



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-02225

**Appearances**

For Government: David Hayes, Esquire  
For Applicant: *Pro se*

03/24/2017

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On November 4, 2016, the Department of Defense (DOD) issued 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; 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 DOD on September 1, 2006.

In a response notarized on December 14, 2016, Applicant admitted most of the allegations raised under Guideline F and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 12, 2016. The matter was scheduled on April 29, 2016, for a June 10, 2016, hearing. The hearing was convened as scheduled.

The Government offered four documents, which were accepted without objection as exhibits (Exs.) 1-4. Applicant offered testimony, introduced one witness, and offered five documents, which were accepted into the record without objection as Exs. A-E. His

amended response to the SOR was Ex. C. Both parties agreed that the debts noted in SOR allegations 1.o and 1.q are duplicative, as are the accounts noted at 1.c and 1.i. (Transcript at 10, 15-16). The record was held open through July 7, 2016, in the event the parties wished to submit additional material. The transcript (Tr.) was received on June 21, 2016. On July 6, 2016, two documents from Applicant were received without objection. They were accepted into the record as Exs. F-G, and the record was closed. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

### **Findings of Fact**

Applicant is a 57-year-old senior program manager with a defense contractor. He began work within the defense contracting industry after an honorable discharge from the United States Army, where he served for 20 years. He maintained a security clearance throughout that time. Applicant has earned a high school diploma and a bachelor of science degree, and he has completed some other college-level coursework. Married with three grown children, he is presently helping support one child who is back in school. (Tr. 23)

In 1986, Applicant filed for Chapter 7 Bankruptcy protection on the advice of counsel. (Tr. 36) At the time, he was a young soldier having difficulty making payments on a leased vehicle he could not take with him overseas. Related debts of about \$10,000 were discharged in 1986. He filed for Chapter 13 Bankruptcy in 1999, with his debts discharged in 2003. This filing was made after Applicant's wife lost her job and their legal counsel told him "to file the Chapter 13 because it was better that [he] consolidated bills and paid them off rather than doing a full Chapter 7." (Tr. 37)

In November 2013, Applicant's son and his youngest daughter were hit by an 18-wheel big rig truck while outside their own vehicle. His daughter received the brunt of the injuries, receiving life-threatening and complex injuries that necessitated numerous surgical procedures. Each surgical repair seemed to reveal more problems and internal injuries. Over a year passed before she was again ambulatory. Fortunately, she had medical insurance coverage through Applicant's plan. Her bills amounted to about a million dollars. The co-pays and her medications bills were sufficiently significant to adversely impact Applicant's ability to meet his other obligations. (Tr. 27)

In 2014, Applicant began having his own medical issues. In May or June of that year, he experienced a bout of vertigo. Related problems recurred and worsened until he fell and broke his neck. It was then discovered he had a tumor in his cerebellum that was causing his imbalance. His first surgery addressed his neck and required a month of recuperation. A second procedure addressed the tumor, leading to about six months of homecare and relearning to walk. (Tr. 33-34) While employed, he only received about 60% or 70% of his usual income through short-term disability payments, then about 60% of his salary when he transitioned to long-term disability. (Tr. 34) He returned to work in June 2015 after several weeks of additional treatment. (Tr. 34)

Since then, Applicant has been trying to catch up on his bills and obligations. As of March 2016, he is generating income equal to “what a senior program manager should be paid.” (Tr. 34-35) He has additional monthly income of about \$1,400 from the United States military for being 70% disabled. Additional compensation may be forthcoming in the future. (Tr. 35).

At issue in the SOR are 21 delinquent debts, two of which are duplicative of two other debts set forth in the SOR. Allegations 1.a and 1.b concern Applicant’s 1986 and 2003 bankruptcy discharges. Applicant has tasked his wife to oversee much of the attention paid to these accounts. The rest of the SOR-alleged debts are:

1.c/1.i – Adverse judgment (\$1,140/\$10,765) – Residential debt. Satisfied. This debt was incurred because Applicant gave the rental complex insufficient notice before moving. (Tr. 38) Applicant has discussed the matter with new management and the issue has been resolved. (Tr. 39; Ex. E)

1.d – Adverse judgment (\$1,335) - *Unsatisfied* - This judgment is for a home association balance related to a short sale. (Tr. 39) Applicant called the entity about five years ago. The debt was created by a gap in payments due to the protracted sale process. The entity was to mail him specifics on the matter, but nothing has arrived. He called again recently and was told it no longer had a record of the 2007 adverse judgment. Applicant is unsure as to how to proceed. (Tr. 40-41)

1.e – Collection account (\$143) – Satisfied – Applicant had no knowledge of the origin of this debt and successfully had it removed from his credit report after formal dispute. (Tr. 41)

1.f – Collection account (\$511) – *Unsatisfied* – Applicant contacted this creditor and it will settle the matter for a lesser amount if paid in a certain amount of time. (Tr. 41-42) He hopes to pay \$350 to settle the matter in a few months. (Ex. F)

1.g – Charged-off account (unknown balance) – Satisfied – Applicant showed that this account was paid off in or before June 2016. (Ex. G)

1.h – Collection account (\$359) – Satisfied – Applicant wrote that his wife contacted this creditor concerning an account opened in 2011, and was told it had no record of this debt. (Ex. F) No documentary evidence was offered to support this assertion, although it was noted that it was deleted after Applicant disputed the entry on-line. (Tr. 46-50) Inasmuch as the account was created in 2011, it is highly unlikely it was removed as being dated, but rather for lack of verification.

1.j – Collection account (\$551) – *Unsatisfied* – Applicant wrote his intention to pay this debt within a few months of the hearing. (Ex. F)

1.k-1.m – Medical accounts (\$99, \$99, \$28) – *Unsatisfied* – After the hearing, Applicant wrote that 1.k “shows paid on credit report provided by the Government.” No

such documentary evidence was specifically cited during the hearing. (Tr. 51-52) I see no clear and direct indication that it was paid in Exs. 2-4. He also wrote regarding 1.l and 1.m, “the same item identified as [xyz] medical bill . . . they stated that I showed a zero balance and they would send out a letter but I haven’t received the letter [yet].”

1.n – Utility collection (\$826) – *Unsatisfied*. Although Applicant successfully had this deleted from his credit report through the dispute process, he wrote his intention to pay this debt within a few months of the hearing. (Tr. 53-54; Ex. F) No evidence of payment was forthcoming.

1.o/1.q – Collection accounts (\$1,694/\$1,297) - *Unsatisfied*. These accounts are duplicative. At the hearing, Applicant stated he had not yet contacted this creditor, but hoped to make a payment in the following month. (Tr. 55-56) He has since initiated contact and is negotiating a settlement amount. He wrote his intention to pay this debt within a few months of the hearing. (Ex. F)

1.p – Medical account (\$1,335) – *Satisfied*. Evidence was presented showing this account was paid. (see, e.g., Tr. 57)

1.r – Collection account (\$539) - *Unsatisfied*. Applicant was extended a settlement offer if debt was paid by a certain date (Tr. 57-58) There is no evidence it has yet been paid.

1.s/1.t/1.u –Medical accounts (\$536, \$432, \$90) - *Unsatisfied*. Applicant earlier expressed his feeling that these balances were in some way duplicative. (Tr. 58) After investigation, he has found no proof to support his belief. They remain unpaid.

Applicant provided personal financial statements which remain current, although they do not reflect his additional disability income (\$1,400), as previously discussed, or insurance premiums. (Tr. 59, 61) The additional disability income will make Applicant’s net monthly remainder approximately \$5,000. (Tr. 60) Despite this remainder, Applicant still believes money for addressing his remaining delinquent debts will be tight due to a need to catch up on his rent and some medical bills. (Tr. 60) After the hearing, he noted that he currently has about \$3,600 budgeted to pay toward these debts in the coming months. (Ex. F) It is unclear whether a recent pay rise will increase his availability of funds. (Tr. 62) His plan going forward is to pay off the smaller debts first and to work with the creditors toward repayment plans.

## **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 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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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).

## **Analysis**

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence indicating that Applicant has multiple delinquent debts. Applicant admits responsibility for the majority of the debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

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.

The acquisition of the majority of Applicant's delinquent debts is, at least in part, attributable to his daughter's surgical and other medically-related expenses, similar expenses related to Applicant's own medical issues, and his subsequent periods of reduced income during recuperation. Although lacking documentary evidence of contemporaneous attempts to manage his accounts as they became delinquent, his wife seems to have taken an active role in helping him deal with them as they became an issue. Therefore, I find AG ¶ 20(b) applies.

Applicant has paid or otherwise satisfied five of the debts at issue. This includes the most significant debt at issue (1.i), which by itself potentially represented nearly \$11,000 in delinquent debt. The remaining 11 delinquent debts represent a sum of about \$4,500 plus either approximately \$1,300 or \$1,700 for the debt cited for the duplicate entries at 1.o/1.q. Consequently, only about \$6,000 remains at issue. This is a significant improvement from the original sum at issue which, because the balance on one account was unknown and the duplicated account balances varied, could have amounted to around \$13,000 or more.

Applicant's plan has been to pay off the lower balances first while trying to settle the larger sums. While there is no documentary evidence showing Applicant has received financial counseling, there is documentary evidence showing significant

progress. Therefore, AG ¶ 20(c)-(d) apply. However, AG ¶ 20(e) does not apply because Applicant failed to provide documentation supporting his dispute of any of the accounts at issue or his efforts to resolve such accounts.

### **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). 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 incorporated my comments under the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 57 years old and has worked as a senior program manager for the same employer for over three years. He honorably served in the United States military for 20 years. He first obtained a security clearance while in the military. Applicant has a college degree and has completed some other related courses. He and his wife have three grown children, one of whom lives with them as she attends college.

In late 2013, Applicant's eldest child was seriously injured in an accident. Extensive surgeries were required to repair her many injuries. Although she had medical insurance coverage through her father, Applicant paid out a significant sum of money to cover her many bills. Soon thereafter, in 2014, Applicant incurred multiple medical bills before it was discovered he had a brain tumor. Surgery and aftercare were expensive and his income was reduced through temporary, then permanent, disability payments that were only 60%-70% of his usual salary. He returned to work at full salary within the past year. He has a net monthly income of about \$5,000 with the possible expectation of more disability income. While he stated money is presently tight, that is because he faces the short term responsibility of catching up on some accounts, such as rent. That should soon be resolved, putting him back into solid footing with improved health. Meanwhile, he has addressed one debt that, alone, potentially represented over half of the debt at issue. Now poised to making further progress on his delinquent debt, Applicant is resolved to do so.

This process expects that an applicant employ a reasonable strategy or plan to address one's delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented. Applicant's plan to pay or settle smaller debts while working to repay or settle the larger balances has succeeded with measured, documented success. With his daughter returned to college, Applicant's health restored,

and his return to full salary payments, Applicant is clearly headed on the right track. I find that Applicant mitigated financial considerations security concerns.

### **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
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Subparagraphs 1.a-1.u:	For Applicant
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### **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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Arthur E. Marshall, Jr.  
Administrative Judge