



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-04466
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

02/15/2017

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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 December 12, 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 (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 February 26, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On May 2, 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 material to refute, extenuate, or mitigate the security concerns. His response to the FORM was received by the DOD on May 31, 2016. The case was assigned to me on January 25, 2017.

### **Procedural Issues**

In the FORM, Department Counsel references FORM Items 1-5.<sup>1</sup> FORM Item 4 is an unauthenticated summary of a December 22, 2014 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 4 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 responded to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's education and work experience, I find his waiver to be knowing and intelligent.<sup>2</sup> Therefore, FORM Item 4 is admitted into evidence as Government Exhibit 4. FORM Items 3 and 5 are admitted into evidence as Government Exhibits (GE) 3 and 5, without objection.<sup>3</sup>

In his FORM response, Applicant included a letter, an email from his bankruptcy attorney, correspondence related to his mortgage loan modification, and a loan statement. I admitted these four exhibits into evidence as Applicant's Exhibits (AE) A-D, without objection.

### **Findings of Fact**

Applicant admitted both alleged collection accounts. After a thorough and careful review of the pleadings and exhibits, I made the following findings of fact:

Applicant is 36 years old. He received an associate's degree in June 2003. He was a part-time carpenter from November 2006 to July 2014. He was employed full time from December 2010 to July 2014 for a private company. He has two children – ages 8 and 11 – who do not reside with him.<sup>4</sup>

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<sup>1</sup> FORM Items 1 and 2 consist of the Statement of Reasons and Applicant's Answer, 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. The Judge's exclusion of the Report of Interview, containing mitigating evidence, was found to be error following an applicant's appeal.).

<sup>3</sup> See ISCR Case No. 14-06781 at 3 (App. Bd. Dec. 16, 2016) (By not responding to the Government's FORM, "Applicant waived any objection he might have had to this document.").

<sup>4</sup> GE 3.

In December 2007, Applicant and an associate opened a restaurant. He used personal credit accounts to purchase equipment and for other business expenses. The restaurant was unsuccessful and was closed in January 2010.<sup>5</sup>

The two collection accounts became delinquent in September 2010 in the approximate amounts of \$8,155 (SOR ¶ 1.a.) and \$5,991 (SOR ¶ 1.b.). Applicant admitted both debts and that he never made any payments on these accounts. He claims to have contacted the creditors to arrange payments in about 2014; however, there is no documentation that he did so.<sup>6</sup>

Applicant attributed his financial delinquencies to his failed restaurant business and his period of underemployment. He demonstrated that he modified his mortgage loan account and that it was current as of April 2015.<sup>7</sup> He also provided email correspondence indicating that a Chapter 7 bankruptcy petition was filed in 2016, but the case remained pending as of May 2016.<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 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,

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

<sup>6</sup> GE 4; GE 5; Response to SOR; Response to FORM.

<sup>7</sup> AE C; AE D; Response to SOR; GE 5.

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

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.

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.

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 two debts – delinquent since September 2010 – total approximately \$14,146. 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>9</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.<sup>10</sup>

There is no documentary evidence to show that Applicant made any payments on his two delinquent accounts. Because the debts are ongoing and unresolved, AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.<sup>11</sup> Applicant's employment history indicates that he has been employed full time since December 2010. Between November 2006 and December 2010, he was employed part time as a carpenter and was self-employed with his restaurant. Because Applicant's period of underemployment and failed business may have hindered his ability to address his delinquent debts, they constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.<sup>12</sup> Applicant claims to have contacted the creditors in about 2014; however, there is no documentation of his efforts. Applicant provided no further

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<sup>9</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>10</sup> Applicant does not dispute either debt. Therefore, AG ¶ 20(e) is not potentially applicable.

<sup>11</sup> See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

<sup>12</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.").

explanation as to what other efforts, if any, were made to resolve these debts prior to the issuance of the SOR. He did contact a bankruptcy attorney and appears to have filed Chapter 7 bankruptcy in 2016. There is no information as to what debts were included in the bankruptcy case, and the debts had not been discharged as of May 2016. There is insufficient evidence to conclude that Applicant acted responsibly to address his delinquent debts or to develop and implement a reasonable debt repayment plan. Therefore, I conclude that AG ¶ 20(b) does not apply.

There is neither record evidence of credit counseling nor evidence, such as a monthly budget, 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>13</sup> There is no evidence of any payments on the delinquent debts since September 2010. Applicant has filed a Chapter 7 bankruptcy petition. Although a legal course of action, a Chapter 7 bankruptcy filing is not enough to show a good-faith effort to resolve debts.<sup>14</sup> As discussed above, there is insufficient evidence of good-faith payments or other steps taken to resolve the alleged delinquent debts. AG ¶ 20(d) does not apply.

The two admitted debts have remained delinquent since 2010 without any payments. 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>13</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).

<sup>14</sup> See ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). See *also* ISCR 12-01664 at 3 (App. Bd. Jan. 17, 2014).

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 underemployment and failed business – contributed to his financial delinquencies. Although he has filed a Chapter 7 bankruptcy petition, there is no evidence demonstrating that the two alleged debts are included in the bankruptcy. Furthermore, the debts had not been discharged. More importantly, there is no evidence of good-faith efforts to repay or resolve these debts or evidence that Applicant 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

### **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