



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06689

**Appearances**

For Government: Eric Borgstrom, Esquire  
For Applicant: *Pro se*

03/10/2017

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On March 23, 2016, the Department of Defense (DOD) issued 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In his response, Applicant admitted two allegations, admitted two allegations with explanations, attached three documents and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on September 8, 2016. The matter was scheduled on September 8, 2016, for a September 28, 2016, hearing. The hearing was convened as scheduled.

The Government offered six documents, which were accepted without objection as exhibits (Exs.) 1-6. Applicant offered testimony and offered no documents. The record was held open through October 13, 2016, in the event the parties wished to

submit additional material. The transcript (Tr.) was received on October 11, 2016. With no additional documents forthcoming, the record was closed on October 13, 2016. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He has been in his present position since mid-2015. He is single and has no children. Applicant is a pastor who has earned a bachelor's degree in business administration. Applicant was previously determined to be eligible for a public trust position. He received mandatory financial counseling in conjunction with both his Chapter 7 bankruptcy petition filings.

From December 2002 to January 2005, Applicant was a contracted project administrator earning \$56,000 a year at a technical center. He was laid off when his company's contract was not renewed. At the time, he had a rental apartment, an automobile loan, credit cards, unspecified medical bills, and a car note on which he cosigned for a former girlfriend. (Tr. 18-19) He quickly found employment as an interim business education teacher at a local public school, earning \$47,000 a year. He worked at the school from January 2005 to April 2006. The \$9,000 decrease in salary led him to "give up a lot of things, even down to the fact of moving back home with my parents because of the types of things I was going through financially with the changes in employment," including losing a vehicle through repossession. (Tr. 17)

In about April 2006, Applicant began a full-time position at a local college earning \$42,000 a year. The job would last until May 2008. The \$5,000 decrease in salary was the cause of concern. In the interim, in August 2006, he filed a petition for Chapter 7 bankruptcy protection. His debts were discharged in November 2006.<sup>1</sup>

In May 2008, after his collegiate position was eliminated, Applicant began working as a researcher for a temporary services agency, earning \$10 an hour. In January 2009, things improved somewhat when he began working as a full-time substitute teacher earning \$125 a day. In January 2010, he began a new job as an educational support specialist earning \$19,000 a year. Then in May 2015, Applicant began his current position, earning \$52,000 a year.

Today, Applicant continues to live at his family's home, paying approximately \$500 a month in rent and, at times, contributing toward utilities. (Tr. 29) He has also been making monthly payments (\$608) on a car loan for a pre-owned 2011 BMW, which returned him to vehicular ownership after several years of ride-sharing.<sup>2</sup> (Tr. 25, 28) In

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<sup>1</sup> With regard to the sum at issue in the bankruptcy petition, Applicant stated: "it has to be at least 20 grand or more." (Tr. 20-21)

<sup>2</sup> Applicant opened two car loans, in 2012 and in 2013, respectively, for vehicles repossessed in 2014. A Lexus truck was for his mother and he does not recall the other vehicle. (Tr. 32-34) Therefore, it appears he was not continuously without a vehicle between the mid-2000s and the mid-2010s.

June 2015, however, he filed a petition for Chapter 7 bankruptcy. His more recent debts were thusly discharged in October 2015. He had been advised by counsel to pursue Chapter 7 bankruptcy, rather than a petition under Chapter 13, because he had no significant assets in need of preserving. (Tr. 34) Applicant thinks the amount of debt involved was between \$50,000 and \$70,000. (Tr. 31-32) He points to his reduced income, credit cards, living expenses, student loans, and helping his mother financially as the reasons behind this more recent bankruptcy petition. (Tr. 29)

Every two weeks, Applicant generates a net salary of about \$1,400. Aside from his monthly rent and auto loan payments, he pays for a cell phone, gas, groceries, car insurance, tithing, credit cards, and student loans. (Tr. 39-40) He continues to financially help his mother as she manages her household, which includes Applicant, his sister, his infant niece, and a young relative.

Applicant has two student loans, reflected in the SOR as allegations 1.c and 1.d for \$28,340 and \$14,380, respectively, have been consolidated. No payments were made on the student loans between 2005 and July 2016. (Tr. 57) The student loans have been delinquent multiple times, most recently in 2011, after the expiration of a deferral. This led to a default caused by “a lot of circumstances . . . home things again, trying to help out in areas and neglecting my own bills.” (Tr. 42-44)

Applicant is not presently in default status on his student loans. (Tr. 44) After a loan rehabilitation effort initiated in 2015, he was considered to be in “repayment - good standing” status as of May 2016. (SOR Response, attachment) This repayment plan calls for monthly payments of \$175.<sup>3</sup> As of September 28, 2016, he had made two \$100 payments on his loans for the 2016 calendar year, for the months of July and August 2016, although no documentation to that effect was offered. (Tr. 44-48) He hoped to make another \$100 payment sometime in October 2016. (Tr. 56) No evidence of additional payment was made before the record was closed on October 13, 2016.

Today, Applicant has the recent addition of a car expense and needed insurance priced at a higher rate due to his classification as a high risk driver.<sup>4</sup> To regain control of his finances, he tried to offer some ideas “that are on the top of [his] head” to improve his financial situation. He stated that he is thinking about trading in his automobile. Applicant testified that he maintains a budget, but did not submit a copy of it for review. He concedes that his home life and helping his mother financially is “very

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<sup>3</sup> See SOR Response, attachment. Applicant provided a student loan obligation statement, dated May 3, 2016, reflecting an original loan amount of \$29,686 with a total current balance of \$48,779. It indicates that he was in good standing as of May 2016 on loans opened in 2003, with an adjustable payment schedule projecting through June 2034.

<sup>4</sup> Applicant has received multiple speeding tickets. His driving record has led to monthly car insurance payments in excess of \$220 a month. (Tr. 38, 65)

overwhelming.” (Tr. 66) He is living paycheck to paycheck. (Tr. 67) He believes he is not currently able to improve his financial situation.<sup>5</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.

These guidelines are not inflexible rules of law. 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 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 not drawn 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 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. 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).

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<sup>5</sup> When asked if there is anything that he can do at present to improve his financial situation, Applicant conceded that he is not ready to implement any measures at this time. (Tr. 67)

## Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced evidence showing Applicant successfully filed for Chapter 7 bankruptcy in 2005 and again in 2015. In addition, he has approximately \$42,720 in outstanding student loan that has been in default, been delinquent multiple times, and undergone rehabilitation. Since that time, he has been late in his payments, and the payments made have been for notably smaller amounts than those scheduled under his payment plan. He concedes he is living paycheck to paycheck, and notes that he is not presently able to implement additional steps to improve his financial outlook. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 had a work history that saw his salary generally decrease from 2005 until he started his present job in 2015. He now earns close to what he made in 2005. To economize in the early years of this downward slump, he moved into his family home and paid a nominal rent. Standing alone, these facts would generally raise mitigating condition AG ¶ 20(b) in full; as it is, however, it is only raised in part. That move also led to his contributing to the household utilities and coffers to a point where his own financial resources have been stretched.

In addition, Applicant mentioned that some of his debt was medical. This could raise AG ¶ 20(b), but that mitigating condition requires a showing that the individual behaved responsibly at the time. Here, Applicant did not describe the medical services obtained or relate how he handled the medical debts when they came due.

While Applicant had one vehicle repossessed before his 2005 bankruptcy, two more autos were repossessed before his second bankruptcy filing in 2015. This occurred despite his recent ascent to a considerably higher paying position. At present, less than two years after his last bankruptcy discharge, he is living paycheck to paycheck. He has considered trading in his pre-owned 2011 BMW, although he has yet to take any steps to do so. Moreover, he is unable to timely meet the full amounts owed on his monthly student loan payments. Applicant has the willingness to honor his debts, as well as those acquired in aid of his mother and family, but he simply lacks sufficient income to meet his all financial undertakings and obligations.

Finally, Applicant received financial counseling in conjunction with his two bankruptcy filings. However, there is no documentary evidence reflecting that he has implemented concepts from that training to better his financial condition. Moreover, because he did not submit a copy of the budget he devised in counseling, his budget cannot be better examined. Given all these considerations, none of the available financial considerations mitigating considerations apply in whole.

### **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). I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Some of the factors in AG ¶ 2(a) were addressed in the analysis section, but some warrant additional comment.

Applicant is a highly credible and earnest 36-year-old employee of a defense contractor who has worked for his present employer since mid-2015. He is single and lives in his family home, where he provides limited support to the household. He earned a bachelor's degree in business. He has twice received financial counseling, in conjunction with his 2005 and 2015 Chapter 7 bankruptcy filings. It is noted that filing for bankruptcy, in itself, is not a bar to security clearance eligibility.

Applicant's downward financial spiral began in 2005, when he lost a job. While his debts were then addressed through Chapter 7 bankruptcy, almost every succeeding job saw him earning less until 2015. He economized by moving into his family home. Standing alone, these facts tend to mitigate finance related security concerns. Contributions for the home and his mother, however, proved to be costly and lead him to lose two vehicles through repossession. Another bankruptcy petition was initiated in 2015. This occurred despite his recent return to a salary level very close to what he originally had made in 2005. A year later, it was again difficult to make full and timely payments on his student loans and he conceded he was living paycheck to paycheck.

This process does not require that an applicant satisfy all delinquent debts before the granting of a security clearance. It does, however, expect that an applicant employ a reasonable strategy to address one's delinquent debts. It then requires documentary evidence that such a plan has been successfully implemented. Applicant has failed to do that here. This was not through sloth, an unwillingness to make timely payments on debts, or negligence. He simply lacks the income at present to address his debts in a timely manner, and he concedes that he is currently living paycheck to paycheck.

With more time to implement concepts learned in financial counseling, and better planning with regard to his contributions to his mother's household, Applicant has potential for better addressing his student loans and avoiding the need for bankruptcy again in the future. In light of the limited documentary evidence he presented, however, I find that financial considerations security concerns remain unmitigated.

### **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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1b:     | For Applicant     |
| Subparagraphs 1.c-1d:     | 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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge