



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-01011  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine Esq., Department Counsel  
For Applicant: *Pro se*

08/18/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On August 1, 2015 and June 16, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on January 25, 2016, and June 21, 2016, and requested a hearing before an administrative judge. The case was assigned to me on May 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 2, 2016. I convened the hearing as scheduled on June 21, 2016. The

Government offered exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified and offered Applicant Exhibit (AE) A, which was admitted into evidence without objection. The record was held open to allow Applicant to submit additional documents, which he did, and they were marked AE B and C. There was no objection, and the documents were admitted into evidence. On August 2, 2016, I extended the period to submit additional documents until August 12, 2016. Applicant submitted AE D through H, and the record closed.<sup>1</sup> DOHA received the hearing transcript (Tr.) on June 29, 2016.

### **Procedural Issues**

Department counsel moved to withdraw SOR ¶ 1.g. The request was granted.

### **Findings of Fact**

Applicant admitted the allegation SOR ¶ 1.a and denied the remaining allegations with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He graduated from high school, served in the military from 1990 to 1996, and was honorably discharged. He married in 1995 and divorced in 2011. He has two children from the marriage ages 18 and 14, who reside with him. He does not receive child support. He remarried in 2012 and divorced in January 2016. He has worked for his present employer since 2005.<sup>2</sup>

Applicant attributed his financial problems to his two divorces. His first wife and he owned a home. He was current with his mortgage payments and was attempting to remove his wife's name from the loan when they divorced. He attempted to refinance the loan, but the mortgage lender advised him he would not be able to refinance or obtain a loan modification unless he was behind in his mortgage payments. He was advised to not pay his mortgage for a couple of months, which would force a short sale of the house. He followed this advice and eventually was able to resolve the home mortgage through a short sale in April 2015.<sup>3</sup>

The debt in SOR ¶ 1.f (\$9,553) was for a credit card that belonged to Applicant's first wife, and he was an authorized user. He testified that in 2011, he negotiated a settlement and paid \$5,000. In Applicant's post-hearing submission, he provided a copy of a June 2016 credit report that lists Applicant as an "authorized user" on the account. He also provided a letter from the creditor indicating he is removed from an account with

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<sup>1</sup> Hearing Exhibit I is a copy of Department Counsel's discovery letter sent to Applicant. HE II is Department Counsel's memorandum indicating she did not object to Applicant's post-hearing submissions.

<sup>2</sup> Tr. 24-26.

<sup>3</sup> Tr. 27-32.

this creditor, but the account number is different than the one alleged. The debt is resolved.<sup>4</sup>

Applicant experienced tax problems in 2009 after he withdrew money from his retirement account to pay bills and pay off the loan on his truck. He gave the truck to his first wife. He indicated that the penalty incurred for the withdrawal was offset by the tax refund he was entitled to receive. He further indicated that he and his wife made the mistake of both claiming their children as their dependents on their separate tax returns. They did not learn of the problem until 2011. Applicant had custody of the children. In 2012, he hired an accounting firm to help him resolve his tax issues. He disclosed his tax issues on his SCA and later to a government investigator. Applicant testified that the taxes owed have been paid and the issue is resolved. He indicated he contacted the Internal Revenue Service and was advised he did not owe any delinquent taxes and has a zero balance. After his hearing, Applicant provided a statement that he reconfirmed with the IRS that he does not have a tax debt, but he was unable at that time to provide a statement indicating such. None of the credit reports list a tax lien.<sup>5</sup>

Applicant and his second wife separated in August 2014, and he continued to pay \$2,100 a month for her rent for the home she lived in until she moved in February 2015. He was paying his own monthly rent of \$1,600 for an apartment at the same time. He had difficulty maintaining two households. Applicant and his second wife entered into a mediated settlement agreement in August 2015. It was agreed that Applicant would pay his wife's residential rent of \$1,479 a month through July 2016.<sup>6</sup> He provided his wife extra money in October 2015. His wife received their joint tax refund of \$13,000 in 2014 and \$12,000 in 2015. Applicant indicated once the spousal support obligation concluded he anticipated being more financially stable.<sup>7</sup>

Applicant testified that the debt in SOR ¶ 1.a (\$4,558) was for equipment he failed to return to a communications company. Applicant settled the debt in July 2016 and it is resolved.<sup>8</sup>

The debts in SOR ¶¶ 1.b, 1.c, and 1.e are for medical services. Applicant indicated that after he and his second wife separated he was required to maintain

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<sup>4</sup> Tr. 31-33, 55-59, AE C, E. Applicant's mediated settlement agreement in AE A indicates that there are no joint credit cards and each party is responsible for their own credit card debts without contribution from the other party.

<sup>5</sup> Tr. 67-77; GE 1, 2, 3, 4; AE C, H.

<sup>6</sup> Tr. 37-39, 59-63; AE A.

<sup>7</sup> Tr. 27, 33, 37; AE D.

<sup>8</sup> Tr. 35-36, 45-49.

medical insurance on her children for a period. These medical bills were for her children. He paid the bills in July 2016 and provided documented proof.<sup>9</sup>

Applicant testified that the debt in SOR ¶ 1.d (\$450) was a cable bill that was for services in the house where his second wife lived. He paid the debt in September 2015. Applicant testified that the debt in SOR ¶ 1.h (\$233) is paid. It is no longer listed on his most current credit report. He indicated that the creditor advised him it does not have an open account in his name and would not provide him a letter. The debt is resolved.<sup>10</sup>

Applicant continues to provide support to his 18-year-old daughter who lives at home and attends college. Applicant does not have other delinquent accounts. He is able to meet his monthly expenses and was able to resolve his delinquent debts once he no longer had any financial obligations to his ex-wives.<sup>11</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, 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 not drawn 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

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<sup>9</sup> Tr. 36-37, 49-54; AE F.

<sup>10</sup> T. 39-44, 54-55; AE C, H.

<sup>11</sup> Tr. 34, 82.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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>12</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

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<sup>12</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(c) a history of not meeting financial obligations.

Applicant had debts that were unpaid or unresolved for several years. The above disqualifying conditions apply.

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;

(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.

Applicant's financial problems were attributed to his divorces and spousal support he was required to pay. His spousal support obligation recently terminated, and he has addressed his delinquent debts. I found his testimony credible that he has worked with an accounting firm to resolve his tax issues and that he contacted the IRS and was advised he has a zero tax balance. I find there is sufficient evidence to conclude that his conduct is unlikely to recur, happened under unique circumstances and it does not cast doubts on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) apply.

For the application of AG ¶ 20(b), there must be conditions that were beyond Applicant's control that resulted in the financial hardship. Applicant provided sufficient evidence to conclude his divorces and his spousal support obligation negatively impacted his finances and was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant provided evidence that he acted

responsibly by complying with his spousal support obligation and when he was financially able, resolving his delinquent debts. AG 20(b) applies.

There is evidence Applicant has resolved his delinquent debt and that he is not responsible for one of them. Applicant began working with an accountant in 2012 to resolve his tax issues. He did not ignore his responsibility, but due to his divorce he was attempting to have the taxes filed correctly. Under the circumstances, I find there are clear indications his financial problems are being resolved. AG ¶ 20(c) applies. I find Applicant has made a good-faith effort to resolve his delinquent debts. AG ¶ 20(d) applies to those debts he has paid. Although Applicant did not provide documentary proof about the resolution of his tax debt, he disclosed on his SCA that he had some issues with his taxes due to his divorce and later disclosed to a government investigator that he was working with an accounting firm to resolve the tax issues. He believed his tax debts were resolved. He has been in contact with the IRS and was advised that he does not have an outstanding balance.

Applicant disputed that he was responsible for the credit card debt in SOR ¶ 1.f and provided a letter from the creditor acknowledging he was an authorized user and confirming he was not responsible for the debt. AG ¶ 20(e) applies.

### **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 relevant 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 48 years old. He has had custody of his children and did not receive child support. He has complied with a spousal support order that negatively impacted his finances. Since the termination of his spousal support obligation he has resolved his delinquent debts. Applicant has met his burden of persuasion, and I find the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h-1.i:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge