



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 14-03560
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

05/05/2017

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On August 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken 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) effective within the Department of Defense after September 1, 2006.

On September 23, 2014, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on May 20, 2015. On July 6, 2015, Applicant responded to the FORM and submitted additional documents. His Response to the FORM and attached documents are admitted as Item 8. On March 9, 2017, the FORM was forwarded to the Hearing Office and assigned to me on March 21, 2017. On March 24, 2017, I re-opened the record to allow Applicant to submit additional documents. I notified the parties by e-mail that the record remained open until April 21, 2017. Applicant did not submit additional documents. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is an employee of a DOD contractor seeking to maintain his security clearance. He has worked for his current employer since March 2012. He is a high school graduate and has completed some college credit. He served on active duty in the United States Navy between February 2003 to September 2006. He is married and has a daughter, age 5. (Item 3)

On April 1, 2013 Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). (Item 5) A subsequent security clearance background investigation revealed that Applicant had 14 delinquent accounts, with a total approximate balance of \$46,096. The debts consisted of seven student loan accounts, a total approximate balance of \$18,696; four delinquent automobile loans, a total approximate balance of \$23,974; two delinquent medical accounts, with a total approximate balance of \$3,413, and a \$193 insurance collection account.

The debts alleged in the SOR are: a \$9,072 charged-off automobile loan (SOR ¶ 1.a: Item 6 at 1); a \$4,302 student loan account that was placed for collection (SOR ¶ 1.b: Item 5 at 3; Item 6 at 2); a charged-off student loan account owed to an on-line university (SOR ¶ 1.c: Item 5 at 3; Item 6 at 2; Item 7 at 2); a \$3,097 student loan account that was placed for collection (SOR ¶ 1.d: Item 5 at 4, Item 6 at 2); a \$2,363 student loan account that was past due in the amount of \$44 (SOR ¶ 1.e: Item 6 at 2); a \$1,834 charged-off automobile loan (SOR ¶ 1.f: Item 5 at 4; Item 6 at 2); a \$1,759 delinquent medical account (SOR ¶ 1.g: Item 5 at 9; Item 6 at 2; Item 7 at 2); a \$1,654 delinquent medical account (SOR ¶ 1.h: Item 5 at 9; Item 6 at 2; Item 7 at 2); and an unpaid judgment in the amount of \$11,095 for an automobile loan. (SOR ¶ 1.i: Item 5 at 2; Item 6 at 3; Item 7 at 1).

Additional delinquent accounts are: a \$1,793 judgment for a delinquent automobile loan (SOR ¶ 1.j: Item 5 at 3; Item 6 at 3); a \$3,149 delinquent student loan account placed for collection (SOR ¶ 1.k: Item 5 at 3); a \$2,647 student loan account placed for collection (SOR ¶ 1.l: Item 5 at 4); a \$1,984 student loan account placed for collection (SOR ¶ 1.m: Item 5 at 4); and a \$193 insurance bill placed for collection (SOR ¶ 1.n: Item 5 at 10).

In his Answer to the SOR, Applicant admits the debt alleged in SOR ¶ 1.a and SOR ¶ 1.i. Applicant states that he co-signed a car loan for his aunt. His aunt never paid the loan. He is attempting to get it removed from his credit report. The judgment alleged in SOR ¶ 1.i is for the same car loan alleged in SOR ¶ 1.a. I find SOR ¶ 1.a for Applicant because it is a duplicate of the car loan judgment alleged in SOR ¶ 1.i. (Item 2)

Applicant denied the medical debts alleged in SOR ¶¶ 1.g, and 1.h. He claims he has no knowledge of these medical accounts. He admits to the remaining SOR debts, which are primarily student loans. Applicant experienced financial hardships over the

past few years. At the end to 2008, he was working and going to school. He lost his job and was on unemployment. He had to move in with a family member. He was taking classes online and had to quit school because his family member did not have Internet access. He found employment in late 2010. (On his e-QIP, Applicant listed periods of unemployment from February 2008 to June 2008, December 2008 to June 2010, and October 2010 to January 2011. (Item 3, section 13A)) For the past few years, Applicant has been working and his wife also works. He is currently working on rehabilitating his student loan accounts. (Item 2)

In his response to the FORM, Applicant states that he has been employed for three years as an engineering technician. His job requires him to have a security clearance. He is well trained for his job. He takes his job seriously and it allows him to provide for his family. He requests that he be allowed to maintain his security clearance. He did not provide additional documentation about his student loan rehabilitation agreement or proof that he paid or had payment agreements with his other creditors. (Item 8)

Mr. A., Applicant's supervisor in July 2015, wrote a statement indicating he supervised Applicant for about one year. He states that Applicant is an intricate part of the work group and his work ethic speaks for itself. Applicant is always willing to do what it takes to get the job done. (Item 8 at 2) Mr. B wrote a letter stating Applicant has proven himself to be an asset to the team. Applicant works hard and pulls his weight as part of three-man team. (Item 8 at 3) Mr. C. worked with Applicant for three years and was his direct manager for two years. He states Applicant is a hardworking technician who is willing to help in any way he can. Applicant's work ethic is great. (Item 8 at 4)

### **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 must be considered when determining 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to protect or 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered financial problems since 2008, when he lost a job and had to withdraw from classes at an online university. The SOR alleges approximately \$37,024 in delinquent debt. Of that amount, \$18,696 are for student loans, \$14,722 is for

automobile repossessions, \$3,413 are for medical bills, and \$193 is a debt owed to an insurance company. Both AG ¶19(a) and AG ¶19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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.)

AG ¶ 20(b) applies because Applicant endured several periods of unemployment which is a circumstance beyond his control. This mitigating condition is given less weight because Applicant did not demonstrate that he acted responsibly under the circumstances. Applicant has been employed full time since 2013, yet, he provided no documentation of what actions he was taking to resolve his debts.

None of the other mitigating conditions under Guideline F apply. While Applicant says that he is in the process of rehabilitating his delinquent student loans, he provided no documentary proof of his rehabilitation agreement or other steps he has taken to resolve his delinquent student loan accounts. Applicant disputes the automobile repossession judgment alleged in SOR ¶ 1.i, because he claims he co-signed an automobile loan for his aunt and she did not make the payments. When an individual co-signs a loan, the individual is responsible for payment if the principal signer does not pay. Applicant is still responsible for the judgment alleged in SOR ¶ 1.i. Applicant did not provide proof of the efforts taken to dispute the two medical accounts alleged in SOR ¶¶ 1.g and 1.h. He did not resolve the \$193 debt alleged in SOR ¶ 1.n. Applicant had years to provide proof that his debts were resolved or were in the process of being resolved. He did not provide sufficient evidence to mitigate the security concerns under Guideline F.

### **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 considered Applicant's favorable employment history with his employer. I considered Applicant's service in the U.S. Navy

and that he supports his wife and young daughter. While Applicant has some favorable conditions, he did not demonstrate that he took sufficient action towards resolving his debts to mitigate the concerns raised under 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.n:	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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ERIN C. HOGAN  
Administrative Judge