



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-06259

**Appearances**

For Government: Benjamin Dorsey, Esquire  
For Applicant: *Pro se*

03/31/2017

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On December 31, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued 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; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response notarized on March 11, 2016, Applicant answered the 17 allegations raised under Guideline F by admitting in part and denying in part each allegation, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on June 29, 2016. The matter was scheduled on September 7, 2016, for an October 13, 2016, hearing. The hearing was convened as scheduled.

The Government offered three documents, which were accepted without objection as exhibits (Exs.) 1-3. Applicant offered testimony. The record was held open through October 18, 2016, in the event the parties wished to submit additional material. On that date, one document was received and admitted without objection as Applicant's exhibit (AEx.) A. The transcript (Tr.) was received on October 20, 2016 and the record was closed. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

### **Findings of Fact**

Applicant is a 39-year-old contractor who has served in his present position as a cyber security analyst since 2009. Applicant honorably served in the United States military for nine years. He has earned a bachelor's degree in network communication management. He is presently single and has no children. Applicant has no retirement accounts and his stock market investments have been stagnant. (Tr. 22) He has not had formal financial counseling, but has had some on-line financial assistance. (Tr. 50)

In 2008, Applicant's now-former wife was running her own moving company and pregnant when she was in a car accident. She was then put on bed rest before suffering a miscarriage. Around the same time, her mother suffered from a heart attack, required by-pass surgery, and needed the help of Applicant and his wife for home care. Applicant's former mother-in-law was supported by the couple until her death the following year. The former spouse's absence from her company adversely impacted the business as a recession started a general economic decline. Reliance solely on Applicant's income was insufficient. Debt was acquired. The couple separated in 2012, and was divorced in 2013. In 2015, Applicant studied his credit report. (Tr. 29) That motivated him to solicit the help of a law firm to verify and dispute credit report entries. (Tr. 30, 39-40)

In February 2016, Applicant worked with a debt resolution entity to develop a client action plan (CAP) to address multiple delinquent debts. (Tr. 16; SOR Response, Ex. F (unsigned CAP) and Ex. Ex. C (signed Creditor Payout Forecast Management, Policies, and Terms)) Under that plan, Applicant was to pay a monthly sum of \$1,222 to address those debts, although that amount has since been reduced to \$873 by the entity despite his income and expenses remaining the same. The reduction was related to the withdrawal of one creditor from the plan for a delinquent car loan. He was unsure whether that debt was the one noted at either SOR allegation 1.d or SOR allegation 1.i, both of which involve the same creditor. (Tr. 21) The credit report at Ex. 2 from 2011 indicates the debt at SOR allegation 1.i for \$7,147 is related to a charged-off auto loan, but no documentary confirmation as to whether this was the removed debt was provided. Payments on the plan were to begin on March 11, 2016, but no evidence that such payment was commenced was provided.

The debts at issue in the SOR are reflected as follows:

1.a - \$34,311 past due on a total mortgage balance of \$370,716 - Applicant stated that his ex-wife took responsibility for this mortgage account as part of their divorce. (Tr 23) Applicant submitted a March 2013 divorce agreement showing that he agreed to convey ownership of the property to his wife within 30 days of the signing of the divorce agreement. (SOR Response, Ex. A) The property is or was in the process of being sold as a short sale. (SOR Response, Ex. B) The short sale listing is from February 2016, reflecting both Applicant and his ex-wife as sellers. Applicant testified that he had arranged that he will not be responsible for any deficiency after the short sale, but no documentary evidence to that effect was presented. (Tr. 24)

1.b, 1.d, 1.i, 1.l, and 1.q - \$27,793, \$10,205, \$7,147,<sup>1</sup> \$4,800, \$4,022 – These delinquent consumer debts are noted as part of Applicant's CAP. Applicant has no documentation showing the listed creditors have agreed to this plan. (Tr. 30) There is no evidence payments began in March 2016, as contemplated under the plan. (SOR Response, Ex. C)

1.c, 1.e, 1.f, 1.g, 1.h, 1.j, 1.k, 1.m, 1.n, and 1.p - \$11,560, \$8,818, \$8,329, \$8,166, \$8,143, \$5,791, \$5,161, \$4,278, \$3,986, 1,063. These accounts first became due in 2013 and immediately became delinquent. (Tr. 33) They are for delinquent Federal student loans. Applicant spoke with his consolidator in August 2015 about these delinquent accounts. They were placed under a repayment plan with payments set at \$223 a month. Applicant provided documentation noting payments made from October 15, 2015, through January 2016. (Tr. 42; SOR Response, Ex. D) That paperwork notes Applicant was, at that time, enrolled in a repayment plan, but it also indicated that he had not returned the loan rehabilitation agreement paperwork needed to complete that plan. (SOR Response, Ex. D)

Applicant testified that payments on the student loans continued until August 2016. The plan then "lapsed." (Tr. 31) Future payments were set for a larger amount (\$449). Applicant has not paid anything toward those debts since that time. He stated: ". . . I'm calling [the plan] back and was trying to rework and try to get a lower payment." (Tr. 31) The Federal student loans still require a payment higher than Applicant can pay. (Tr. 43-44) His "back-up" plan for addressing these debts is to get a second job, but he finds getting a second job is hard in his area without a security clearance. (Tr. 44)

1.o - \$1,233. This account was charged off. Applicant denies that this is his debt. (Tr. 34-36) He has not disputed the account entry on his credit report or contacted the creditor. He thought it was added to his CAP, but it is not reflected on that document. (Tr. 37-38; SOR Response, Ex. F)

Applicant submitted multiple letters of reference. (SOR Response, Exs. L-P) He is thought of as a reliable, trustworthy man and employee. He is regular with his rent and considered to be a reliable tenant.

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<sup>1</sup> This appears to be the account Applicant believes was dropped from the plan, although there is no documentary evidence to that effect.

## **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 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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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).

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence indicating that Applicant has multiple delinquent debts, consisting of over \$150,000 delinquent debt. He acknowledges most of the debts at issue. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

In 2008, Applicant's wife at the time was injured in a car accident. Her recuperation away from managing her business, and splitting time with Applicant as they cared for her mother for the next year or so, adversely impacted her income. As a result, Applicant became the sole wage-earner for the family. His income was insufficient to cover all of their bills, and debts were acquired. Several years later, the couple separated in 2012, and was divorced in 2013. Little is known as to what, if any, efforts Applicant expended to ward off the acquisition of delinquent debt during these times. Consequently, AG ¶ 20(b) only applies in part.

The debts at issue are multiple in number and are still outstanding to date. Applicant has not received formal financial counseling. Although he denies responsibility for the debt at SOR allegation 1.o (\$1,233), he has not sought verification of the account or disputed the balance with the creditor or a credit reporting bureau.

Applicant testified that the debt at SOR allegation 1.a, concerning a past-due mortgage, is not his responsibility. He introduced documents showing the property was to be transferred within 30 days of his signing a divorce agreement, and paperwork showing it was to be listed for short sale. These documents tend to show the debt cited is not owed by him. However, I do note that there is no documentation reflecting Applicant conveyed the property in the given timeframe. Moreover, while the listing agreement for a 2016 short sale shows little more than intent to sell, Applicant's name on the document as a seller raises questions without clear and documented answers.

Applicant showed that he had made payments on his Federal student loans for under a year, but he has discontinued them because the new monthly rates are too high. He testified he is willing to take a second job, but thus far none has been attained. At present, however, the rehabilitation and repayment of these student loans is aborted. Based on Applicant's testimony, and his tight financial situation, the situation appears to be at a standoff.

As for the CAP repayment strategy, Applicant has no documentation showing the listed creditors have agreed to this plan, and he did not establish a documented and established record of payments on the plan. The plan indicates repayment was to begin in March 2016. If payments had been shown as made from that time to the October 2016 hearing, a meaningful track record of timely repayment could have been established. Without such documentary proof, however, little progress can be ascribed. Considering all of these factors, only AG ¶ 20(d) applies in full.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 incorporated my comments under the guideline at issue 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 a 39-year-old contractor who has served in his present position since 2009. He honorably served in the United States military for nine years. He has earned a bachelor's degree, is divorced and has no children.

From 2008 through about 2009, Applicant became the main wage-earner when his wife's recuperation from an accident and her need to help care for her mother side-tracked her from her business. During this period, debts were acquired. He was divorced in 2013. Applicant has multiple financial issues and scant financial reserves. He has not had formal financial counseling. He began assessing his credit in 2015, when he employed a law firm to dispute questioned entries on his credit report and began payments on his delinquent Federal student loans.

While incomplete, and given the ultimate disposition in this matter, the evidence regarding the delinquent debt at SOR allegation 1.a appears to have been adequately addressed, if not necessarily satisfied. The two repayment plans, however, remain troublesome. The "lapsed" Federal student loan repayment plan appears, based on the excerpts provided, to have been part of, or an extension of, a student loan rehabilitation program. Regardless, necessary paperwork requested by the lender was apparently not submitted and, once the temporary repayment plan had "lapsed," a higher monthly sum was needed to continue the plan. Applicant cannot afford the sum and the plan was essentially aborted. At present, it remains unaddressed and his efforts to establish a meaningful track record of their repayment rebuffed.

The CAP plan was instituted to address all but one of the remaining debts at issue. Documentary evidence establishing record of repayment, however, is lacking. Moreover, while credit must be given to efforts made to address delinquent debts, the measure of good-faith here is diminished to some extent by the fact the plan was initiated after the issuance of the SOR.

This process expects that an applicant employ a reasonable strategy or plan to address his delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented. Applicant presented documentary evidence of plans to address his debts, but his documentary evidence fails to demonstrate they were implemented or continue to be implemented. Therefore, they cannot be said to be under control. Part of this is based on the fact Applicant's income is presently inadequate for addressing all the debts at issue. More documentation and, with regard to the student loans, negotiation or reconciliation, is needed to meet that standard. At present, under these facts, financial considerations security concerns remain unmitigated.

### **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:	For Applicant
Subparagraphs 1.b-1.q:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge