



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



In the matter of:

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ISCR Case No. 15-00562

Applicant for Security Clearance

**Appearances**

For Government: Nicole Smith, Esq., Department Counsel

For Applicant: *Pro se*

09/28/2017

**Decision**

CURRY, Marc E., Administrative Judge:

Although Applicant's financial problems were largely caused by circumstances beyond his control, he failed to establish either that they are being resolved or that they are currently under control. Clearance is denied.

**Statement of the Case**

On March 8, 2016, 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 explaining why it was unable to find it clearly consistent with the interests of national security to grant or continue security clearance eligibility. 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 April 5, 2016, Applicant answered the SOR, admitting all of the allegations, and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 7, 2017. On May 25, 2017, I scheduled a hearing for June 15, 2017. The hearing was held as scheduled. I received five Government exhibits (GE 1 – 5), and four exhibits from Applicant (AE A – AE I). I also considered Applicant's testimony, and admitted a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). The transcript was received on June 27, 2017.

On December 10, 2016, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.<sup>1</sup>

### **Findings of Fact**

Applicant is a 52-year-old single man. A prior marriage ended in divorce in 2006. He has two adult children from his marriage and one child from a relationship after the divorce. He earned a bachelor's degree in 1993 and a master's degree in business administration in 1995. For several years, he pursued a Ph.D while working in various college teaching positions, and working as a financial planner. (GE 1 at 13) Since May 2013, he has worked as a consultant for a defense contractor (Tr. 52)

Applicant owes four creditors approximately \$38,000 of delinquent debt, as alleged in the SOR. Subparagraph 1.a, totaling \$2,441, are attorney fees stemming from divorce proceeding in the mid-2000s. Subparagraphs 1.b and 1.c, totaling approximately \$27,000, are student loans, and subparagraph 1.d, totaling approximately \$8,200, is a delinquent medical bill.

Applicant attributes much of his financial problems to his spendthrift ex-wife. During their marriage, she repeatedly incurred debts without his knowledge, and she refused to obtain gainful, steady employment. These problems manifested themselves within the first ten years of their marriage in the mid-1990s. In approximately 1995, Applicant told his wife that he was going to file for divorce if she did not obtain a job and stop overspending. She told him that her job prospects with an undergraduate degree were poor in the area where they were living, and that she needed to return to school for a master's degree to improve them. By this time, Applicant had completed his master's degree, and was contemplating pursuing a Ph.D (AE A at 3). Consequently, Applicant and his then wife researched several areas where they could both attend school, eventually narrowing it down to two places. After Applicant obtained a full scholarship to attend a university in one of the agreed-upon areas, his wife refused to relocate, stating that she had applied and been accepted to a school in the other area that they discussed.

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

In an effort to accommodate his wife, Applicant applied for, and was accepted into a Ph.D program located in the area near the university where she told him she had been accepted into a master's degree program. When they relocated, Applicant discovered that his then wife had lied to him about being accepted into a master's degree program. (AE A at 3) This was devastating both to their marriage and Applicant's finances, as he had foregone a fully-financed education in one state to attend a program in another state that he had to finance by himself. (AE A at 3; Tr. 33)

In the mid-2000s, Applicant filed for a divorce. The process was "long, expensive, and acrimonious." (AE A at 3) The divorce court ordered him to pay half of the debts that his wife had incurred. (Tr. 30) This prompted Applicant to gradually lose control of his finances. In 2006, he filed for Chapter 13 bankruptcy protection. (Tr. 38) The amount of the debt included in the bankruptcy is unknown from the record.

Applicant's financial problems were aggravated in approximately January 2011 when he was laid off from his job. (GE 2 at 4) He was subsequently either unemployed or underemployed for the next 18 months. He incurred the debt to his attorney, as alleged in subparagraph 1.a, during this period. (Tr. 21)

Applicant has been struggling with paying his student loan debts since 2006. He has placed them in deferral multiple times. (Tr. 23) He thought the student loans were included in his Chapter 13 bankruptcy filing, and that the trustee was applying a portion of his monthly bankruptcy payment to the student loans. (Tr. 39-40) He discovered that the student loan debts had not been included in the Chapter 13 shortly after he had completed the Chapter 13 payment plan, and he learned how much interest that had accrued when he began the loan consolidation process in April 2014. During an interview with an investigative agent that month, Applicant promised to make payments on them by August 2014. (GE 2 at 10; Tr. 44) He made some payments for a few months, then stopped, deferring the loans again. He owes significantly more than the total alleged in the SOR. (Tr. 23)

When Applicant obtained his current job, he contacted his creditors to make payment arrangements. (Tr. 42) In February 2017, he satisfied his car loan. (AE D) He has consolidated his student loans and plans to begin making payments totaling \$1,000 monthly in October 2017 under the terms of a ten-year payment plan. (AE A at 5-6) He provided no documentary evidence of the payment plan.

Applicant has not yet started satisfying the medical debt alleged in subparagraph 1.d. (Tr. 45) When he first started his current job, he earned \$80,000 annually. (Tr. 42) Since then, his annual salary has increased to \$107,000. (Tr. 42)

### **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. According to AG ¶ 2(a), 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.

## **Analysis**

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

Under this guideline, "failure 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 or sensitive information." (AG ¶ 18) Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

AG ¶ 20(a) 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial trouble did not occur because of extravagant or foolish spending. Instead, it began during his marriage to a spendthrift spouse, was compounded by his subsequent divorce expenses, and was perpetuated by an 18-month unemployment period between 2011 and 2013. Applicant has not begun making payments toward the satisfaction of his delinquent attorney fees, as alleged in subparagraph 1.a, or his delinquent medical bill, as alleged in subparagraph 1.d. Although he testified that he has a plan to pay his delinquent student loans through a debt reduction plan, he had not begun making payments, as of the date of the hearing. Also, he had developed a plan approximately three years ago, but was unable to execute it. Under these circumstances, AG ¶ 20(b) is partially applicable with respect to the circumstances of Applicant's indebtedness being beyond his control, but none of the other mitigating conditions is applicable. Applicant has not mitigated the financial considerations security concerns.

### **Whole-Person Concept**

In assessing the whole person, 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(d).<sup>2</sup> The circumstances surrounding the incurrence of the debt is somewhat mitigating. However, these factors are not sufficient to overcome the security concern given the extremity of the delinquent debt, the age of the debts, and the fact that none of the debt has yet to be resolved. Under these circumstances, Applicant has not carried 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

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

Subparagraphs 1.a – 1.d:

Against Applicant

**Conclusion**

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge