



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



In the matter of:

ISCR Case No. 15-06258

Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

07/19/2017

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 9, 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>

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

Applicant answered the SOR on July 7, 2016, and August 5, 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 August 22, 2016. The evidence included in the FORM is identified as Items 2-7 (Item 1 includes pleadings and transmittal information). The FORM was mailed to Applicant, who received it on August 30, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file any objections or submit any documentary evidence. Items 2-7 are admitted into evidence without objection. The case was assigned to me on July 3, 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 53 years old. He has worked for a defense contractor since November 2014. He was unemployed from February until November 2014. From June 2009 until February 2014, he was employed by a federal contractor. He was unemployed from April until June 2009. He is divorced and has a grown child and a step-child. He works as an engineering technician. He retired from the Navy after 20 years of honorable service (1985-2005). He received a bachelor's degree in 2011.<sup>2</sup>

The SOR alleges six delinquent debts totaling approximately \$31,326. The two largest debts are from credit cards in the amount of \$28,595 (SOR ¶¶ 1.a and 1.b). The remaining delinquent debts are for telecommunications and other consumer debt. The debts are supported by credit reports from December 2014, July 2015, and August 2016, Applicant's statement to a defense investigator in May 2015, and by Applicant's SOR admissions.<sup>3</sup>

Applicant's financial difficulties began when he was unemployed for 10 months in 2014. His credit reports verify that he began missing payments during this time. Applicant stated during his background interview that he set up payment plans on the two large credit card debts. The August 2016 credit report corroborates his payment claim because it shows he has made 20 months of payments on these two debts, thereby substantially reducing the balances. This credit report also has an absence of entries reflecting the remaining SOR debts. All the credit reports show that Applicant has consistently made timely payments on his student loans, even throughout 2014. Applicant has established a track record of making responsible payments since his period of unemployment in 2014. Any remaining unpaid debt is of insignificant consequence related to a security worthiness determination.<sup>4</sup>

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<sup>2</sup> Items 2-3.

<sup>3</sup> Items 3, 5-7.

<sup>4</sup> Items 3, 7

## 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.

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 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." 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 had delinquent debts that were unpaid or 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:

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

Applicant went through a period of unemployment in 2014, which caused him to become delinquent on many of his debts. During this time, he did not allow his student loans to become delinquent. He has consistently made payments on the two largest debts over the past 20 months and substantially reduced the balances of each debt. The remaining debts no longer appear on his credit report and are of such small balances as to be inconsequential. I find AG ¶¶ 20(b) and 20(d) 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 and his period of unemployment. Applicant established a reliable track record of financial stability.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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: FOR APPLICANT

Subparagraphs 1.a – 1.f: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge