



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-02399
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

03/20/2017

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 19, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 28, 2015, and he elected to have the case decided on the written record in lieu of a hearing. On March 14, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on March 18, 2016. He was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file

objections and submit material to refute, extenuate, or mitigate the security concerns. He did not provide any response. The case was assigned to me on February 17, 2017.

### **Procedural Issues**

In the FORM, Department Counsel references FORM Items 1-6.<sup>1</sup> FORM Item 4 is an unauthenticated summary of a January 22, 2013 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 4 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant did not respond to the FORM.<sup>2</sup> Therefore, I admitted the FORM Items 3-6 into evidence as Government Exhibits (GE) 3-6, without objection.

### **Findings of Fact**

The SOR alleges six student loan accounts (SOR ¶¶ 1.a.-1.d., 1.j., and 1.k.) and five other delinquent debts (SOR ¶¶ 1.e.-1.i.). Applicant admitted all of the alleged debts in his response to the SOR. He claimed to be participating in a student loan rehabilitation program; however, he provided no corroborating evidence.<sup>3</sup> After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 34 years old. He graduated from high school in 2000, and he attended undergraduate-level classes from 2000 to 2005. He was gainfully employed full time from June 2005 to September 2012. After a brief break in employment, he has been employed full time for a DOD contractor since October 2012. He has been married since 2007, and he has a six-year-old child.<sup>4</sup>

The 11 alleged debts are listed within Applicant's December 2012 and February 2015 credit reports, as delineated below:

<b>SOR ¶</b>	<b>Creditor</b>	<b>Balance</b>	<b>Date of Delinquency</b>	<b>Evidence</b>
1.a.	Student loan	\$16,820	3/2011	GE 6
1.b.	Student loan	\$248	12/2014	GE 6
1.c.	Student loan	\$12,698	3/2011	GE 6

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<sup>1</sup> FORM Items 1 and 2 consist of the SOR and Applicant's response to the SOR. These documents are pleadings and are included in the record.

<sup>2</sup> See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

<sup>3</sup> GE 2.

<sup>4</sup> GE 3.

1.d.	Student loan	\$8,821	8/2013	GE 5; GE 6
1.e.	Personal loan	\$5,106	1/2012	GE 5; GE 6
1.f.	Medical	\$503	7/2013	GE 6
1.g.	Credit card	\$475	9/2010	GE 5; GE 6
1.h.	Utility	\$350	9/2011	GE 6
1.i.	Consumer account	\$216	12/2013	GE 6
1.j.	Student loan	\$11,492	3/2011	GE 5
1.k.	Student loan	\$14,751	3/2011	GE 5

Applicant attributed his financial indebtedness to becoming financially overextended using credit cards. He provided no evidence of circumstances beyond his control that may have contributed to his indebtedness or hindered his ability to resolve these debts. On his security clearance application and in his response to the SOR, he referenced a debt-consolidation program; however, he did not provide any documentation as to which debts were included or what payments he made. Likewise, his efforts to rehabilitate his student loans are uncorroborated. During his January 2013 security interview, Applicant admitted the alleged debts and expressed an intent to address these debts. He has not provided evidence demonstrating payments or debt resolution on the 11 alleged debts.<sup>5</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 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, administrative judges apply the guidelines 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."

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,

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<sup>5</sup> GE 2-4.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 EO 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The 11 alleged debts, which became delinquent between 2010 and 2014, total approximately \$71,480. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government established a case for disqualification, thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the

facts.<sup>6</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>7</sup> Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>8</sup>

Applicant's financial problems are ongoing, and there is no evidence that he has taken any steps to resolve or repay the 11 alleged debts. As a result, doubts remain as to his good judgment and financial responsibility. Thus, AG ¶ 20(a) is not applicable.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.<sup>9</sup> Applicant attributed his delinquent debts to becoming overextended on his credit cards. His employment history reveals only a short gap between jobs. He has identified no circumstances beyond his control that contributed to his indebtedness or hindered his ability to address his delinquent debts. Therefore, AG ¶ 20(b) does not apply.

There is neither record evidence of credit counseling nor record evidence, such as a monthly budget, to conclude that there are clear indications that Applicant's financial problems are under control. Rather, the absence of evidence of payments or other steps to resolve the alleged delinquent debts undercuts such a conclusion. Therefore, AG ¶ 20(c) does not apply.

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<sup>6</sup> Directive ¶ E3.1.15.

<sup>7</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>8</sup> Because Applicant has not disputed any of the alleged debts, AG ¶ 20(e) does not apply.

<sup>9</sup> See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

Although Applicant claimed that he was taking steps to rehabilitate his student loans, he provided no corroborating evidence. He provided no evidence of any payments made or steps taken to resolve any of the 11 alleged debts. Therefore, AG ¶ 20(d) does not apply. Absent evidence of debt repayment and financial responsibility, I find that financial considerations concerns remain.

### **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 and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant was provided an opportunity in his SOR response and in response to the Government's FORM to show what steps he has taken to resolve these delinquencies, and to provide documentation. He presented no evidence of any payments or efforts to resolve his delinquent debts or that he can maintain his current monthly financial obligations. As a result, the totality of the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. I conclude Applicant did not mitigate the 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:	AGAINST APPLICANT
Subparagraphs 1.a.-1.k.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric H. Borgstrom  
Administrative Judge