



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



In the matter of: )  
)  
) ISCR Case No. 15-04714  
)  
Applicant for Security Clearance )

**Appearances**

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

02/27/2017  
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**Decision**  
\_\_\_\_\_

CURRY, Marc E., Administrative Judge:

Although Applicant's financial problems were significantly caused by his divorce, five years have elapsed since it was finalized, he has yet to establish a clear track record of financial reform. Clearance is denied.

**Statement of the Case**

On December 13, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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) implemented by the DOD on September 1, 2006. On January 5, 2016, Applicant answered the SOR, denying all of the allegations, except subparagraph 1.a, and requesting a decision on the written record rather than a hearing.

On March 3, 2016, Department Counsel prepared a File of Relevant Materials (FORM). Applicant was provided a copy of the FORM on March 15, 2016, and was instructed that he had 30 days to file any objections to this information, or to supply additional information. Applicant filed a response on April 1, 2016. On April 7, 2016, the case was assigned to me. On January 31, 2017, I re-opened the record through February 10, 2017, to afford Applicant the opportunity to supplement his Response. He did not provide any additional documentation.

### **Findings of Fact**

Applicant is a 37-year-old single man. He was married from 2004 through 2012. The marriage ended in a divorce after a five-year separation. (Item 3 at 24; Item 4 at 3) Applicant earned a high school degree and an associates degree, together with several college credits. (Item 3 at 11-12) Since 2014, he has been working for a defense contractor as a technician. (Item 3 at 12)

Between 2007 and 2012, Applicant incurred approximately \$323,000 of delinquent debt, consisting of a delinquent condominium mortgage (subparagraph 1.a), and multiple delinquent student loans (subparagraph 1.b-1.g). Applicant and his then wife financed the purchase their condominium in 2005 with a \$267,000 mortgage. After they separated, his wife moved from the property, and Applicant could not afford the mortgage payments on one income. (Response at 1) Efforts to sell the home were unsuccessful, as the mortgage balance exceeded the fair market value. The mortgage gradually became delinquent. In September 2010, the mortgagor contacted Applicant and his estranged wife, offering them the opportunity to qualify for a short sale. (Response at 9) Efforts at short-selling the home were also unsuccessful.

In September 2011, Applicant and his wife executed a separation agreement. Under the agreement, Applicant's wife agreed to manage the condominium, collecting rent, and paying miscellaneous fees, with the goal of using the rent to cover the mortgage. (Response at 1, 8) She did not manage the property competently, and the delinquency increased. Applicant intends to retain a real estate attorney to help him resolve this delinquency. (Response at 8)

After Applicant's divorce, he could no longer afford to pay his student loans, and they gradually became delinquent. (Item 4 at 4) Shortly after his interview with an investigative agent in December 2014, he began attempting to resolve them. By March 2016, his creditor had consolidated the loans and approved a repayment plan. (Response at 2) Under the plan, Applicant was to begin making monthly \$142 payments beginning in April 2016. He submitted no proof that he has been making these payments, despite the extension of the record to February 10, 2017.

Applicant has been living at his parent's home since June 2013. (Item 3 at 7) His expenses have decreased since then. (Item 4 at 7)

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

## **Analysis**

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

Under this guideline, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 debt.

Applicant's financial problems stem from a marital separation and subsequent divorce. He has negotiated a resolution of his student loan accounts, and they are no longer in delinquent status. I resolve SOR subparagraphs 1.b through 1.g in Applicant's favor.

Applicant's delinquent home mortgage remains outstanding. He presented no evidence of any attempts at resolving the mortgage since his ex-wife's efforts at renting it failed five years ago. Under these circumstances, Applicant's assurance that he will retain an attorney to address this problem has minimal probative value. I conclude that the cause of Applicant's debts and the efforts he made to bring his student loans out of delinquent status are sufficient for AG ¶ 20(b) to apply partially, but that there is insufficient evidence of his current financial circumstances, or of a demonstrated track record of financial reform, to apply any of the other mitigating conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Circumstances beyond Applicant's control clearly contributed to his financial problems. However, he provided insufficient evidence that his financial problems are under control, given the significance of the remaining outstanding debt. Under these circumstances, I conclude Applicant has not met his burden of proving that it is clearly consistent with the national interest to grant him a security clearance.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b - 1.g:	For 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.

MARC E. CURRY  
Administrative Judge