



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



In the matter of:

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) ISCR Case No. 15-02323  
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Applicant for Security Clearance

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

09/26/2016  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant's debts were discharged in a 2005 Chapter 7 bankruptcy, but he incurred more delinquent debt over the next decade despite continuous employment. He also failed to file his Federal and state income tax returns for 2011, 2012, and 2013. He demonstrated neither sufficient explanation for these issues, nor the ability to avoid recurring financial problems. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on July 24, 2014.<sup>1</sup> On October 30, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security

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<sup>1</sup>Item 2.

concerns under Guideline F (Financial Considerations).<sup>2</sup> 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on November 25, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on February 1, 2016. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was received by Applicant on February 11, 2016, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted additional material in response to the FORM on February 29, 2016, but did not object to consideration of any Item contained therein. Department Counsel had no objection to consideration of the information Applicant provided in response to the FORM, which is admitted as exhibit (AE) A. Items 1, 2, and 4 through 6 in the FORM are also admitted into evidence. I received the case assignment on May 12, 2016.

### **Findings of Fact**

Applicant is 53 years old. He has worked full time for a defense contractor as a consultant and production manager since 2009, and was previously employed by the same company from 1988 to 1998. He worked as a city firefighter/paramedic from 1998 to 2009, and reported no periods of unemployment on his SF-86. While working as a firefighter, he also performed part-time contract consulting work for the defense contractor. He never served in the military. He held a security clearance during his previous employment with the defense contractor. He recently married for the third time and has a baby daughter. He also has two adult stepchildren from his second marriage.<sup>5</sup>

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<sup>2</sup>Item 1.

<sup>3</sup>Item 1.

<sup>4</sup>Department Counsel submitted six Items in support of the SOR allegations. Item 3 is the summary of an interview from the OPM Report of Investigation. It was neither attested to nor adopted by Applicant, and no witness authenticated the document. Accordingly, it is inadmissible per Directive ¶ E3.1.20 and will not be considered in determining Applicant's eligibility for a security clearance. There is no information contained in Item 3, which is not repeated in AE A, that would reasonably support mitigation of the financial issues alleged in the SOR. The relevant adverse information in Item 3 is cumulative with the information contained in Items 1, 2, and 4 through 6.

<sup>5</sup>Item 2; AE A.

In his response to the SOR, Applicant admitted all of the SOR allegations with explanations. His admissions are incorporated in the following findings.<sup>6</sup> The allegations in SOR ¶¶ 1.a through 1.s are also supported by record credit reports dated August 20, 2014; and February 26, 2015.<sup>7</sup>

Applicant's first marriage lasted two and a half years, ending in divorce in November 1992. He married his second wife in March 1998, when her two children were 12 and 6 years old. Shortly after their marriage, his second wife relapsed into regular drug abuse, a problem of which he says he was previously unaware. He said that he "stuck to" this marriage until the children were old enough to survive on their own, despite his wife's multiple periods of incarceration and rehabilitation for drug addiction, because of his desire not to see them suffer, be homeless, or be placed in foster care. This marriage ended in divorce in 2013, at which time the stepchildren were 27 and 22 years old. Applicant attributes his financial problems to his second wife's diversion and theft of the family's funds, and her misuse of his credit, to support her drug addiction during their 15-year marriage.<sup>8</sup>

SOR ¶ 1.a: Applicant filed a Chapter 7 bankruptcy petition in March 2005 due to excessive indebtedness despite his regular employment. He claims that his second wife's drug addiction, theft of family funds, use of credit cards, and "forging cash advances" caused him to file this bankruptcy. His debts were discharged in August 2005 through this proceeding.<sup>9</sup>

SOR ¶¶ 1 b through 1.d: Applicant failed to file his Federal and state income tax returns for tax years 2011, 2012, and 2013 when required. He claimed that he failed to file them due to his ex-wife's drug addiction, but that they had been filed by the time he responded to the SOR. He provided no evidence to document that the returns have been filed. He owes approximately \$40,000 to the IRS and his state for unpaid taxes during those years. He is also indebted on a judgment that was obtained against him in 2014 for unpaid taxes in the amount of \$21,574. He provided a letter from a company, dated February 23, 2016, stating that he has hired them to represent him in negotiations with the IRS and the state tax authorities. However, no evidence of any progress toward resolution of his tax delinquencies was provided.<sup>10</sup>

SOR ¶¶ 1.e, 1.g, 1.i, 1.o, 1.p, and 1.r: Applicant said that he was trying to make arrangements to repay these consumer credit and medical debts, totaling \$8,717. He provided no documentation concerning these efforts, or of any payments toward them.

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<sup>6</sup>Item 1.

<sup>7</sup>Item 4; Item 5.

<sup>8</sup>Item 1; Item 2; AE A.

<sup>9</sup>Item 1; Item 4; Item 6; AE A. The record has no evidence showing the total amount of discharged debt.

<sup>10</sup>Item 1; Item 2; Item 4; AE A.

SOR ¶ 1.f: Applicant documented that he made payments totaling \$1,400 between April 2014 and February 2016 toward this \$1,207 judgment debt that he originally owed to a dentist. He still owed \$475 in accrued interest and fees as of the close of the record.

SOR ¶ 1.h: Applicant said that he has been making \$100 monthly payments to the credit union that charged off this \$2,281 account, which became delinquent in February 2011. He provided a letter saying that he had a payment arrangement with the credit union, but no evidence indicating that it involved this account, how much had been paid, or what he still owes on the debt.<sup>11</sup>

SOR ¶¶ 1.j through 1.n, and 1.s: Applicant provided receipts showing that, during November and December 2015, he repaid these six delinquent debts, totaling \$916.<sup>12</sup>

SOR ¶ 1.q: Applicant said that he made contact with the creditor and paid this \$150 medical debt, but submitted no documentation to prove the payment.<sup>13</sup>

Applicant provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling, of savings or retirement investments, or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 (DCs) and mitigating conditions (MCs), which are to be 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, the guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The objective is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

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<sup>11</sup>Item 1; Item 4; Item 5; AE A.

<sup>12</sup>AE A.

<sup>13</sup>Item 1; AE A.

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 the 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, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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 concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under three Guideline F DCs, as set forth in AG ¶ 19:

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

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant filed for Chapter 7 bankruptcy relief in 2005, and obtained a discharge of the debts incurred up to that point that he could not pay. He subsequently incurred more than \$70,000 in additional delinquent debt. These delinquencies arose despite his continuous employment. He also failed to timely file required Federal and state income tax returns for tax years 2011, 2012, and 2013. This pattern and history of financial irresponsibility raise security concerns under DCs 19(a), (c), and (g), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial irresponsibility:

(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.

Mitigation under AG ¶¶ 20(a), (b), or (c) was not established. Applicant incurred numerous delinquent debts over the past ten years, many of which remain unresolved. He claims that his second wife's drug addiction caused his financial problems, but he became aware of that issue shortly after their marriage in 1998 and remained married to her for 15 years while the financial issues continued to worsen. He demonstrated no reasonable link between her drug addiction and his failure to file or pay his income taxes for 2011 through 2013. He submitted no evidence of financial counseling, or of a budget showing that his finances are under control going forward. He repaid six small debts after receiving the SOR, providing some mitigation for those allegations under AG ¶ 20(d). He admitted the truth of all SOR allegations, so AG ¶ 20(e) has no application.

## **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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and conduct that caused the financial problems underlying the security concerns expressed in the SOR. His delinquent debts and tax problems arose over the past fifteen years, and he demonstrated little evidence of financial responsibility until he paid a few small debts after receiving the SOR. He enjoyed continuous employment throughout the time involved. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g through 1.i:	Against Applicant
Subparagraphs 1.j through 1.n:	For Applicant
Subparagraphs 1.o through 1.r:	Against Applicant
Subparagraph 1.s:	For 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.

DAVID M. WHITE  
Administrative Judge