



**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. 15-03220

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro se*

03/29/2017

**Decision**

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

**Statement of the Case**

On October 22, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).<sup>1</sup> In a January 4, 2016, response to the SOR, Applicant denied all allegations and requested a determination based on the written record. On April 20, 2016, the Government issued a File of Relevant Material (FORM) with nine attachments ("Items"). Applicant did not respond to the FORM within the time allotted. I was assigned the case on March 23, 2017. Based on my review of the case file, I find Applicant failed to mitigate financial considerations security concerns.

**Findings of Fact**

Applicant is a 66-year-old company controller working for a defense contractor. He has worked for the same employer since 2007. In his present capacity, he has direct responsibility over administering all of the company's financial obligations. Annual

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<sup>1</sup> 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.

budgets range from \$140M to \$160M. He has been associated with another corporation that is affiliated with his current employer for 45 years. Married, he is the father of three grown children and one minor child. There is no documentation showing Applicant has received financial counseling. This case involves five delinquent debts. Applicant provided scant facts regarding his finances, in general, and these debts, specifically.

In 2007, Applicant was transferred from a project in one state to a different project in another state. Once transferred, he bought a new home for \$510,000 before selling his previous property, which had been valued at \$690,000. This occurred while a national real estate housing slump adversely affected home prices and slowed the sales of homes. Managing two mortgages simultaneously became financially onerous. His original house took about 18 months to sell. When it finally sold, it was sold for \$410,000. In the interim, he fell behind on the mortgages, credit card payments, and other financial obligations. While none of these issues hurt his ability to make business decisions, Applicant was personally left financially distressed.

At issue are five delinquent debts, amounting to about \$20,400. They are reflected in SOR allegations 1.a-1.e. Regarding the debts at 1.a and 1.b for \$1,803 and \$476, Applicant wrote that he is not familiar with the debts. (SOR Response) He made a similar comment regarding the debts cited at 1.d and 1.e, for \$236 and \$609, respectively. (SOR Response)

The largest debt, reflected at 1.c, pertains to a home equity loan that was written off with a balance of \$17,283. The account was initially opened in 2007. Regarding this debt, Applicant only wrote: "This debt was written off when I sold my [first] house in 2008." (SOR Response) No subsequent information was offered.

## **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 and endures throughout off-duty hours. Decisions include, by necessity, 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) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

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 showing Applicant has over \$20,000 in outstanding delinquent debts. This is sufficient to invoke two of the 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.

In the late 2000s, Applicant bought a second home before selling his first residence. Consequently, he balanced two mortgages simultaneously as the sale of the first house lagged due to a poor real estate market. Because Applicant failed to fully elaborate on his efforts to, for example, synchronize his real estate transactions or explain what efforts might have been made to hasten the sale of the first home, there is insufficient information to conclude that he behaved responsibly at the time. No research was apparently made regarding the other debts at issue, so Applicant did not offer any background details regarding the other accounts. Therefore, while the real estate market downturn was beyond his control, AG ¶ 20(b) only applies in part.

There is no documentary evidence Applicant has received financial counseling or formally disputed any of the debts at issue. There is no documentary evidence showing Applicant has initiated any action of the delinquent debts at issue. Consequently, none of the other mitigating conditions 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 relevant circumstances. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c) sets forth the need to utilize a whole-person evaluation.

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 guideline at issue in my whole-person analysis. Applicant is a 66-year-old company controller who has worked for the same employer since 2007. He is married and has four children, including one minor. There is no question as to his loyalty, support of his industry, or his professional work ethic.

Regarding his delinquent debts, Applicant only provided information about the home finance loan at issue. He alludes to difficulty selling his former home around 2008 during a sour real estate market. He noted that the account was written off. He failed, however, to offer any further insight about the delinquent debt, or relay any efforts he has exerted to address either the debt or its continued inclusion on his credit report.

Applicant's writing that he did not recognize the other delinquent debts at issue does not reflect any effort to investigate, validate, or dispute those debts or their inclusion in his credit report. This process does not require an applicant to satisfy all of his delinquent debts. It does expect an applicant to provide documented evidence of a plan or attempts to address such debt. Here, insufficient evidence regarding these delinquent debts was offered. Based on the scant information provided, I find Applicant failed to mitigate 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.e:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge