a federal contractor since 2012. He has a history of financial delinquencies. He has chosen to ignore his delinquent debts and wait for them to be unenforceable. He failed to provide evidence that he has paid, resolved, or disputed any of the debts. Although debts may no longer be legally enforceable because of their age, it does not show Applicant has acted responsibly in paying his just debts. To the contrary, it reflects Applicant's long history of irresponsibility regarding his fiscal duties. Applicant's financial track record is unstable and unreliable. He has failed to meet his burden of persuasion. The record evidence leaves me with serious 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.u:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge