



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



In the matter of:

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) ISCR Case No. 15-03225  
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Applicant for Security Clearance

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel

For Applicant: *Pro se*

09/19/2016  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant defaulted on two mortgage loans and incurred more than \$4,700 in delinquent medical debts over the past eight years despite continuous employment. He demonstrated neither sufficient explanation for these debts, nor changes 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 15, 2014.<sup>1</sup> On December 1, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> The action was taken under

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<sup>1</sup>Item 2.

<sup>2</sup>Item 1.

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 December 20, 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 January 26, 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.<sup>5</sup> Applicant submitted no additional material in response to the FORM during the time provided, did not object to its consideration, and did not request additional time to respond. I received the case assignment on May 12, 2016.

### **Findings of Fact**

Applicant is 60 years old. He has worked for a major defense contractor since 1978, and currently serves in a design engineering management position. He earned a bachelor's degree in 1983. He never served in the military. He has held a security clearance during his current employment and is seeking to renew it. He remarried his first wife in 2013, shortly after divorcing his second wife. He has three adult children.<sup>6</sup>

In his response to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a, 1.b, 1.e, 1.g, 1.i, and 1.n through 1.ee, but provided no evidence to corroborate statements that the debts involved were either resolved or not his responsibility.<sup>7</sup> Applicant admitted the remaining SOR allegations, and his admissions are incorporated in the following findings.<sup>8</sup>

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<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 relevant information contained in Item 3 that would reasonably support mitigation of the unresolved debts alleged in the SOR, and the relevant adverse information is cumulative with the information contained in Items 4 through 6.

<sup>5</sup>After reviewing Applicant's response to the SOR and the record evidence, Department Counsel determined that the debts alleged in SOR ¶¶ 1.n through 1.ee were incorrectly attributed to Applicant and withdrew them in Section III of the FORM.

<sup>6</sup>Item 2.

<sup>7</sup>Item 1. As noted above, Department Counsel withdrew the allegations in SOR ¶¶ 1.n. through 1.ee, in apparent agreement that those debts were erroneously attributed to Applicant.

<sup>8</sup>Item 1.

SOR ¶¶ 1.a and 1.b allege the \$71,504 charge off of the second mortgage loan on Applicant's former residence, and the \$164,483 total loan balance on the first mortgage account in foreclosure on that home. When Applicant and his second wife encountered marital difficulties and separated, he stopped making payments toward the mortgages on their home and it went into foreclosure in late 2010. After it was sold, both mortgage holders were paid and now reported zero balances due on Applicant's record credit reports. These debts are resolved.<sup>9</sup>

The remaining allegations, in SOR ¶¶ 1.c through 1.m, describe 11 medical debts ranging from \$31 to \$3,261, one or more of which became delinquent during each of the years from 2008 through 2014. The total delinquent amount of these debts is \$4,786. Applicant denied three of these allegations, claiming that he paid those providers in full after each visit but providing no supporting documentation. He admitted the remaining eight allegations with uncorroborated assertions that he had made payment plans or would fulfill the debts. There is no evidence in any of the record credit reports indicating that any of these debts has been resolved, although the debts alleged in SOR ¶¶ 1.f, 1.j, and 1.k do not appear on the most recent report. Applicant provided no documentation concerning the status of any of these debts, which remain unresolved with no indication that they were incurred under circumstances beyond Applicant's control.<sup>10</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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

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<sup>9</sup>Item 1; Item 2; Item 5; Item 6.

<sup>10</sup>Item 1; Item 4; Item 5; Item 6.

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.

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, “[t]he 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: “[a]ny 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 two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's former mortgage debts were resolved when his home was sold in foreclosure proceedings after he voluntarily stopped making payments toward those loans. However, his unwillingness to satisfy those debts remains a significant part of his history of not meeting his financial obligations. He also incurred eleven delinquent medical debts over the past eight years that total almost \$4,800. These delinquencies arose despite his continuous employment during that time, and he offered no evidence of ability or willingness to resolve them. His pattern and history of financial irresponsibility raise security concerns under DCs 19(a) and (c), 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 difficulties:

- (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.

Applicant incurred numerous delinquent medical debts over the past eight years that remain unresolved. He also chose to stop making his mortgage payments during his separation and divorce proceedings with his second wife, leading to foreclosure. He did not demonstrate that delinquent indebtedness is unlikely to recur, that the debts

arose from unexpected conditions, or that his financial situation is under control. Applicant demonstrated neither the ability, nor any effort, to investigate or resolve any of the alleged medical delinquencies. Department Counsel pointed out the absence of such updated information in the FORM. Applicant chose not to address those concerns by filing additional information in response thereto. Defaulting on his mortgage loans under these circumstances was not a good-faith resolution of those debts. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions.

### **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 medical debts arose over the past eight years and he voluntarily defaulted on two mortgage loans in 2010. He enjoyed continuous employment throughout that period. 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.m:

Against Applicant

Subparagraphs 1.n through 1.ee:

Withdrawn by Dept. Counsel

## **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