



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



In the matter of: )  
)  
) ISCR Case No. 15-01790  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

12/15/2016  
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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 December 13, 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 January 22, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) and it was mailed to Applicant. It was received on March 18, 2016. Applicant was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government's evidence, which is identified as Items 2 through 9. Applicant provided documents that are marked as Applicant Exhibits (AE) A through K.<sup>1</sup> The Government and Applicant's documents are admitted into evidence without objection. The case was assigned to me on October 6, 2016.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR except ¶¶ 1.c, 1.k, 1.n, 1.o, 1.p, and 1.q, to which he stated: "I neither admit or deny."<sup>2</sup> I will consider his response to these allegations as denials. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He served in the military from 1991 to 1997, and received an honorable discharge. He married in 1993 and divorced in 1997. He remarried in 2000 and has a 15-year-old child. He worked for a federal contractor between 2002 and 2013, and for his present employer since 2013.<sup>3</sup>

In his May 2014 security clearance application (SCA), Applicant disclosed he had delinquent debts and had filed Chapter 13 bankruptcy in 2012. The SOR debts alleged are supported by his admissions, credit reports from May 20, 2014, December 2014, and September 2015, IRS transcripts, and court documents.<sup>4</sup>

In August 2014, as part of a background investigation, Applicant was interviewed by a government investigator. Applicant admitted to the investigator that for the past five years he had been financially irresponsible. He disclosed that his financial problems were due to excessive gambling by his wife and poor money management. He explained that during this time his wife had been gambling compulsively and excessively. She gambled on a daily basis. In his response to the FORM, he disputed that he told the investigator that she gambled \$2,000 daily, but admitted that the amount she gambled was enough to make them fall behind on their mortgage and other bills. Applicant told the investigator that he also gambled between \$20 and \$40 a week. He and his wife began to borrow money to support her gambling habit. Their debts eventually outweighed their combined income of approximately \$150,000 annually. He admitted that along with his wife's gambling habit, both he and his wife were poor money managers.<sup>5</sup>

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<sup>1</sup> AE J is a copy of the SOR and Applicant's answer to the SOR. AE K is a duplicate letter that was provided with Applicant's answer to the SOR.

<sup>2</sup> Item 2.

<sup>3</sup> Item 3.

<sup>4</sup> Items 2, 3, 4, 5, 6, 7, 8, and 9.

<sup>5</sup> Items 2, 4.

After filing bankruptcy, Applicant had a tentative payment plan, and he made approximately 13 payments of \$1,000. Later the payments increased to approximately \$1,757, and he could not afford to pay that amount. He stopped making payments and the bankruptcy was dismissed in late 2013. Applicant told the investigator that in November 2013, he received a refund of approximately \$10,000 from the Chapter 13 bankruptcy fund. He did not use this refund to pay his delinquent creditors. He could not account for where the money was spent, but felt some of it likely was used by his wife to gamble. He does not know where the rest of the money was spent.<sup>6</sup>

In his SCA, Applicant stated: "I had some deaths in the family about 6 years ago. I did a lot of traveling with money I didn't have and slowly went into debt I could not get out of. I switched my W-4 from zero dependents to 9 dependents to bring home more money and then was not able to pay the IRS at the end of the year."<sup>7</sup> His father died in December 2007, and he traveled extensively to take care of his mother and sister.<sup>8</sup> Applicant told the government investigator that he intentionally changed the number of dependents so he would have more money available for his wife to gamble. He then did not have the funds to pay Federal income taxes owed to the IRS for tax years 2010, 2011, and 2012. He denied he was attempting to defraud the government. He was aware his conduct could adversely affect his security clearance. Applicant owes the IRS approximately \$35,269 for delinquent income taxes. In October 2014, Applicant began a payment plan with the IRS. He has consistently paid \$514 a month.<sup>9</sup>

Applicant was unable to pay his mortgage in about November 2012. At the time of the interview in August 2014, he continued to live in the residence and had not made the monthly payment. He did not consider this to be dishonest. He did not plan on moving until he was evicted. He could not account for how or where the unpaid mortgage money was spent. The house was sold in June 2015 through a short sale. Applicant acknowledged he still owes the second mortgage (SOR 1. d - \$58,715). In his answer to the SOR and response to the FORM, he stated he was making payments on this debt, but he failed to provide documented proof of his payments.<sup>10</sup>

In his 2014 interview, Applicant told the investigator that his wife had recently reduced her gambling spending to \$100 or \$200 a week, and he planned on opening separate bank accounts. In his answer to the SOR, he stated that his wife had a bad gambling habit, but it was in the past. He further stated: "I have gone to meetings with her and she hasn't had a problem in a long while."<sup>11</sup> He did not provide additional

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<sup>6</sup> Items 2, 4; AE A.

<sup>7</sup> Item 3.

<sup>8</sup> AE A.

<sup>9</sup> Items 6, 7, 8, 9; AE B.

<sup>10</sup> Items 2, 4.

<sup>11</sup> Item 2.

information about her recovery or whether he continued to gamble. In his response to the FORM, Applicant stated: "My wife was in charge of paying the bills and with me working and traveling all of the time, I had no idea that we were falling behind."<sup>12</sup>

Applicant provided proof that he settled the debt in SOR ¶ 1.c (\$215).<sup>13</sup> He provided a letter from the creditor for the debt in SOR ¶ 1.h (\$65) that he made a payment to resolve this debt.<sup>14</sup> The debt in SOR ¶ 1.i (\$130) was settled in full and proof was provided.<sup>15</sup> He settled the debt in SOR ¶ 1.o (\$1,647) and provided proof. All of these debts were resolved in January 2016. He is making payments of \$365 on the debt in SOR ¶ 1.e (\$7,962) and provided proof that he has been making payments since January 2016.<sup>16</sup>

In his answer to the SOR, Applicant stated that he contacted the creditors for the debts in SOR ¶¶ 1.f (\$580), 1.g (\$368), 1.k (\$313), 1.l (\$896), 1.m (\$1,012), and 1.n (\$273), and 1.r (\$3,904). He stated he was told that each one was "settled." Applicant did not provide proof that he paid these debts or paid a settlement amount. He stated that he was making payments on the debt in SOR ¶ 1.j (original balance \$160) and the balance had increased to \$1,203. He had two payments remaining, but he failed to provide proof of his payments. He stated he was investigating the validity of medical debts in SOR ¶¶ 1.p (\$413) and 1.q (\$115). He did not provide proof of actions to resolve the debts.<sup>17</sup> These debts are not resolved.

## **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,

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<sup>12</sup> Item 4; AE A.

<sup>13</sup> AE F.

<sup>14</sup> AE H.

<sup>15</sup> AE G.

<sup>16</sup> AE C.

<sup>17</sup> Item 2, AE I.

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.

## **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 handing and safeguarding classified information.<sup>18</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (i) compulsive or addictive gambling as indicated by . . . borrowing money to fund gambling or pay gambling debts . . . .

Applicant has numerous delinquent debts and unpaid Federal income taxes. He and his wife borrowed money to support her gambling habit. He changed his Federal income tax withholdings to pay for travel and gambling. 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;
- (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.

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<sup>18</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant's debts are recent and multiple. He intentionally changed his Federal income tax withholdings so he could use the additional money to fund his wife's gambling. He began borrowing money to fund his wife's gambling habit. In his response to the FORM, he claimed his wife was responsible for paying the bills, and he had no idea they were falling behind in paying them. His statements are not credible. Insufficient evidence was provided to conclude Applicant's behavior is unlikely to recur. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his wife's gambling habit and that they were poor money managers. He spent money he did not have for travel when his father was ill. Applicant was aware of his wife's gambling habit and borrowed money for her to use it to gamble. He also was gambling during this time, but there is no indication his gambling was excessive. He was aware at the time that they were spending money they did not have. These were conditions that were within his control. It is understandable that he felt compelled to travel to take care of his mother and sister after his father passed away. This was somewhat beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. There is insufficient evidence to conclude he did so, in fact the evidence indicates the contrary. He was aware of his wife's problem and exacerbated it by borrowing money for her to gamble. After receiving a \$10,000 refund from the bankruptcy fund in late 2013, he does not know how he spent the money, but it was not to pay his creditors. He did not begin to pay the IRS until after he completed his SCA in May 2014. The other debts he paid did not occur until 2016. Applicant has not acted responsibly. AG ¶ 20(b) applies minimally.

No evidence was presented that Applicant has received financial counseling. He did not provide a budget or a reliable financial plan for resolving his delinquent debts. Although he stated he was told by certain creditors that his debts were settled, he failed to provide proof that he had paid the debts. AG ¶ 20(c) does not apply.

Applicant has a payment plan with the IRS that began in October 2014, and he has been making consistent payments. AG ¶ 20(d) applies to SOR ¶ 1.a. He paid some of the smaller debts in the SOR, but it did not occur until after he received the SOR and two years after he became aware of the security concerns raised by finances. I have given Applicant some credit for resolving these debts, but his conduct marginally falls within the concept of a good-faith effort to repay his overdue creditors under AG ¶ 20(d). He failed to explain, provide proof of payment, or provide substantiating information regarding debts he was told were "settled." AG ¶ 20(d) does not apply to them.

Applicant indicated he was going to research the validity of the medical debts in SOR ¶¶ 1.p and 1.q. He failed to provide information about his efforts to resolve the debts. 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 46 years old and a military veteran. He has worked for federal contractors since 2002. He was aware that his wife had a gambling problem. They borrowed money so she could gamble. He reduced his Federal income tax withholdings so he would have more money for her gambling. He stopped paying his mortgage and continued to live in the house, but could not account for where the extra money was going. He filed bankruptcy and after it was dismissed and funds were returned, he did not use them to pay his delinquent debts. He has a payment plan with the IRS and recently paid some small delinquent debts. He failed to provide sufficient evidence that he paid other delinquent debts. Applicant's modest effort in paying some of his creditors is overwhelmingly outweighed by his lack of self-control, poor judgment, and unwillingness to abide by rules and regulations. He has not established a reliable financial track record. Applicant 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.r:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge