



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-04098
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

10/11/2016

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On December 15, 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 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 (AG) effective within the Department of Defense after September 1, 2006.

On January 15, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 12, 2016. The case was assigned to me on May 10, 2016. On August 1, 2016, a Notice of Hearing was issued, scheduling the hearing for August 23, 2016. The hearing was held as scheduled. During the hearing, the Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. Applicant testified, called one witness, and offered nine exhibits which were admitted as Applicant Exhibits (AE) A – I. The transcript (Tr.) was received on August 31, 2016. The record was held open until September 7, 2016, to allow Applicant to submit additional documents. Applicant did not



submit additional documents. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his response to the SOR, Applicant admits all SOR allegations.

Applicant is a 44-year-old employee of a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since August 2003. He left high school in order to earn money to support his family. He earned his General Equivalency Degree in June 1993. He is married and has two children, a daughter, age 21 and a son, age 17. (Tr. at 10, 22; Gov 1; Gov 5)

Applicant's security clearance background investigation revealed that he had two mortgage payments that were more than 120 days past due. The first mortgage was delinquent in the amount of \$2,270. (SOR ¶ 1.a: Gov 4 at 4) The second mortgage account was past due in the approximate amount of \$49,073. (SOR ¶ 1.b: Gov 4 at 4) He also had a \$150 medical account that was placed for collection. (SOR ¶ 1.c: Gov 3 at 1).

In his answer to the SOR, Applicant states the two mortgages (SOR ¶¶ 1.a and 1.b) are combined into one account. Only the balance alleged in SOR ¶ 1.a is accurate. The total amount past due for the two mortgages was \$14,317.77. Applicant has lived in his home for 16 years. He will be current on his mortgage payments within 30 days. He admits to the \$150 medical bill alleged in SOR ¶ 1.c, but cannot identify it. Once he locates the creditor, he will pay the bill. (Response to SOR; AE D at 2)

Applicant states that his home is worth more than double what he owes on it. He has no credit card debt. He has been married more than 23 years. He has never collected unemployment or asked for financial assistance. He takes pride in his job and who he is as an American. (Answer to SOR)

During the hearing, Applicant provided proof that he took out a loan from his 401(k) account to bring his mortgage current. He paid the past due amount on March 15, 2016. It is now current. (AE D; AE G) He also provided proof that he paid the \$150 medical debt alleged in SOR ¶ 1.c. (AE F; Gov 7 at 1)

Applicant's wife testified that she is primarily responsible for paying the household bills. On occasion, they have struggled because of either Applicant or herself being laid off. She has been employed as a special education instructional assistant with a local school district for the past nine years. The first five years, she was a part-time employee. She has worked full-time the past four years. In the summers, her hours are reduced from 30 hours a week to 14 hours and her pay is reduced by \$3.35 an hour. Her reduced summer hours adversely affected the family's finances and they would get a little behind. Often this resulted in paying the mortgage payments late or making partial payments. (Tr. 22-29)



Applicant's wife takes responsibility for the late mortgage payments. She would not tell Applicant about them because he had other things on his mind. There were two occasions where she had to tell her husband because they were three months behind in payments and their home was up for foreclosure review. Once Applicant became aware of the situation, he contacted the mortgagor and arranged to take a loan from his 401(k) to bring the mortgage current and to pay some of his daughter's medical bills. She and her husband now communicate better about the household expenses. (Tr. 31-36, 43)

In addition to the regular household expenses, they would spend money on the children's extra-curricular activities, car repairs, home repairs and medical bills for her children. Their daughter attended counseling once a week for two years while in high school. This was not covered by insurance. It cost \$125 a session. She also saw a neurologist for migraines. Their son attended physical therapy because of a bone growth condition. (Tr. 24, 32, 37-38)

Applicant's annual salary increased by \$10,000 this past year. His base take home income is \$3,000 a month. This does not include any overtime or per diem Applicant may earn. His wife's monthly income is \$1,800 from September to July and \$800 from July to August. Their monthly expenses are approximately \$2,947. Applicant's wife also has a monthly car payment of \$368. With the exception of her automobile insurance, their daughter is self-supporting. Applicant has over \$53,000 in his 401(k) account. Applicant and his wife purchased used cars. His car is paid off. At present, Applicant states that their financial status is the best it has ever been. (Tr. 10, 44, 47, 49-52; AE B, C and H)

In the past, Applicant and his wife have struggled to pay their bills. They have always resolved them. An August 2016 credit report lists a charged off cable company account in the amount of \$465. (Gov 7 at 1-2) When asked about the debt during the hearing, Applicant disputes this debt. They switched to this cable company in order to save money. The cable company kept increasing the bill so Applicant cancelled the contract. He does not believe he owes the cable company any money. He disputed the debt over the telephone. (Tr. 59-60)

### **Whole-Person Factors**

Applicant provided a copy of a performance evaluation covering the periods June 2015 to March 2016. It was favorable and Applicant met standards. (AE A) Applicant has never been disciplined or suspended from work. He has never had any security violations. He testified he is a good employee and good at what he does. (Tr. 61-62)

### **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 and mitigating conditions, which must be considered when determining 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, 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." 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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.

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**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations), apply. Applicant and his wife have struggled to meet monthly expenses for years. This caused them to get behind in some bills to include paying late or partial mortgage payments.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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) applies. While Applicant has occasionally gotten behind on his bills, he has a track record of paying his bills when he is able to pay the bills. He does not ignore his debts, but paid when he could when he was struggling. His wife did not tell him about the late mortgage payments. Once he learned of the late mortgage payments, he took out a loan from his 401k to bring the mortgage current on two occasions. A recent raise and better communication have allowed he and his wife to be in a better financial position. Applicant's past financial issues do not cast doubt on his 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) applies. Although, not brought up in detail, Applicant and his wife have both been laid off on occasion which adversely affected the family finances. Applicant's wife's hours and income are reduced during the summer which resulted in the family finances getting a little behind. Applicant and his wife always attempted to resolve their bills when they had the money to do so. They do not live a lavish lifestyle. They 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) applies because Applicant's financial situation is now under control. Aside from a disputed cable bill, Applicant has resolved all of his delinquent accounts and is able to pay his monthly expenses.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant paid the past-due amounts on the mortgages alleged in SOR ¶¶ 1.a and 1.b. He is current on his mortgage payments. He also paid the delinquent medical account alleged in SOR ¶ 1.c. His credit reports indicate no other delinquent accounts aside from an outstanding cable bill. Applicant denies this debt, but has not filed a formal dispute with the credit reporting agencies. Should he file a formal dispute and the outcome of the dispute is not in his favor, he is capable of paying the cable debt. His past history of catching up on all of his financial obligations make it likely that he would pay the cable debt if it is proved to be his debt. Applicant demonstrated that he is making a good-faith effort to resolve his accounts.

### **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 the 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 considered Applicant's favorable performance evaluation and his 13 year employment history with the defense contractor. Although Applicant and his wife have struggled to pay the bills on occasion, they always have been able to eventually resolve their delinquent accounts. Their financial situation has improved and they are now able to meet their financial obligations. Security concerns under financial considerations are mitigated.

### **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:	FOR APPLICANT
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Subparagraphs 1.a -1.c:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ERIN C. HOGAN  
Administrative Judge