



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



In the matter of: )  
)  
) ISCR Case No. 12-03271  
)  
Applicant for Security Clearance )

**Appearances**

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

02/19/2016

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On May 16, 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 May 28, 2015, and elected to have his case decided on the written record. On July 6, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on August 13, 2015, and it was received on August 17, 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. The Government's documents identified as Items 2 through 5 are admitted into evidence. The case was assigned to me on January 19, 2016.

### **Findings of Fact**

Applicant denied the sole SOR allegation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He is a high school graduate and has earned different certifications. He has three grown children from previous relationships. He served on active duty in the military from 1982 to 1994 and was honorably discharged. He served in the National Guard from 2011 to 2013. He began employment with a federal contractor in 2014.<sup>1</sup>

Applicant was interviewed in October 2014 by a government investigator as part of his background investigation. During the interview he stated he married in 1990 and separated from his wife a year or two later, but did not divorce until 2007. As part of their divorce settlement, he was required to pay alimony. He was also required to pay her a portion of an "early out payment" he received from the military when he was discharged. His alimony was timely paid until 2012. The military payment was paid until 2008 and stopped because he indicated he did not have the money. A couple years later, he received a letter from the state where he was divorced advising him he owed \$21,000 to his ex-wife, which included fees. A judgment was entered by the court in July 2011. Applicant paid a lump-sum payment and monthly payments to satisfy the debt. He made the payments through his ex-wife's attorney. He believed he had satisfied the debt in 2014, but was advised he still owed \$7,000. He initially attempted to dispute the amount, but his own lawyer confirmed the amount. Applicant paid his ex-wife through her attorney until the judgment was satisfied. He provided a copy of the court document, dated May 29, 2015, and a letter from his ex-wife's attorney, dated May 26, 2015, acknowledging receipt of payments and that the amount of the judgment was satisfied. It appears he does not owe his ex-wife any other payments.<sup>2</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 disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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<sup>1</sup> Item 3.

<sup>2</sup> Items 2, 3, 4, 5. Applicant also provided copies of checks showing payments.

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 handling and safeguarding classified information.<sup>3</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.

A judgment for \$21,000 was entered against Applicant in July 2011 and was unpaid for a period. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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

The 2011 judgment entered against Applicant was satisfied in May 2015. Applicant made lump sum and monthly payments to satisfy the judgment owed to his ex-wife. He paid alimony and some of his military “early out pay” for a period, but then stopped. He indicated he was unable to pay it because he did not have enough money. He did not provide any other information about why he was unable to pay it. There is insufficient evidence to show the conditions that caused his financial problem were beyond his control. AG ¶ 20(b) does not apply. It appears Applicant is no longer required to make payments to his ex-wife. AG ¶ 20(a) applies because the debt is resolved and his financial difficulties are unlikely to recur. AG ¶¶ 20(c) and 20(d) apply because he made a good-faith effort to resolve the debt and his finances are under control.

### **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 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 52 years old. He served in the military and received an honorable discharge. He had financial difficulties keeping current with payments owed to his ex-wife, and a judgment was subsequently entered for the amount owed. He satisfied the judgment in 2015. No other financial issues were raised. The record evidence leaves me with no 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.

