



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04618

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

04/05/2017

**Decision**

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KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

On December 11, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on May 24, 2016. Applicant received the FORM on June 2, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and provided no response to the

FORM. The Government's evidence, identified as GE 1 through 7 are admitted into evidence without objection. The case was assigned to me on April 7, 2017.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a and 1.b, Chapter 13 bankruptcy filings in July 2004 and March 2006, respectively. He stated that he filed these bankruptcies due to the decline in the economy and loss of contracts in his business.<sup>1</sup> He admitted 11 of the other 13 SOR allegations of delinquent debts, totaling \$20,434. Applicant denied SOR ¶ 1.k, because the creditor and debt were unknown to him. He also denied the delinquent debt alleged in SOR ¶ 1.o, owed for a parking fine, "until more information is found out about this account."<sup>2</sup> In his personal subject interview (PSI) of August 2013, Applicant explained that both bankruptcies were dismissed, after he continued to make payments to his creditors and consulted with an attorney.<sup>3</sup> After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant disclosed some of his financial problems in section 26 of his June 2013 Questionnaire for National Security Position (SF 86) or Security Clearance Application (SCA). Applicant repeatedly stated in his response to the SOR that "I admit to the debt owed to (creditor) and will seek to make retribution."<sup>4</sup> Yet, he has produced no evidence, such as payment installment plans, receipts, cancelled checks, or correspondence with the creditors, to show progress. Nor has he tried to find out more about the delinquent debts alleged at SOR ¶ 1.k and SOR ¶ 1.o. Yet, these are reflected in his 2013 credit bureau report.<sup>5</sup>

Applicant is 49 years old. He graduated from high school in 1985, and obtained his associate's degree in electrical engineering in 2013. He has been married since 1992, and he has been employed by a federal contractor since October 2012. He reports honorable service in the Navy from 1992 –1999, and a top secret clearance while he was on active duty.<sup>6</sup> Applicant repeatedly avers that he was unable to pay these delinquent debts due to "limited funds."<sup>7</sup> Moreover, in his PSI in August 2013, Applicant asserted that he had no medical insurance when his wife and daughter

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<sup>1</sup> GE 3, Answer to SOR.

<sup>2</sup> GE 3, Answer to SOR.

<sup>3</sup> GE 5, page 5.

<sup>4</sup> GE 3, Answer to SOR.

<sup>5</sup> GE 6.

<sup>6</sup> GE 2 at page 42.

<sup>7</sup> GE 2 at section 26.

needed medical attention. That resulted in the judgment against him at SOR ¶ 1.i.<sup>8</sup> In that same interview, Applicant explained that he was self-employed at his own construction business, when he lost a large government roads contract in December 2007. After that, he went out of business in 2010. That was the primary cause of his financial problems.<sup>9</sup> Further, he has had no financial counseling, and he “plans on repaying each financial obligation as funds become available.”<sup>10</sup> Applicant has not resolved any of his delinquent debts.

## **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 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(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. 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, 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 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

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<sup>8</sup> GE 2, at page 4.

<sup>9</sup> GE 5, at page 6.

<sup>10</sup> GE 5, at page 6.

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 as to 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**

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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant admitted to filing the two Chapter 13 bankruptcies that were subsequently dismissed. He also either disclosed or admitted to 11 of the remaining 13 delinquent debts and judgment alleged in the SOR. The two other delinquent debts alleged, which he denied, are substantiated in his credit reports. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 problems were largely beyond the person's control, 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 provide evidence of actions to resolve the issue.

Applicant disclosed many of his delinquent debts in his SCA. He stated his intent to make [retribution] payment arrangements over one year ago. But Applicant has not followed through on any of this. He provided no documents or evidence to show progress on payments, or mitigation regarding the 13 delinquent debts alleged in the SOR. These debts were not discharged in the earlier Chapter 13 bankruptcies filed in 2004 and 2006. AG ¶¶ 20(a), 20 (b) and ¶ 20(c) do not apply.

### **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 have incorporated my comments under F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines.

Applicant's finances remain a security concern. There are ample indications that Applicant's financial problems are not under control. He has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

### **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:	For Applicant
Subparagraphs 1.c -1.o:	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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Robert J. Kilmartin  
Administrative Judge

