



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



In the matter of:

ISCR Case No. 15-05160

Applicant for Security Clearance

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: Ryan C. Nerney, Esq.

06/09/2017

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 8, 2016, 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 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).<sup>1</sup>

<sup>1</sup> I decided this case using the AGs implemented by DOD on June 8, 2017. However, I also considered this case under the old AGs implemented on September 1, 2006, and my conclusions are the same using either set of AGs.

Applicant answered the SOR on March 25, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 9, 2016. The evidence included in the FORM is identified as Items 4-10 (Items 1-3 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on June 21, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In August 2016, Applicant, through counsel, submitted exhibits (AE) A-S, which were admitted without objection. Applicant's email transmittal information, supplemental response to SOR and FORM, prepared by counsel, and exhibit list were all attached to the record as hearing (HE) exhibits I-III. Applicant also raised two objections to the Government's FORM. Both objections claim Department Counsel misstated facts and was vague in her characterization of the evidence. These objections are overruled. I will weigh the evidence appropriately and Department Counsel's argument is just that--argument, and will be considered by me as such. Items 4-10 are admitted into evidence without objection. The case was assigned to me on May 19, 2017.

### **Findings of Fact**

Applicant admitted all the allegations in his answer to the SOR. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 44 years old. He honorably served in the Army from 1991 to 1998, and 1999 to 2007. He deployed to Iraq during his Army service. He has worked for several defense contractors since leaving the Army in 2007. He has also experienced three periods of unemployment since 2011, and various times between 2013 and 2015. He is twice divorced with three children, ages 10, 11, and 23. He is a high school graduate and is working toward completing a bachelor's degree.<sup>2</sup>

The SOR alleges four delinquent debts totaling approximately \$17,977. The debts are supported by credit reports from November 2014, April 2015, and January 2016; Applicant's statement to a defense investigator in January 2015; and by Applicant's SOR admissions.<sup>3</sup>

Applicant stated that for SOR ¶ 1.a (credit card debt of \$8,534) he set up a payment plan of \$250 monthly and he has been making payments "consistently since December 2015 and have not missed a payment." His supporting documentary evidence shows three payments made (December 2015, April 2016, and May 2016). No other proof of payments was submitted. He did not provide documents reflecting his payment agreement with the creditor. This account is unresolved.<sup>4</sup>

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<sup>2</sup> Item 5; AE B, N.

<sup>3</sup> Items 3-8, 10.

<sup>4</sup> Items 3-4; AE G-H.

Applicant stated that for SOR ¶ 1.b (credit card debt of \$3,215) he set up a payment plan of \$100 monthly and he has been making payments “consistently since April 2016 and have not missed a payment.” His supporting documentary evidence shows one payment made (April 27, 2016). No other proof of payments was submitted. He did not provide documents reflecting his payment agreement with the creditor. This account is unresolved.<sup>5</sup>

Applicant stated that for SOR ¶ 1.c (credit card debt of \$3,997) he set up a payment plan of \$50 monthly and he has been making payments “consistently since April 2016 and have not missed a payment.” His supporting documentary evidence shows one payment made (April 27, 2016). No other proof of payments was submitted. He did not provide documents reflecting his payment agreement with the creditor. This account is unresolved.<sup>6</sup>

Applicant stated that for SOR ¶ 1.d (consumer debt of \$2,231) he set up a payment plan of \$25 monthly and he has “not missed a payment.” His supporting documentary evidence shows one payment made (April 29, 2016). No other proof of payments was submitted. He did not provide documents reflecting his payment agreement with the creditor. This account is unresolved.<sup>7</sup>

Applicant submitted a certificate of financial counseling from August 2016, and a financial statement showing a monthly net remainder after expenses of \$626 (it should be noted that the total monthly payments on the statement for debts is \$125 less than Applicant indicated he is currently paying).<sup>8</sup>

Applicant presented five recommendations from former co-workers. All opine that Applicant is trustworthy and possesses integrity. They all recommend him for a security clearance.<sup>9</sup>

## **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 used in evaluating an applicant’s eligibility for access to classified information.

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<sup>5</sup> Items 3-4; AE G.

<sup>6</sup> Items 3-4; AE G.

<sup>7</sup> Items 3-4; AE D.

<sup>8</sup> AE I-J.

<sup>9</sup> AE A.

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(a), 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 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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**

AG ¶ 18 expresses the security concern for financial considerations:

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 misuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 has delinquent debts that remain unpaid and unresolved. I find all disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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 a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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's debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that periods of unemployment contributed to his delinquent debts. He did not present sufficient evidence to show that his subsequent actions to deal with his debts were responsible under the circumstances. While he made three payments toward one debt and one payment toward three debts, he failed to show his follow-up action on these debts. I find AG ¶ 20(b) partially applies. There is some evidence of financial counseling, but there is insufficient evidence to show that the debts are under control or being resolved. AG ¶ 20(c) partially applies. His token payments with no follow-on payments do not establish a good-faith effort to repay or resolve his debts. AG ¶ 20(d) does not apply. There was no evidence presented disputing any of the debts. 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(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 ¶ 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 guideline 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 considered his honorable military service, including his deployment to a combat zone, his periods of unemployment, and the positive recommendations of his co-workers. However, Applicant has not established a track record of financial stability.

Overall, 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.d:	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 E. Coacher  
Administrative Judge