



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



In the matter of: )  
)  
) ISCR Case No. 14-06042  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

07/20/2016  
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**Decision**  
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CURRY, Marc E., Administrative Judge:

Although Applicant's financial problems were partially caused by circumstances beyond his control, there is not sufficient evidence indicating that they are either resolved or under control. Clearance is denied.

**Statement of the Case**

On August 31, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, Personal Conduct. 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) implemented by the DOD on September 1, 2006.

On September 22, 2015, Applicant answered the SOR, admitting the allegations in SOR Paragraph 1 and denying the allegations in SOR Paragraph 2. He requested a

hearing, and the case was assigned to me on December 1, 2015. DOHA issued a notice of hearing on April 19, 2016, scheduling the hearing for May 11, 2016. The hearing was held as scheduled.

Department Counsel withdrew Paragraph 2 and submitted four exhibits that I identified and received as Government Exhibit (GE) 1 through 4. Also, I took administrative notice, at Department Counsel's request, of two documents marked and received as Hearing Exhibits I and II. I identified and received ten exhibits that Applicant submitted (AE A - K). At the close of the hearing, I left the record open, at Applicant's request, to allow him the opportunity to submit additional exhibits. Within the time allotted, he submitted one additional exhibit that I admitted and incorporated into the record as AE L. DOHA received the transcript (Tr.) on May 23, 2016.

### **Findings of Fact**

Applicant is a 34-year-old married man with three children, ages 12, 11, and 9. He is also raising a four-year-old child that his wife had outside of their marriage. He graduated from high school in 2003 and he has been working for a defense contractor as a security guard for the past 13 years.

Between 2008 and 2012, Applicant incurred approximately \$35,000 of delinquent debt. Approximately \$33,000 constitutes delinquencies on four car notes (SOR subparagraphs 1.a through 1.d). The remainder of the debts consists of delinquent parking tickets (SOR subparagraphs 1.e through 1.h, and 1.j through 1.l), and delinquent utilities (SOR subparagraphs 1.i and 1.m).

Applicant's financial problems corresponded with marital problems. Specifically, in August 2008, Applicant and his wife separated. (Tr. 19) He remained in their apartment and continued to provide financial assistance for her, taking legal responsibility for her lease payments for the apartment where she moved. (Tr. 19) As time progressed, Applicant realized that his estranged wife was not keeping up with the rent payments. Unable to juggle two monthly rent payments, Applicant suggested to his wife that they reconcile.

In March 2009, Applicant's estranged wife returned home after being evicted from the apartment.<sup>1</sup> (Tr. 40) When she returned, she was unemployed. Applicant purchased a car for her to assist her with finding a job (SOR subparagraph 1.a). (Tr. 39-40) In the process of buying this car, he traded in his car that he had financed with the creditor listed in SOR subparagraph 1.d. (Tr. 22, 35) SOR subparagraph 1.d alleges that Applicant owes \$464 to this creditor. Applicant contends that this amount was the remaining balance on the car note when he purchased the new car, and that he paid off

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<sup>1</sup>As part of the eviction process, a judgment was entered against Applicant, whose name was on the lease. By 2014, he had satisfied it through a wage garnishment. (AE K)

this balance when he traded the car. (Tr. 24) He provided no documentary evidence to support his claim.

In April 2009, approximately one month after purchasing the vehicle financed by the creditor alleged in SOR subparagraph 1.a, Applicant purchased another vehicle (SOR subparagraph 1.b). (Tr. 24) He anticipated that he could afford both car notes because he was no longer paying the rent for two apartments, as his wife had reconciled with him. Shortly after purchasing the second car, Applicant began struggling to keep up with car payments, compelling him to obtain payday loans to help make ends meet. (Tr. 24) By April 2010, both car notes had become delinquent. (GE 2 at 5) By 2013, the creditor of the delinquent debt alleged in SOR subparagraph 1.b had forgiven the debt and reported it to the IRS. (AE D) In 2014, the creditor of the debt alleged in SOR subparagraph 1.a, reported the debt to the IRS, as forgiven, discharging the \$17,805 balance. (AE A, AE B)

In March 2011, Applicant and his wife separated again. (Tr. 46) He maintained physical custody of their children. In April 2011, Applicant purchased another car. (GE 2 at 5) In May 2011, Applicant was in a motorcycle accident and suffered injuries that incapacitated him. Unable to work for several months, he could not make his rental payments. Subsequently, he and his children moved to a relative's home, and ultimately, to a homeless shelter in August 2011, where he remained for five months, through February 2012. (Tr. 55) While Applicant was living in the homeless shelter, the car loan for the car he had purchased in May 2011, as alleged in subparagraph 1.c, totalling \$5,855, went into default. Applicant voluntarily surrendered the car. In February 2015, Applicant entered a payment agreement with the creditor. (AE J at 2) Since then, he has been making monthly payments of \$25 to \$75 per month, consistent with the agreement. (AE J) He has reduced the balance by approximately \$1,800.

Applicant owes all of the delinquent parking tickets, alleged in SOR subparagraphs 1.e through 1.h, and 1.j through 1.l, to the same municipal authority. In September 2016, Applicant contacted the municipal authority and was informed that the collective balance was \$700. (Tr. 61) He made a \$200 payment the day that he contacted them. (AE I at 4) On May 4, 2016, he made a \$220 payment. (AE I at 1 - 3) The remaining balance on the delinquent tickets totals \$375.

The delinquencies alleged in SOR subparagraphs 1.i and 1.m are utilities, totalling \$163 and \$42, respectively. Applicant satisfied both of these debts. (Tr. 63, 64)

In November 2015, Applicant purchased a home for \$223,000. He made half of the \$9,000 downpayment using money borrowed from his retirement account. (Tr. 7) Currently, he has \$4,500 in his retirement account, \$2,500 in his savings account, and approximately \$100 of monthly, discretionary income. (Tr. 76-77) Applicant and his wife reconciled in February 2016. She has a job. Now, Applicant and his wife manage their finances separately. (Tr. 72)

As of the hearing date, Applicant had not filed his 2015 federal and state income tax returns. (Tr. 69) On June 2016, he filed for an extension. (AE L)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

## **Analysis**

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

Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 debt.

Although marital instability contributed to Applicant's financial problems, he did not always manage his finances responsibly during his marriage-driven financial crisis, making poor decisions such as purchasing two cars within a two-month period following his wife's eviction for breach of a lease that he had signed. Nevertheless, Applicant's marital problems, considered together with his disabling injuries from a car accident in May 2011, and the steps that he initiated to resolve his delinquencies persuade me to conclude that AG ¶¶ 20(b) and 20(d) apply partially, but do not mitigate the SOR concerns.

Conversely, Applicant did not satisfy the largest delinquencies (SOR subparagraphs 1.a and 1.b). Instead, they were discharged and forgiven. Under these circumstances, the positive security inference generated by Applicant no longer being responsible for them is limited.

In sum, there are some indications that Applicant is resolving his financial problems. However, I remain troubled that he has not yet filed his 2015 income tax returns, and just filed for an extension after the hearing. The circumstances beyond Applicant's control are compelling, but there is not enough evidence of rehabilitation to conclude that Applicant's problems may not recur. AG ¶ 20(c) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant is devoted to his family, sacrificing his financial well-being for the preservation of his marriage. He deserves credit for overcoming homelessness to buy a house. Given the nature, extent, and seriousness of his financial problems, it is too soon to conclude that Applicant has rehabilitated his finances. I conclude that Applicant has failed to carry the burden.

### **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.m:

Against Applicant

PARAGRAPH 2, Guideline E:

WITHDRAWN

**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.

MARC E. CURRY  
Administrative Judge