



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07119

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

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06/12/2017

**Decision**

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KILMARTIN, Robert J., Administrative Judge:

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

**Statement of the Case**

On April 14, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on July 22, 2016. Applicant received the FORM on August 5, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided no response to the FORM. The Government's evidence, identified as Items 1 through 5, is admitted into evidence without objection. The case was assigned to me on May 24, 2017.

## Findings of Fact<sup>1</sup>

Applicant is 60 years old. He obtained his Master's degree in 1987. Applicant has been employed as a ship fitter by a federal contractor since May 2014. He served honorably in the Army for six months from February 1976 to August 1976. Applicant reports periods of unemployment including December 2013 to May 2014, and September 2010 to September 2012. Applicant was married from 1985 until his 1997 divorce. He has three children and reports having no previous security clearance.

Applicant reported delinquent debts in section 26 of his Security Clearance Application (SCA),<sup>2</sup> including: a foreclosed upon mortgage loan for his primary residence from September 2007; child support arrearages; medical bills; delinquent student loans; and charged-off credit cards.

In his Answer to the SOR, Applicant admitted SOR ¶ 1.a (having filed for Chapter 7 bankruptcy protection in 2014). He had over \$500,000 in unsecured debt discharged at that time. He denied SOR ¶ 1.c alleging failure to pay his state income taxes from 2008 to 2011. With respect to the other alleged delinquent debts at SOR ¶¶ 1.b and 1.d to 1.g, Applicant responded "don't recall" to each and every allegation. This is noteworthy because three of these allegations involve state tax liens that are clearly reflected in Applicant's credit reports.<sup>3</sup> He also discussed these tax liens in his July 2014 clearance interview. SOR ¶ 1.g alleges \$111,000 in child support arrearages to which Applicant responded "don't recall." Yet, Schedule E of his bankruptcy filings conspicuously notes this \$111,000 delinquency along with \$64,000 in past-due student loans and the aforementioned tax liens.<sup>4</sup> Also, he discussed his failure to pay for his children's support in the clearance interview. The tax liens, child support obligations, and student loans were not discharged in his bankruptcy. Thus, Applicant still had over \$300,000 in debt even after the Chapter 7 was discharged.

SOR ¶ 1.b alleges Applicant made more than one transfer of funds, in the \$30,000 to \$40,000 range, from his solely-owned limited liability company into his personal bank accounts. Applicant admitted in his clearance interview that this money was his personal savings.<sup>5</sup> These transfers were made in late 2014, around the same time that Applicant declared to the bankruptcy court that he had only \$7,600 in assets against \$706,811 in liabilities.<sup>6</sup> Applicant averred in his clearance interviews that the

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's May 29, 2014 Security Clearance Application (SCA). (Item 4)

<sup>2</sup> Item 2, page 34.

<sup>3</sup> Item 2.

<sup>4</sup> Item 5.

<sup>5</sup> Item 3, Answers to Interrogatories verifying subject interview of July 9, 2015.

<sup>6</sup> Item 5, summary of schedules.

primary reasons for his financial difficulties were a downturn in the economy in 2008, and his chronic underemployment or unemployment. He also explained that the aforementioned tax liens were filed against a construction company partnership in which he was a partner, along with his brothers.<sup>7</sup> He was also previously involved in family concrete businesses.

SOR ¶¶ 1.a, and 1.d to 1.g have not been resolved. Applicant has not cooperated in this process. He provided responses to the SOR that were not candid by repeatedly asserting “do not recall” regarding tax liens and child support arrearage that he could not have forgotten. He provided no response to the FORM or budgetary information.

### **Policies**

This action was taken 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 effective within the DOD on June 8, 2017.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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 ¶ 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.

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<sup>7</sup> Item 3, p. 5.

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.” 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 relating to the guideline for 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. 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.

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, bankruptcy filings and his two clearance interviews of July 2014, and July 2015 that were adopted and verified by his Answers to Interrogatories. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(b) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>8</sup> Applicant has not met that burden. None of the delinquent debts have been resolved.

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 problems 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;
- (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

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<sup>8</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).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant endured a downturn in the economy, and his employment history is sketchy. Arguably, these conditions were beyond his control. He has produced no documentation either with his Answer to the SOR, or in response to the FORM. It is patently obvious that he knew about the tax liens and child support arrearages. Yet, he was not candid in responding “don’t recall” to these specific allegations in the SOR. He has not demonstrated that he acted responsibly under the circumstances. Applicant has benefited by the bankruptcy laws as recently as 2014. Yet, even after getting a clean slate, he shows no progress on making payments on tax liens and child support obligations. 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 unlikely to recur. 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 ¶ 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 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 ¶ 2(d) were addressed under that guideline. Most importantly, Applicant has not been candid or forthcoming in the security application process, and he has not cooperated.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious 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:

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

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Robert J. Kilmartin  
Administrative Judge