



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-07519  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2017  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On June 16, 2016, the Department of Defense (DOD) issued to 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; 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on June 29, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on August 8, 2016. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence identified as Items 2 through 6 and they were admitted into evidence without objection. Applicant submitted documents that were marked as Applicant Exhibits (AE) A through G, and they were admitted into evidence without objection. The case was assigned to me on May 3, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.c and 1.e. He denied the SOR allegations in ¶¶ 1.a, 1.b, and 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 61 years old. He was married from 1981 to 2005. He has two children from the marriage, ages 32 and 31. He remarried in 2008. Applicant was employed by the same federal contractor from 1982 to June 2011, when due to a reduction in work he was laid off. He was unemployed from July 2011 to October 2011. From October 2011 to October 2012, he held two different jobs until he was hired by a federal contractor in November 2012, his present employer.<sup>1</sup>

Applicant attributed his financial problems to his loss of employment in June 2011, and his wife's reduction in income from her business due to the economy. Applicant filed Chapter 7 bankruptcy in February 2011. In November 2011, he had \$53,923 of unsecured consumer debt discharged. As part of his bankruptcy filing he was required to participate in financial counseling.<sup>2</sup> In January 2012, Applicant took a five-day Caribbean cruise.<sup>3</sup>

In January 2013, Applicant was interviewed by a government investigator. He acknowledged he cosigned the three student loans alleged in the SOR. The loans in SOR ¶¶ 1.a (\$14,066-charged off) and 1.b (\$7,374 charged off) were with his son and are listed in his January 2013 credit report as joint accounts. He stated the loan in SOR ¶ 1.d (past-due \$579 on a total balance of \$21,439) was with his daughter. This debt is listed in his January 2013 credit report as an individual account. He told the investigator that he was unaware the loans were in collection status.<sup>4</sup> Applicant listed these debts in his bankruptcy filings, and they were not discharged.<sup>5</sup> Credit reports from January 2013, September 2015, and July 2016 support the debts are in Applicant's name and unpaid.<sup>6</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Items 3, 4, 5.

<sup>3</sup> Item 3.

<sup>4</sup> Item 4.

<sup>5</sup> Item 5.

<sup>6</sup> Items 4, 6, 7, 8.

In Applicant's answer to the SOR in reference to the student loans in ¶¶ 1.a and 1.b, he stated in response to each:

I believe this is a [student loan] administered by [loan services] secured by [name] (my son) for his education and is his sole responsibility. I spoke with [name] about this and he indicated that he was delinquent. [Name] can be reached at [phone number].<sup>7</sup>

In response to the student loan debt in SOR ¶ 1.d that is in Applicant's name, he stated that he believes this debt is a consolidated debt of SOR ¶¶ 1.a and 1.b. Applicant's January 2013 credit report reflects the account is separate and has different account numbers. He offered no supporting documents to show it is not a separate account.<sup>8</sup> In Applicant's response to the FORM, he stated, "My Mother cosigned for my Student Loans and she told me that they are for me therefore they are my responsibility, and I paid them off in full, and this I will continue to stress to my Children."<sup>9</sup> Applicant provided a document to show he paid off a student loan in 2014.<sup>10</sup>

Applicant provided documents to show he is making timely mortgage payments, car payments, and he resolved the \$26 debt in SOR ¶ 1.c. He did not provide any documents to show efforts to resolve the other delinquent debts.<sup>11</sup> Applicant did not provide any other financial information.

### **Policies**

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(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.

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<sup>7</sup> Item 2.

<sup>8</sup> Items 2, 6.

<sup>9</sup> AE A.

<sup>10</sup> AE B.

<sup>11</sup> AE C, D, E, F, G.

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 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.” 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 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 having to engage in illegal 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.<sup>12</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that he is unwilling to satisfy. He had more than \$59,000 of delinquent debt discharged in bankruptcy in November 2011. There is sufficient evidence to support the application of the above disqualifying conditions.

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 (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;
- (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;
- (d) the individual initiated 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 provide evidence of actions to resolve the issue.

Applicant had debts discharged in bankruptcy in November 2011. He acknowledged he cosigned three student loans with his children. These debts as alleged in SOR ¶¶ 1.a, 1.b, and 1.d were not discharged in bankruptcy. Applicant

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<sup>12</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

mistakenly believes these debts are the sole responsibility of his children. Clearly, he does not intend to pay the debts, which are his legal responsibility. I cannot find his behavior is unlikely to recur. His conduct is recent and casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to being laid off in 2011 and his wife's reduction in income due to the economy. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. In this case, Applicant chose to file bankruptcy. He had more than \$59,000 of debt discharged. This is a legal means for Applicant to get a fresh financial start. However, not all debts are dischargeable in bankruptcy, and Applicant was put on notice during his January 2013 background interview that student loans, for which he was the cosigner, were delinquent. Applicant believes his children should pay these debts. This ignores his legal obligation. Applicant has not acted responsibly regarding the delinquent debts alleged in the SOR. AG ¶ 20(b) has minimal applicability.

Applicant participated in financial counseling as part of his bankruptcy. Applicant has been aware of the delinquent student loans since at least January 2013. There is no evidence to conclude Applicant is making any attempt to resolve these debts. The first part of AG ¶¶ 20(c) applies, the second part does not. SOR ¶ 1.c is resolved. AG ¶ 20(d) applies to that debt. It does not apply to any of the remaining debts in the SOR.

Applicant disputes that he is responsible for the debts in SOR ¶¶ 1.a, 1.b, and 1.d. However, during his interview, he acknowledged he cosigned these student loans for his children. The debt in SOR ¶ 1.d is listed as an individual debt in his name. Applicant indicated that he believed the debt in SOR ¶ 1.d is a duplicate of the debts in SOR ¶¶ 1.a and 1.b. This is not supported by the evidence in the record. Applicant failed to provide any documentary evidence to the contrary. 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(a):

- (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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 61 years old. He was laid off from his job in July 2011 and was unemployed until November 2011. He filed bankruptcy and had debts discharged in November 2011. He was hired by his current employer in November 2012. Applicant was the cosigner on two student loans and one individual account in his name. He believes his children should pay these loans. He has not provided any evidence of efforts to resolve or pay the delinquent debts, or proof that his children are paying them, thereby ignoring his legal responsibility. His unwillingness to comply with his legal obligations is a security concern. He has failed to meet his burden of persuasion. 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge