



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-04994  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

06/07/2017

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**Decision**

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GARCIA, Candace Le'i, 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 29, 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 (Exec. Or.) 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 April 5, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 31, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on June 10, 2016. Applicant did not respond to the Government's FORM. The case was assigned to me on May 4, 2017. The Government's documents identified as Items 1 through 5 are admitted in evidence without objection. Other than his Answer to the SOR, admitted in evidence as Item 2, Applicant failed to submit any additional documentation.

### **Findings of Fact**

Applicant is 29 years old. He served in the U.S. military from October 2007 to October 2012, when he was honorably discharged. He worked for a prior federal contractor from October 2012 to July 2013. He attended community college from January 2013 to March 2013, and July 2013 to August 2013, but did not earn a degree. He was unemployed from July 2013 to October 2013. He has worked as an electrician for his current federal contractor since January 2014. He was granted a DOD security clearance in September 2007. As of June 2014, he had never been married, he has two children, ages 8 and 4, and he had been living with his parents since June 2009.<sup>1</sup>

The SOR alleges a judgment for \$1,528, seven delinquent consumer debts totaling \$12,901, a delinquent child support account for \$6,415, a delinquent educational account for \$1,455, and three delinquent government overpayments totaling \$1,236. Applicant admitted all of the SOR allegations in his response to the SOR.<sup>2</sup>

The SOR debts are established by Applicant's admissions and the credit reports. The June 2014 credit report lists the two delinquent government overpayments alleged in the SOR as ¶¶ 1.d and 1.e. It reports an open date for SOR ¶ 1.d of April 2013, and an open date for SOR ¶ 1.e of September 2013. The May 2016 credit report continues to list only two delinquent government overpayments, both of which have account numbers that mirror the first eleven numbers of the account numbers for SOR ¶¶ 1.d and 1.e, as reported on the June 2014 credit report. One of the accounts listed in the May 2016 credit report is SOR ¶ 1.m, and it has the same April 2013 open date as SOR ¶ 1.d. The second account listed in the May 2016 credit report carries the same September 2013 open date as SOR ¶ 1.e, and is reported as paid. I therefore find that SOR ¶ 1.d is a duplicate of 1.m, and SOR ¶ 1.e is paid.<sup>3</sup>

Applicant attributes his financial problems to a lack of income and financial irresponsibility. He indicated in his June 2014 Electronic Questionnaires for Investigations Processing (SF 86), that he is making payments to reduce his delinquent child support debt. His May 2016 credit report reflects a delinquent child support balance of \$6,171, which is lower than the \$6,415 balance reported on the June 2014 credit report.<sup>4</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Items 1-5.

<sup>3</sup> Items 1-5.

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

## 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, 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 has a judgment for \$1,528, seven delinquent consumer debts totaling \$12,901, a delinquent child support account for \$6,171, a delinquent educational account for \$1,455, and a delinquent government overpayment of \$327. There is sufficient evidence to support the application of the above disqualifying conditions.

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.

Applicant paid SOR ¶ 1.e. Applicant also paid down the balances of SOR ¶¶ 1.c and 1.m, from \$6,415 to \$6,171, and from \$659 to \$327, respectively. However, the \$6,171 balance for SOR ¶ 1.c remains significant, and there is no evidence that Applicant has made any additional payments towards either SOR ¶¶ 1.c or 1.m. Further, Applicant still has an outstanding judgment, a delinquent educational account, and seven delinquent consumer accounts that remain unresolved. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's unemployment and lack of income constitute conditions beyond his control that contributed to his financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. The credit reports reflect that Applicant paid SOR ¶ 1.e, and paid down the balances of SOR ¶¶ 1.c and 1.m. However, as previously noted, the \$6,171 balance for SOR ¶ 1.c remains significant, and there is no evidence that Applicant has made any additional payments towards either SOR ¶¶ 1.c or 1.m. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant's financial problems are not under control. Applicant has not provided evidence of any efforts he may have taken to repay or otherwise resolve his delinquent debts. AG ¶¶ 20(c) and 20(d) 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 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.

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 this whole-person analysis.

Applicant's finances remain a security concern. He failed to meet his burden of persuasion. 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
Subparagraphs 1.a - 1.c, 1.f - 1.m:	Against Applicant
Subparagraphs 1.d - 1.e:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge