



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-00041
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

05/30/2017

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On November 25, 2015, the Department of Defense (DOD) 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 (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 May 20, 2016, Applicant answered the SOR and requested a decision based on the written record. Department Counsel issued a File of Relevant Material (FORM) on July 27, 2016. Applicant received the FORM on August 2, 2016. He had 30 days from his receipt of the FORM to submit additional information in response to the FORM. Applicant did not submit matters in response to the FORM. On October 11, 2016, the FORM was forwarded to the Hearing Office and assigned to me on May 23, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## Findings of Fact

In his response to the SOR, Applicant admits SOR allegations 1.d, 1.f, 1.k, and 2.a. He denies SOR allegations 1.a – 1.c, 1.e, 1.g – 1.j.

Applicant is an employee of a DOD contractor seeking to maintain a security clearance. He has worked for his current employer since June 1997. He has held a secret security clearance since 2000. He and his wife are separated. He has three adult children. (Item 2)

On June 3, 2013, Applicant submitted a security clearance application (e-QIP) as part of a periodic background investigation related to his security clearance. In response to Section 26 – Employer Travel or Credit Card, “In the past 7 years have you been counseled, warned, or disciplined for violating the terms of agreement for a travel or credit card provided by your employer?” Applicant answered, “yes.” He explained that he charged \$2,000 on his company credit card in order to pay his rent and while disputing his mortgage foreclosure. He paid the amount owed. (Item 2, section 26)

Applicant also listed that he owed about \$4,000 in delinquent student loans in 2010. He fell behind making student loan payments while fighting the foreclosure on his home. He indicated the student loans were resolved by August 2011. He did not list any additional delinquent debts. (Item 2, Section 26).

On June 6, 2013, Applicant submitted an addendum to his e-QIP application where he explained the cause of his financial problems. Applicant’s financial problems began in November 2007, when his wife left him after 30 years of marriage, leaving him responsible for all of the debts and with supporting their three children. Two of his children were in college at the time and one was in high school. He had difficulty meeting his financial obligations because of the loss of his wife’s income contributing towards the expenses and he was not receiving child support. His credit score suffered. Applicant did everything in his power to meet his financial obligations. He sought out payday loans, which further aggravated the problem. He fell behind on paying his children’s student loans, and other bills. Before his wife left him, he was never late on any of his bills. He intends to pay what he owes. In 2010, Applicant applied for a home loan modification program for his mortgage when it was with the creditor alleged in SOR ¶ 1.g. The modification was approved, but his loan had been sold to the creditor alleged in SOR ¶ 1.h, who foreclosed on his mortgage. He hired a law firm to fight the foreclosure, but he was not successful. (Item 2)

A background investigation revealed that Applicant had ten delinquent debts; a total approximate balance of \$220,825. Of that amount, \$207,690 were debts involved in Applicant’s home mortgage foreclosure. The debts include: a home mortgage that was past due in the amount of \$162,678. (SOR ¶ 1.a: Item 3 at 3; Item 4 at 1); a mortgage account that was past due in the amount of \$16,555 (SOR ¶ 1.b: Item 4 at 1; Item 6 at 3; Item 7 at 2); a \$9,554 student loan account that was placed for collection (SOR ¶ 1.c: Item 4 at 2; Item 7 at 3); a \$1,638 account placed for collection (SOR ¶ 1.d:

Item 4 at 2; Item 6 at 1; Item 7 at 1) ; an \$851 cable television account that was placed for collection. (SOR ¶ 1.e: Item 4 at 2); a \$432 delinquent cable television account (SOR ¶ 1.f: Item 6 at 2); a mortgage that was charged off (SOR ¶ 1.g: Item 3 at 6; Item 7 at 4); a \$28,457 deficiency balance owed as a result of a mortgage foreclosure (SOR ¶ 1.h: Item 3 at 4); a \$660 cable television account that was placed for collection (SOR ¶ 1.i: Item 3 at 10); and a defaulted student loan account with an unspecified balance. (SOR ¶ 1.j: Item 3 at 10)

The SOR also alleged that Applicant was verbally warned for his misuse of his company credit card in approximately September 2012. This allegation was alleged under Guideline F and Guideline E. (SOR ¶¶ 1.k, 2.a: Gov 5 at 6)

In his response to the SOR, Applicant addressed each allegation as follows:

SOR ¶ 1.a: A home mortgage past due in the amount of \$162,678: Applicant denies this debt. He claims he never had a mortgage with the mortgagor. This account is not listed on his recent credit report. (Item 1; Item 7)

SOR ¶ 1.b: A delinquent mortgage that is past due in the amount of \$16,555 with a total balance of \$52,655: Applicant denies this debt. He claims he never had a mortgage with the mortgagor. This remains on his most recent credit report. There is no evidence that Applicant formally disputed this debt. (Item 1; Item 7 at 2)

SOR ¶ 1.c: A \$9,554 federal student loan account that was placed for collection: Applicant denied this debt because he contacted the Department of Education and confirmed that he had a zero balance. On the most recent credit report in the file, the loan has a zero balance and is noted as a paid collection. (Item 1; Item 7 at 3)

SOR ¶ 1.d: A \$1,638 account placed for collection: Applicant admits this debt. He did not provide any updates on the status of the account. He did not provide proof of any steps taken to resolve the account such as a repayment agreement, and/or receipts of payment. The debt remains listed as delinquent on the most recent credit report. (Item 1, Item 7 at 7)

SOR ¶¶ 1.e, 1.f, and 1.i: Cable television accounts placed for collection in the respective amounts of \$871, \$432, and \$660: Applicant denies SOR ¶¶ 1.e and 1.i. He claims he was not given credit for some returned equipment. He admits the \$432 debt alleged in SOR ¶ 1.f. He states this is the amount he owes after being given credit for returned equipment. He does not indicate that he took steps to resolve this debt. I find for Applicant with respect to SOR ¶¶ 1.e and 1.i because they all appear to be the same cable bill at different stages. (Item 1)

SOR ¶ 1.g: Charged-off mortgage: Applicant denies this debt. He explained on his e-QIP application that this mortgage was purchased by the mortgagor alleged in SOR ¶ 1.h. I find this allegation for Applicant. (Item 1).

SOR ¶ 1.h: A \$28,457 deficiency balance owed as a result of a mortgage foreclosure: While Applicant admits the mortgagor foreclosed on the property, he denies owing this debt. He did not provide information on any steps taken to dispute this debt. (Item 1)

SOR ¶ 1.j: A defaulted student loan with a claim filed against the guarantor: Applicant denies this debt. He claims the student loan payments are paid. The most recent credit report reflects a zero balance on this account. (Item 1; Item 7 at 3)

SOR ¶ 1.k: and ¶ 2.e: Applicant was counseled for using his company credit card for personal purchase in 2012: Applicant admits he did this. In his response to the SOR, he claims the credit card charge was used for emergency car repairs. He brought the issue to his director's attention. He repaid the credit card company immediately and was counseled that he could not charge personal expenses unless they were authorized. Applicant claims that this is the only time he used his company credit card to make personal charges. It is noted that Applicant initially said that he used his company credit card to pay a bond so that he and his children could remain living in their home while fighting foreclosure proceedings. (Item 1)

### **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 incurred several delinquent debts which were placed for collection as well a home foreclosure. 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 his 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 own 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. September 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(a) does not apply because Applicant still has several outstanding delinquent accounts. His financial problems are continuing.

AG ¶ 20(b) applies, in part, because Applicant began to have financial issues when his wife left him in 2007. She left him to care for their three children without contributing any income to the care of the children. This is a condition that was beyond his control. This mitigating condition is given less weight because I cannot conclude Applicant behaved responsibly under the circumstances. He and his wife have been

separated for more than ten years and he continues to have financial problems. He did not provide any evidence showing what steps he was taking to resolve his financial problems.

AG ¶ 20(c) does not apply because Applicant did not demonstrate that his financial situation was under control.

AG ¶ 20(d) partially applies in that it appears from the credit reports that Applicant paid the delinquent student loan accounts. However, he did not provide evidence of any actions towards paying his other delinquent accounts.

AG ¶ 20(e) has the potential to apply because Applicant disputes several debts alleged in the SOR. He did not provide documented proof to substantiate the basis of the dispute or the evidence of actions he has taken to resolve the issue, such as directly disputing the debt with the creditor, or disputing entries on his credit report. For this reason, AG ¶ 20 (e) does not apply.

Overall, Applicant did not provide sufficient evidence to mitigate the concern under financial considerations.

### **Guideline E – Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying condition applies to Applicant's case:

AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant's use of a company credit for personal purchases in 2012 indicates an unwillingness to comply with rules and regulations. While Applicant initially stated he charged \$2,000 in order to pay a bond so that he and his children could remain in the home during the foreclosure proceedings, he claimed it was for emergency car repairs

in his response to the SOR. I do not conclude Applicant was trying to mislead the government when he mischaracterized what purchase he made on his company credit card. He still acknowledged that he misused his company credit card. He was counseled by his supervisor. He immediately paid off the credit card and he has not abused his company credit card since 2012. There is no evidence indicating that Applicant misused his company credit card on more than one occasion. Applicant volunteered this information on his e-QIP application, and it is unlikely this information would have been discovered during his background investigation. For these reasons, I believe the following mitigating condition applies:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant mitigated the concerns raised under personal conduct.

### **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 20-year work history with his employer. I considered the reduced household income after his wife left him caused his financial problems. I found for Applicant for debts that the credit reports indicate as paid or where they appear to be duplicate entries. Applicant did not provide any evidence to show that he is taking steps to resolve his remaining delinquent debts. A security concern remains 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
Subparagraphs 1.a, 1.c, 1.e, 1.g, 1.i – 1.k:	For Applicant
Subparagraphs 1.b, 1.d, 1.f, 1.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For 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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ERIN C. HOGAN  
Administrative Judge