



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



In the matter of: )  
 )  
 ) ISCR Case No. 14-06899  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

09/14/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On November 30, 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 December 24, 2015, and elected to have his case decided on the written record. On February 5, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on February 17, 2016. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence and did not provide any documents or evidence within the time period. The Government's documents identified as Items 1 through 5 are admitted into evidence. The case was assigned to me on August 26, 2016.

### **Findings of Fact**

Applicant admitted the allegation in SOR ¶ 1.a and denied the remaining allegations in ¶¶ 1.b, 1.c, and 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He served on active duty in the military beginning in May 2000 until at least December 2013 when he completed his security clearance application.<sup>1</sup> He married in 2003 and has two children, ages 13 and 10.

In his answer to the SOR, Applicant admitted he defaulted on a car loan (SOR ¶ 1.a-\$16,068) when he was separated from his wife and was unable to make the payments because he was paying other expenses. They were separated from February 2009 to October 2009, when they reconciled. He disclosed this delinquent debt on his December 2013 security clearance application (SCA). He indicated that this issue began in 2010; the car was repossessed; the debt was in collections, and he was negotiating a pay-off.<sup>2</sup> He did not provide any amplifying information or documents to show he has attempted to resolve the debt or a negotiated settlement was completed.<sup>3</sup> The debt is not resolved.

Applicant was interviewed by a government investigator in January 2014. He was confronted with the delinquent debt alleged in SOR ¶ 1.c (\$1,356). He acknowledged to the investigator that the debt belonged to him. He indicated it was a debt for an unpaid daycare bill that was incurred when he and his wife were separated. It has been delinquent since December 2010. Applicant was also confronted with the delinquent debts alleged in SOR ¶¶ 1(b) (\$231) and 1.d (\$142). He advised the investigator that he was unaware of these debts. In November 2015, Applicant responded to the SOR and stated: "With regards to (b), (c) and (d), I was not aware of these claims on my credit report. I will make all efforts to ensure that these are taken care of in a timely manner."<sup>4</sup> The debts are reflected in credit reports from December 2013 and October 2014.<sup>5</sup>

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<sup>1</sup> Presumably, Applicant has been discharged from the military and is seeking civilian employment; otherwise his security clearance adjudication would not be administered through the Directive, as noted above. More recent information is not available about his present employment.

<sup>2</sup> GE 1, 2.

<sup>3</sup> GE 2, 3.

<sup>4</sup> GE 1.

<sup>5</sup> GE 4, 5.

Applicant was made aware that these debts were delinquent in January 2014, and has not provided evidence that he has resolved, paid, or disputed them.

### **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.

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>6</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.

Applicant has four delinquent debts that are unresolved. 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;

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<sup>6</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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;

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

(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.

The delinquent debts alleged are unpaid and unresolved. Applicant did not provide evidence of his current financial situation. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address the delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to an eight-month period in 2009 when he and his wife were separated. This was a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant failed to provide evidence that he has resolved any of the alleged debts or is taking action to resolve them. In his SCA, he indicated he was negotiating a settlement regarding the debt in SOR ¶ 1.a, which has been delinquent since 2010. He did not provide evidence of the action he has taken to resolve that debt. He also stated in his SOR answer that he was unaware of the debts in SOR ¶¶ 1.b, 1.c and 1.d. He was put on notice during his interview that these debts were a security concern and at the time he acknowledged owing the debt in SOR ¶ 1.c. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant provided insufficient evidence to conclude that he has received financial counseling or that there are clear indications that his financial problems are under control. AG ¶¶ 20(c) does not apply. There is insufficient evidence to conclude that he initiated a good-faith effort to pay the delinquent debts or otherwise resolve them. Applicant stated he was unaware that he owed the debts in SOR ¶¶ 1.b, 1.c, and 1.d. He did not provide evidence of actions he has taken to dispute the legitimacy of the debts or efforts to resolve them. AG ¶ 20(e) does not apply.

## **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 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 36 years old. He has been aware of the large delinquent debt in SOR ¶ 1.a since 2010. He has not provided evidence of his actions to resolve it. He was made aware of the other delinquent debts during his background interview. He acknowledged he owed the daycare debt alleged in SOR ¶ 1.c, but has not taken steps to resolve it or any of the other alleged debts. Applicant does not have a reliable financial track record. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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
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Subparagraphs 1.a-1.d:	Against Applicant
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## **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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge