



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



In the matter of:

ISCR Case No. 15-00462

Applicant for Security Clearance

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro se*

02/16/2017

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 14, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

Applicant answered the SOR on November 8, 2015, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 2, 2016. The evidence

included in the FORM is identified as Items 3-6 (Items 1-2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on February 17, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional evidence, nor object to the Government's evidence. Items 3-6 are admitted into evidence without objection. The case was assigned to me on January 27, 2017.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 45 years old. According to his July 2012 security clearance application, he is single. In his answer to the SOR, he stated he was having a baby in November 2015. There is no further family information in the record. He has worked for a defense contractor since February 2010. He holds a bachelor's degree.<sup>1</sup>

The SOR lists four delinquent debts totaling approximately \$411,740. The debts include a delinquent mortgage account, a charged-off account for a boat loan, and two tax liens against the boat. The debts are supported by credit reports from December 2014 and July 2012, Applicant's statement to a defense investigator in August 2012, and by Applicant's SOR admissions.<sup>2</sup>

Applicant offers no explanation for his debts except for the charged-off boat loan. He stated he obtained the loan with a friend to purchase the boat. When the friend could not make his half of the payments the loan went into delinquency. Applicant and his friend agreed to a voluntary repossession of the boat. Applicant has not made any arrangements to pay the delinquent balance. During his statement to a defense investigator in August 2012, he committed to contacting the creditor identified and setting up a payment plan. No evidence was presented that he made contact with the creditor.<sup>3</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Items 2, 4-6.

<sup>3</sup> Items 2, 3, 6.

The status of the debts is as follows:

**SOR ¶ 1.a (delinquent mortgage \$385,332):**

Applicant's December 2014 credit report shows a balance owed of \$385,332 on this mortgage and a past-due amount of \$113,354. The date of last activity was November 2011. This debt is unresolved.<sup>4</sup>

**SOR ¶ 1.b (charged-off boat loan \$26,044):**

Applicant's December 2014 credit report shows a balance of \$26,044 on this loan. The date of last activity was February 2009. This debt is unresolved.<sup>5</sup>

**SOR ¶¶ 1.c and 1.d (tax liens for \$183 and \$181):**

Applicant admitted these liens were from taxes he owed on his repossessed boat. He has never contacted the taxing authority to pay or settle the debts. In August 2012, he stated to a defense investigator that he intended to set up a payment plan or pay the debts within a month. There is no evidence of payment, a payment plan, or settlement. These debts are unresolved.<sup>6</sup>

Applicant did not provide any information about his current financial status or a budget. There is no evidence that he sought financial counseling.<sup>7</sup>

### **Policies**

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 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,

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<sup>4</sup> Item 4.

<sup>5</sup> Items 4-5.

<sup>6</sup> Items 4-6.

<sup>7</sup> Items 2-6.

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, 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 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 an 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 EO 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**

AG ¶ 18 expresses the security concern for financial considerations:

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 conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following two potentially apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following four potentially apply:

- (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;
- (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 debts.

Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented no evidence that the debts were due to circumstances beyond his control. I find AG ¶ 20(b) does not apply. He showed no efforts to contact the creditors, set up payment plans, or make payments on the debts. There is no evidence of financial counseling. AG ¶ 20(c) does not apply. AG ¶ 20(d) 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 guideline 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 his contractor service. Applicant has not established a track record of financial stability.

Overall, 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
Subparagraphs 1.a – 1.d:	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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Robert E. Coacher  
Administrative Judge