



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-04049
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2017

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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 February 10, 2016, 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 March 25, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On April 20, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on May 10, 2016. He was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file objections

and submit information to refute, extenuate, or mitigate the security concerns. Applicant did not respond to the FORM. The case was assigned to me on February 16, 2017.

### Procedural Issues

In the FORM, Department Counsel references FORM Items 1-11.<sup>1</sup> FORM Item 11 is an unauthenticated summary of a July 22, 2013 interview with a government investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 11 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. Notwithstanding Department Counsel's advisement, because Applicant did not attend or complete high school and did not respond to the FORM, I cannot find his waiver to be knowing and informed.<sup>2</sup> Pursuant to Directive ¶ E3.1.20, FORM Item 11 is not admitted into evidence because the summary of interview is unauthenticated. FORM Items 5-10 are admitted into evidence as Government Exhibits (GE) 5-10, without objection.

### Findings of Fact

The SOR alleges 12 delinquent debts; however, Department Counsel withdrew the allegations in subparagraphs SOR ¶¶ 1.c. and 1.h. Applicant admitted the allegations in SOR ¶¶ 1.b., 1.d., and 1.j., and he denied the remaining allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 52 years old. He did not attend high school, though he did attain a trade certification in 2008. He worked in the service industry from 1984 to April 2012. He has worked in a clerical position since April 2012, including for a DOD contractor since August 2012. He married in 2000 and divorced in 2007. He has two sons, ages 18 and 21, who live with him and whom he financially supports.<sup>3</sup>

Applicant's three credit reports establish the ten remaining delinquent debts:

SOR ¶	Creditor	Balance	Date of Delinquency	Evidence
1.a.	Vehicle repossession	\$4,218		GE 9
1.b.	Credit card	\$2,884	6/2011	GE 6; GE 9

<sup>1</sup> FORM Items 1-4 consist of the SOR, Applicant's response to the SOR, and administrative correspondence, which are pleadings and are entered into the administrative 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 5.

1.d.	Utility	\$1,211	6/2014	GE 6; GE 9
1.e.	Car loan	\$319	10/2009	GE 6; GE 9, GE 10
1.f.	Medical	\$47	3/2009	GE 9; GE 10
1.g.	Judgment	\$2,619	8/2011	GE 6; GE 7; GE 9; GE 10
1.i.	Credit Card	\$1,953	5/2008	GE 10
1.j.	Credit Card	\$175	4/2008	GE 10
1.k.	Utility	\$154	1/2013	GE 10
1.l.	Insurance	\$110	10/2012	GE 10

Applicant claims the debts alleged in SOR ¶¶ 1.e., 1.f., and 1.i. were paid; however, he provided no documentation to substantiate these claims. The judgment alleged in SOR ¶ 1.h. – withdrawn by Department Counsel – was satisfied in February 2015. Applicant denied the debts in SOR ¶¶ 1.a. and 1.g. without explanation, and he denied the debts in SOR ¶¶ 1.k. and 1.l., claiming that the debts were not his. He provided no documentation or further information to support his claims. He referenced some contacts with creditors to arrange lower payments, but he provided no documentation of contacts or payments on any of these alleged debts.<sup>4</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, 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.

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<sup>4</sup> Response to SOR; GE 5; GE 8.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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.

Applicant’s ten delinquent debts total approximately \$13,690, and the debts became delinquent between 2008 and 2014. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce

evidence to rebut, explain, extenuate, or mitigate the facts.<sup>5</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; 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.

There is no documentary evidence showing any payments on the ten alleged accounts, and these debts remain unresolved. There is no evidence that Applicant's financial situation has improved. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.<sup>6</sup> Following his divorce, Applicant has raised and financially supported his two sons. Because these circumstances hindered his ability to address his delinquent debts, they constitute circumstances beyond his control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.<sup>7</sup> Applicant satisfied the judgment alleged in SOR ¶ 1.h., but there is no

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<sup>5</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

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

<sup>7</sup> See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

documentation of any other payments or debt-resolution efforts. There is no evidence of a reasonable plan to address the remaining debts and actions in furtherance of that plan. Therefore, AG ¶ 20(b) does not apply.

There is no record evidence of credit counseling or of a monthly budget from which 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.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."<sup>8</sup> Applicant did satisfy the judgment alleged in SOR ¶ 1.h.; however, there is no documentation of any other payments or debt-resolution efforts. As discussed above, there is insufficient evidence of good-faith payments or other steps taken to resolve the alleged delinquent debts. AG ¶ 20(d) partially applies.

To the extent Applicant disputes the debts in SOR ¶¶ 1.a., 1.g, 1.k, and 1.i., he has not demonstrated a reasonable basis to dispute the legitimacy of these debts. These debts were all included on his credit reports, and Applicant has provided no documentation to substantiate his disputes. AG ¶ 20(e) does not apply.

Applicant's debts have remained delinquent for several years. There is no evidence of a reasonable plan or affirmative steps by Applicant to address, resolve, or repay these debts. Furthermore, he has not demonstrated that he can maintain his current monthly financial obligations. 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.

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<sup>8</sup> See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

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.

Circumstances beyond Applicant's control – his divorce and raising his two sons – contributed to his financial delinquencies. Nonetheless, he bears the burden to demonstrate that he acted financially responsibly under the circumstances. Applicant did resolve one judgment, but there is no evidence of good-faith efforts to repay or resolve the remaining debts or evidence that he meets his current financial obligations. As a result, the totality of the record evidence leaves me with questions and doubts as to Applicant's eligibility and 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.b.:	Against Applicant
Subparagraph 1.c.:	Withdrawn
Subparagraphs 1.d.-1.g.:	Against Applicant
Subparagraph 1.h.:	Withdrawn
Subparagraphs 1.i.-1.l.:	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