



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05091

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

08/17/2017

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant has not mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 7, 2014. On February 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.<sup>1</sup>

Applicant answered the SOR on March 6, 2017, admitting all of the SOR allegations in a one-page statement. Attached was a letter from the collection agent for Navient confirming that Applicant telephonically authorized a one-time payment from his debit card in the amount of \$250 on June 28, 2016. The stated balance on the Navient account (student loans) was \$72,078, which is the aggregate total of the delinquent debts alleged in SOR ¶¶ 1.a through 1.c. Applicant also requested a hearing before an administrative judge. The case was assigned to me on May 2, 2017. On May 19, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 21, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. At the hearing, Applicant testified and submitted no documents. DOHA received the transcript (Tr.) on June 29, 2017. At the hearing, Department Counsel moved to amend the SOR ¶ 1.c by deleting the digit “4” at the end of the stated amount. So, it now alleges a charged-off correct amount of “\$22,309”. Applicant did not object. This motion was granted. It did not alter Applicant’s admission of this allegation. I granted Applicant’s request to leave the record open until July 11, 2017, so that he could provide substantiating documentation.<sup>2</sup> He declined to do so.

### **Findings of Fact<sup>3</sup>**

Applicant is 32 years old. He graduated from high school in 2004, and obtained an associate’s degree in 2009. Applicant has been employed as a dietary aid at a rehabilitation facility since December 2010. He has been pending a job with a federal contractor, contingent on obtaining a security clearance, since September 2014. Applicant was married in September 2013, separated in May 2014, and divorced in December 2014. He reported no children. He also reported no military service and no previous security clearance. He disclosed the three delinquent-student-loan debts in section 26 of his September 2014 SCA, and explained that he fell behind on payments due to his pending divorce and moving. He also claimed to have set up a payment plan with the creditor in September 2014, but provided no documentation to show payments in accordance with a plan.

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<sup>1</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either version.

<sup>2</sup> Tr. at 39.

<sup>3</sup> Unless stated otherwise, the source of the information in this section is Applicant’s September 7, 2014 Security Clearance Application (SCA) and the summaries of his two security clearance interviews on January 29, 2015 and February 19, 2015.

The SOR alleged three delinquent debts totaling approximately \$72,000 for student loans that Applicant obtained to attend college. Applicant admitted to these charged-off debts in his Answer to the SOR. At the hearing, Applicant testified that he could not find a job out of college.<sup>4</sup> All of the three charged-off debts were for student loans that he consolidated for intended payments of \$300 each month.<sup>5</sup> He claims to have made payments pursuant to this plan for a year.<sup>6</sup> However, he stopped making payments when he ran into marital difficulties, which ended in divorce. Applicant testified that a different collection agency took over the consolidated accounts in April 2015, and he was paying approximately 20% of his salary each month with the intention to pay the student loans off in full.<sup>7</sup> However, during the turbulence surrounding his divorce proceedings and his move back in with his parents, Applicant lost the paperwork and documents to demonstrate that he actually made payments on the plan.

Applicant needs a security clearance for his anticipated job. Applicant's monthly take-home pay is \$250 - \$300 a week currently.<sup>8</sup> He admits that he defaulted on his payment plan to try to resolve the charged-off student loans.<sup>9</sup> He pays his parents \$40 a week to live in their home and he has an automobile monthly payment of \$350 plus other incidental expenses for phone, groceries, gas etc.<sup>10</sup> Applicant testified that he could obtain his bank records to show that he made payments for approximately a year on the student loans, but he has not done so. He provided no evidence of financial counseling or debt consolidation services. Further, he provided no character references, performance evaluations or evidence of community service and civic involvement.

### **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, 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

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<sup>4</sup> Tr. at 24.

<sup>5</sup> Tr. at 24-26.

<sup>6</sup> Tr. at 40.

<sup>7</sup> Tr. at 29.

<sup>8</sup> Tr. at 31.

<sup>9</sup> Tr. at 30.

<sup>10</sup> Tr. at 32.

adjudicative goal is a fair, impartial, and commonsense decision. According to AG, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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, Appendix A, ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 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."

## **Analysis**

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

The security concern relating to financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other

issues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, clearance interview and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>11</sup> Applicant has not met that burden.

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 . . . , and the individual acted responsibly under the circumstances;
- (c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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<sup>11</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).

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

Applicant was separated and divorced in 2014. Since then, he has been employed earning hourly wages as a dietary aid. To some extent, these conditions were beyond his control. However, he has not produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant has not met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He claims to have made previous payments to the creditor pursuant to a plan, but produced no substantiating documents beyond the one telephone authorization for a \$250 debit in June 2016, that was attached to his Answer to the SOR. The charged-off debts have not been resolved. The mitigating conditions enumerated above 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, Appendix A, ¶ 2(d):

(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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Most importantly, Applicant has not

addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. 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
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Subparagraphs 1.a through 1.c:	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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge