



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



In the matter of:

ISCR Case No. 15-04154

Applicant for Security Clearance

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

09/01/2017

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Personal conduct concerns were not established. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 19, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).<sup>1</sup>

<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on June 6, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on July 29, 2016. The evidence included in the FORM is identified as Items 2-7 (Item 1 includes pleadings and transmittal information). The FORM was mailed to Applicant, who received it on August 18, 2016. Applicant submitted documents (AE A) in response to the FORM, which were received on October 31, 2016 (this submission was a copy of his previous answer and the Government's FORM submission--Items 1 and 2). AE A is admitted into evidence without objection. Items 2-7 are admitted into evidence without objection. The case was assigned to me on August 8, 2017.

### **Findings of Fact**

Applicant denied all the allegations in his answer to the SOR. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 65 years old. He has worked for a defense contractor since June 1993. He is a widower, his wife having passed away in 2008. They were married over 36 years. He has one adult son. He retired from the Army after 22 years of honorable service (1971-1993). He graduated from high school and has taken some college courses.<sup>2</sup>

The SOR alleges two delinquent debts totaling approximately \$72,093, two tax liens, one state and one federal, both in the amount of \$1,103, and a Chapter 13 bankruptcy filed in May 2011 with a resulting discharge in February 2014. The SOR also alleges Applicant falsely answered three questions about his finances on his June 2014 security clearance application. He answered "no" to a question asking if he failed to pay his federal or state taxes within the past seven years. He answered "no" to a question asking if he had a lien placed against his property for failing to pay taxes in the past seven years. He also answered "no" to a question asking if he was 120 days delinquent on any debt.<sup>3</sup>

Applicant's financial difficulties began after his wife passed away in 2008. She was always responsible for taking care of their finances. When she passed on, Applicant found it too difficult to handle those duties and got several months behind on his debts. This led to him not paying his state and federal income taxes for 2009. A lien was filed, but Applicant paid the amount owed to both the state and IRS and the liens were released in 2012, long before the issuance of the SOR.<sup>4</sup>

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<sup>2</sup> Items 2-3.

<sup>3</sup> Items 3, 5-7.

<sup>4</sup> Items 3, 5-7.

Applicant contends that the two delinquent debts (a home equity debt for \$48,847 (SOR ¶ 1.a) and a car loan for \$23,246 (SOR ¶ 1.b)) are both current. He claims that he stopped paying on the home equity account for some time, but has since resumed monthly payments in the amount of \$243. A credit report from November 2015 shows this account as charged off (no charged-off date indicated). The date of first delinquency was January 2011. The date of last payment was November 2013. A later credit report (same credit reporting service), from July 2016, does not list the debt. This debt was included in Applicant's Chapter 13 bankruptcy, which was fully administered in February 2014. His most recent credit report shows that he is current on his mortgage. This debt is resolved.<sup>5</sup>

The auto debt was included in Applicant's Chapter 13 bankruptcy. The debt no longer appears on Applicant's last two credit reports after the bankruptcy. This debt is resolved.<sup>6</sup>

In May 2011, Applicant filed for Chapter 13 bankruptcy protection and completed all the plan requirements resulting in his discharge in February 2014. Applicant was required to make monthly plan payments, which he did for 33 months. He paid a total of approximately \$30,735 over that period of time. He is current on his car payment. He has no new delinquent debts.<sup>7</sup>

Applicant listed his Chapter 13 bankruptcy in his security clearance application. He also admitted using a company credit card for personal use. He discussed all his debts with a defense investigator in July 2014.<sup>8</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 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(a), 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,

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<sup>5</sup> Items 3-4, 6-7.

<sup>6</sup> Items 4, 6-7.

<sup>7</sup> Items 4, 7.

<sup>8</sup> Items 2-3.

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 national security eligibility 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.

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. 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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**

AG ¶ 18 expresses the security concern for financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had delinquent debts and taxes that were unpaid or unresolved. I find all disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's wife passed away in 2008 causing him to be ill equipped, literally and emotionally, to handle his financial responsibilities. After some time, he gathered himself and paid his delinquent tax debt, which released the liens. He also completed 33 months of payments under his Chapter 13 bankruptcy plan. He is making his current mortgage and car payments. I find AG ¶¶ 20(b) and 20(d) apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted his Chapter 13 bankruptcy in his security clearance application. He also admitted using a company credit card for personal use. Those admissions lend corroboration to his unintentional mistake of failing to affirmatively declare his tax liens (which were paid by this time) and his delinquent debt. Someone who is trying to deceive the Government about their finances would not list the information Applicant provided. I find that any omission by Applicant was unintentional. Personal conduct concerns are not established.

### **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(d):

(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 guideline 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 his honorable military

service and his wife's death. Applicant established a reliable track record of financial stability by making 33 months' worth of bankruptcy payments, incurring no new delinquent debts, and making consistent mortgage and car payments.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations. Personal conduct concerns were not established.

### **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
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant

### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge