



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



In the matter of: )  
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 ) ISCR Case No. 15-04953  
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Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

03/15/2017  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On December 7, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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; 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 answered the SOR on April 12, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on September 23, 2016. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence identified as Items 2 through 10, and they were admitted into evidence. Applicant submitted documents that were marked as Applicant Exhibits (AE) A through C, and they were admitted into evidence without objection.<sup>1</sup> Subsequent to the record closing, Applicant provided AE D and E. Department Counsel had no objection and the documents are admitted into evidence.<sup>2</sup> The case was assigned to me on November 4, 2016.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.e with explanations and denies the remaining allegations in ¶¶ 1.b, 1.c, 1.d, and 1.f through 1.i. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 66 years old. He is a retired U.S. Marine Corps Lieutenant Colonel having served on active duty from 1972 to 1994. He married in 1977 and divorced in 1997. He does not have children from the marriage. He remarried in 2002 and has an adult stepchild. Applicant has worked as an independent contractor for federal contractors or directly for federal contractors since at least 2003. He has worked for his current employer since 2011. He had periods of unemployment ranging from one month to six months in between contracts and had a one-year-period of unemployment from January 2004 to January 2005. While employed Applicant has worked almost exclusively overseas.

Applicant completed a security clearance application (SCA) in June 2012. In it he stated that when he married in 2002 "at that time I had almost nothing to bring into the marriage financially."<sup>3</sup> He and his wife purchased a home. In 2005, he and his wife purchased investment property for \$576,000, financed with two mortgages (\$476,000 and \$100,000). The transaction was handled by Applicant's wife since he was overseas. Applicant explained that at closing his wife was notified that the loan officer "had made a mistake with the interest rate" on the second mortgage. The matter was to be resolved after closing. During Applicant's background interview in October 2014, he explained that his wife paid the first mortgage on time, but never made payments on the second mortgage because it was sold, and she did not know who to pay. In 2006, Applicant told his wife to stop paying both mortgages until someone contacted them. They received an eviction notice and the home foreclosed in August 2006. Applicant believed the first mortgage was satisfied by the sale of the home.

In 2011, Applicant was notified a judgment was filed against him by the holder of the second mortgage in the amount of \$152,000. A wage garnishment was ordered.

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<sup>1</sup> Each exhibit includes multiple pages.

<sup>2</sup> Hearing Exhibits I and II are Department Counsel's email memoranda.

<sup>3</sup> Item 4 at 68.

Applicant challenged the order due to a jurisdiction issue and was successful. The garnishment order was rescinded.<sup>4</sup> The first mortgage is listed on Applicant's credit bureau report as past-due and in foreclosure.<sup>5</sup> These debts were not alleged in the SOR.<sup>6</sup>

The SOR alleges delinquent debts totaling more than \$69,700. The debt in SOR ¶ 1.a (\$11,316) is a charged-off account. In his June 2012 SCA, Applicant listed the debt, but said he did not recognize it, and he had just become aware of it from his credit report. He stated he would take action by letter to the credit bureau and would contact the creditor to obtain information about the debt. He also stated he would enlist the help of a professional to have it removed from his credit report.<sup>7</sup> During his October 2014 background interview, he indicated to the investigator that he was unfamiliar with the debt, but had contacted the creditor in September 2013 and offered to settle the debt for \$3,000, so he could clear his record. The creditor refused. In Applicant's April 2016 answer to the SOR, he admitted the debt and stated:

This was a credit card that we routinely paid as agreed, until [X] Bank closed it for no apparent reason and refused to come to terms with settling this. Background: When my wife and I got into contention with [X] (please see sub-paragraph e below) [X] unexpectedly shut down all of our [X] accounts, including this one, and "wrote it off." They stopped even allowing us to go to [X] on-line pay bills or otherwise communicate. I made offers in an attempt to settle, but [X] refused them and just shut down on me.<sup>8</sup>

In his November 2016 response to the FORM, Applicant indicated he attempted to contact the creditor so it could provide proof of the amount it alleged he owed, but it has not responded.<sup>9</sup> Applicant provided a letter dated February 21, 2017, addressed to creditor X, indicating that he had consulted with his wife and they believe the account is erroneous and neither he nor his wife used the creditor's charge card. He believes someone fraudulently used the account, and he strongly suspected it was his ex-wife. In reference to his ex-wife he stated:

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<sup>4</sup> AE D.

<sup>5</sup> Item 5.

<sup>6</sup> These mortgage debts were not alleged in the SOR and will not be considered for disqualifying purposes, but will be considered when analyzing Applicant's credibility, for mitigation purposes, and in a whole-person analysis.

<sup>7</sup> Item 4.

<sup>8</sup> Item 3.

<sup>9</sup> AE B.

It is plausible that she fraudulently opened up the above account in my name, ran up these charges, and deliberately has not repaid this debt in an effort to lay the blame and cost on me. Unfortunately, I cannot prove this. I could have been any credit fraud thief.<sup>10</sup>

Applicant did not provide evidence or support for his claim of identity theft. He did not provide evidence that he reported this alleged theft to the police. He further stated that he tried to resolve the debt with settlement offers that were refused and requested information from the creditor who was unresponsive. The debt is listed on credit reports from July 2012, June 2013, September 2014, and May 2015.<sup>11</sup> The debt is unresolved.

The debt in SOR ¶ 1.b (\$130 past due on balance of \$630). In Applicant's answer to the SOR, he denied the debt and indicated there was no balance owed and he has never heard of the company and does not believe he owes it. In his Response to the FORM, he stated: "My wife returned items she purchased and the credit was not applied as it should have been. The amount owed is incorrect."<sup>12</sup> The account was opened in the fall of 2014 and is listed in collection status on the May 2015 credit report.<sup>13</sup> The debt is unresolved.

Applicant denied both debts in SOR ¶¶ 1.c (\$393) and 1.d (\$342) to the same creditor, but different accounts. He stated in his answer to the SOR that he ordered credit cards to help increase his credit standing, but when the cards arrived "the charges were too much, both for the cost of the actual card and interest." He stated he directed the creditor to cancel the card. He stated he never used the cards and does not believe he owes the creditor. He did not provide documentary evidence of the terms of the credit card agreement or that he was not responsible for any costs associated with it once he received the card. The accounts were opened in the fall of 2014, and they are listed in collection status in the May 2015 credit report.<sup>14</sup> The debts are not resolved.

In 2005, while Applicant was overseas, his wife purchased a \$50,000 vehicle and financed it with creditor X, as mentioned above. Applicant did not know what the monthly payments were on the vehicle. His wife claimed the creditor mistakenly charged her a higher interest rate than she agreed. She made the car payments for three years and attempted to address the higher interest rate with the creditor. Applicant stated she was told by the creditor to stop making the car payments and the creditor would resolve the matter. She stopped making payments on the vehicle and several months later the car was repossessed and sold. In his answer to the SOR, Applicant admitted the debt alleged in SOR ¶ 1.e (\$31,048) and provided the above explanation. The amount

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<sup>10</sup> AE E.

<sup>11</sup> Items 5, 6, 7, and 9.

<sup>12</sup> AE B.

<sup>13</sup> Item 9.

<sup>14</sup> Item 9.

alleged is the deficiency owed. Applicant stated that the creditor admitted it made the mistake. In his 2012 SCA, Applicant indicated he had been working with the creditor to resolve the debt when the car was mistakenly sold. At that time, he was seeking the assistance of an attorney to resolve the matter. When interviewed in October 2014, Applicant indicated that in September 2013, he attempted to settle the debt for \$10,000 and the creditor refused. He stated at the time he intended to hire an attorney and fight the matter. He sent a letter to creditor X on February 21, 2017, disputing the debt. The debt is listed on credit reports from July 2012, June 2013, and September 2014. Applicant did not provide any documentary evidence to show the terms of the contract or to substantiate his claims.<sup>15</sup> The debt is unresolved.

Applicant was confronted with the debt in SOR ¶ 1.f (\$150) during his background interview. In his answer to the SOR, Applicant denied the debt and stated he was not sure what the debt was for and he would try and correct it and send proof it did not belong to him. In his response to the FORM, he stated: "A dental bill which I thought had been paid by [Y] Dental, my Tricare/military retiree dental plan. I will inquire of [Y] Dental what happened and pay the bill, if [Y] Dental will not."<sup>16</sup> The debt is listed as in collection on credit reports from July 2012, Jun 2013, and September 2014.<sup>17</sup> The debt is not resolved.

The debt in SOR ¶ 1.g (\$6,485) is for a disputed housing rental agreement and amounts owed after Applicant's wife vacated the premises. Applicant was living overseas when his wife leased and subsequently left the rental property. She attempted to have an inspection done prior to leaving, but was unsuccessful. Applicant claims the landlord is fraudulently charging them for damage. His wife attempted to negotiate a lower amount and was unsuccessful. Applicant stated he contacted the landlord on multiple occasions to settle the debt, but has been unsuccessful. He intended to hire a lawyer in January 2015 to resolve the matter. The debt is listed on credit reports from July 2012, June 2013, and September 2014.<sup>18</sup> The debt is unresolved.<sup>19</sup>

Applicant disputes the debts in SOR ¶ 1.h (\$6,491) and 1.i (\$12,853) both owed to the same creditor. He indicated during his background interview of 2014 that he believed these debts were due to identity theft. He believes his ex-wife may be responsible for them, but offers no evidence to reach that conclusion. He did not provide information or documentation that he filed a police report regarding the fraud and theft accusation. He contacted the creditor asking it to verify the debts. He stated the debts were deleted from his credit report. He provided letters he sent to the collection agency

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<sup>15</sup> Items 5, 6, and 7; AE E.

<sup>16</sup> AE B.

<sup>17</sup> Items 5, 6, and 7.

<sup>18</sup> Items 5, 6, and 7.

<sup>19</sup> Items 3, 8; AE B.

that wrote back indicating the accounts were returned to the original creditor. The debts are listed in a June 2013 credit report.<sup>20</sup> The debts are unresolved.

Applicant indicated in his responses that his investment property was foreclosed due to a mistake in the interest rate made by the loan officer and his car was repossessed due to a mistake by the creditor who charged him a higher interest rate, even though he paid it for three years. He also indicated that other creditors took action against him by closing a credit card account and refusing to communicate with him, and unfairly charging him for damage on rental property. He failed to provide any substantiation to his claims. He also claimed, without supporting documents, that he was the victim of identity theft. He indicated that he was going to hire an attorney to dispute many of the actions taken against him and resolve the matters. He did not provide information as to whether he hired an attorney or actions he took to resolve them other than sending creditors letters.

It appears from Applicant's responses that many of the facts regarding the delinquent debts he obtained from his wife, as he was living overseas when the actions occurred. It is unknown how they managed their finances. It is unknown if they have a budget. He did not provide a current credit report or a personal financial statement. He did not provide information as to whether he had attended financial counseling. He did not provide amplifying information as to actions he indicated he would take to resolve the delinquent debts once he returned from his overseas assignment.

Applicant provided numerous character letters. He is described as devoted, diligent, trusted, loyal, a role model, consummate professional, ethical, reliable, honest, honorable, dedicated, responsible, patriotic, charismatic, team-oriented, task-oriented, and charismatic. He exercises good judgment, and has impeccable integrity. He is a leader.<sup>21</sup>

Applicant stated in his response to the FORM: "I realize that I have not been as attentive as I should have been. I have not [paid] equal attention to all components of my life; especially in the financial area. I have always given 100% to my job and career, but have not done so in my business life."<sup>22</sup> He indicated that he is dedicated to the tasks before him and he is dedicated to serving his country.<sup>23</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief

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<sup>20</sup> Item 8; AE B.

<sup>21</sup> AE C.

<sup>22</sup> AE B.

<sup>23</sup> AE B.

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 Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follow:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decision is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

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 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 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.

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.<sup>24</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has numerous delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

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<sup>24</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).



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 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;
- (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 provides evidence of actions to resolve the issue.

Applicant has numerous debts that he disclosed on his SCA or he was confronted with during his background interview. He has been aware since at least 2012 that they are a security concern. He indicated he would contact an attorney to assist him in resolve or disputing certain debts. There is no evidence he took that action. Those that he does not dispute, he has not resolved. I cannot find his behavior is unlikely to recur. His delinquent debts are recent and his failure to resolve them casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant did not provide evidence that the debts occurred due to circumstances beyond his control. He attributes some of the debts to mistakes made by creditors without substantiating evidence or documents to support that he is not responsible for the debt or it has been resolved. There is insufficient evidence to conclude that the conditions that resulted in the financial problems were beyond his control and he acted responsibly in resolving them. AG ¶ 20(b) does not apply.

There is no evidence Applicant participated in financial counseling. He did not provide documentary evidence of any action he has taken to pay the debts he owes. He did not provide evidence of his current financial status. I cannot find that his financial problems are under control. AG ¶ 20(c) does not apply. There is no evidence Applicant has made good-faith efforts to repay the overdue creditors. He has not paid even the

smallest debt for dental services that was brought to his attention in 2014 and that he admitted he owed. There is insufficient evidence to apply AG ¶ 20(d).

Applicant disputes many of the delinquent debts alleged. Although he provided some letters to show he contacted the creditors, he has failed to provide sufficient documentation to show he has a reasonable basis to dispute the legitimacy of the past-due debts, and he did not provide documentation of his efforts to resolve the debts. Applicant provided inconsistent statements about some debts. He was unfamiliar with the debt in SOR ¶ 1.a, but then admitted he had a charge card with the company, but then indicated the creditor would not deal with him. He then attributed the debt to identity theft, without providing any supporting evidence. He admitted he owed the debt for the car repossession, but claimed it was due to a dispute about the interest rate, but he paid the debt for three years. He initially denied the debt in SOR ¶ 1.b, but then admitted his wife had a charge card, but disputed the past-due amount claiming she returned items that were not credited. Applicant's explanations about the debts in dispute are not supported by credible evidence. I find AG ¶ 20(e) does 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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 66 years old. He is a retired Marine Corps officer and has served in the defense industry overseas for many years. He provided numerous letters attesting to his outstanding character and service. Despite being on notice after he completed his

2012 SCA and was interviewed by a government investigator in 2014 that his finances were a security concern, he failed to provide sufficient evidence of actions to resolve his numerous delinquent debts. He failed to meet his burden of persuasion. He has not established a reliable financial track record. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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
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Subparagraphs 1.a-1.i:	Against Applicant
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### **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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge