



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



In the matter of:

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ISCR Case No. 14-06318

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

03/17/2017

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to provide sufficient evidence to establish that he had mitigated the financial considerations security concern. Clearance is denied.

**Statement of the Case**

On May 28, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On September 24, 2015, Applicant answered the SOR allegations and requested a decision based on the administrative record instead of a hearing. On November 4, 2015, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the

FORM on April 12, 2016. He did not file a response, whereupon, the case was assigned to me on February 13, 2017.

### **Findings of Fact**

Applicant is a 47-year-old married man with two children, ages 13 and 12. He graduated from college in 1992 and he earned a master's degree in 1999. (Item 2 at 8-9) Applicant served on active duty in the U.S. Marine Corps from 1992 to 2001. He was honorably discharged. He served in the Marine Corps active reserves from 2001 to 2008, returning to active duty from 2008 to 2011. He has been in the active reserves since then, and currently serves as a lieutenant colonel. (Item 3 at 2) Applicant has been working in his civilian capacity as a federal contractor since 2012. (Item 2 at 11) He has held security clearances intermittently since 1993.

Applicant incurred approximately \$35,000 of delinquent debt, as alleged in the SOR. His financial problems began in early 2012 when rental receipts from his multiple rental properties decreased, as tenant payments became more erratic, causing him to fall behind on the properties' respective mortgage payments. (Answer at 1) His financial problems were compounded by a six-month period of unemployment between June 2012 and January 2013.

In January 2013, Applicant filed for Chapter 13 bankruptcy protection, as alleged in subparagraph 1.a. He sought the assistance of the bankruptcy court in restructuring the mortgage payments that he owed to the holders of his rental property mortgages. (Answer at 1) Shortly after the filing, the individual mortgagors agreed to their own respective repayment arrangements, prompting Applicant to withdraw the bankruptcy filing. None of the SOR delinquencies stems from his rental properties, as he has paid them consistent with his payment agreements.

Subparagraph 1.b is a medical bill for \$396. Applicant contends that he incurred this bill, but that his insurance company should have satisfied it. (Answer at 1-2) He provided no evidence memorializing any contact with the insurance company.

Subparagraph 1.c is a credit card debt totaling \$1,228. It was charged off when Applicant filed for Chapter 13 bankruptcy protection. (Answer at 2) Applicant contends that after he withdrew the bankruptcy petition, he contacted the creditor and began making payments, gradually satisfying it in its entirety. He provided no evidence of payment confirmations, either from the creditor, or from his checking account statements.

Subparagraph 1.d is a primary residence mortgage delinquency totaling \$19,865. Applicant admits incurring the debt, but denies any current delinquency, as he sold the property in March 2015 for an amount that covered the delinquency and the remaining balance of \$515,732 (Answer at 2, 16-17)

Applicant disputes subparagraph 1.e, totaling \$290. He provided no evidence of efforts to resolve the dispute, or substantiate the basis of the dispute. SOR subparagraph

1.f, totaling \$54, is a holdover utility balance from one of the rental properties that Applicant sold. He contends that he paid it, but provided no evidence. Similarly, Applicant's contention that he paid the debt alleged in subparagraph 1.g, totaling \$14,703, is unsupported by any documentary evidence.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are set forth 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 proceeds from Applicant's sale of his home in March 2015 covered both the delinquency and the remaining mortgage balance. I resolve subparagraph 1.d in his favor. The remaining SOR delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

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," is only partially applicable.

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 that 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's financial problems were caused by a combination of a downturn in his real estate investment business and a six-month unemployment. I conclude that these facts constitute circumstances beyond his control. Applicant has begun to resolve his delinquencies, eliminating the most significant debt, his primary residence mortgage, by selling the home. Conversely, Applicant's contention that he has either paid or disputed the remaining debts is unsupported by record evidence, and he provided no evidence of a spending plan or a budget. Under these circumstances, I conclude there is enough

evidence to trigger the application of AG ¶ 20(d), but that AG ¶ 20(b) is only partially applicable, and that AG ¶ 20(c) and 20(e) are inapplicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>1</sup> The nature and seriousness of Applicant's financial problems are mitigated somewhat by the surrounding circumstances of Applicant's business downturn and his lengthy period of unemployment in 2012. Ultimately, however, Applicant did not provide enough evidence to meet the burden of persuasion to mitigate the security concern.

### **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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e – 1.g:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge

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<sup>1</sup> The factors under AG ¶ 2(a) 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.