



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-08612
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

03/03/2017

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On June 7, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 Department of Defense after September 1, 2006.

On June 30, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 15, 2016. The case was assigned to me on October 28, 2016. On November 9, 2016, a Notice of Hearing was issued, scheduling the hearing for December 6, 2016. The hearing was held as scheduled. During the hearing, the Government offered six exhibits, which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered one exhibit, which was admitted as Applicant Exhibit (AE) A. The transcript (Tr.) was received on December 14, 2016. The record was held open until December 20, 2016, to allow Applicant to submit additional documents. Applicant timely submitted documents which were marked and admitted as AEs B and C. Based upon a review of

the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his responses to the SOR, Applicant admits all SOR allegations.

Applicant is a 34-year-old employee of a DOD contractor seeking a security clearance. He has worked for his current employer since September 2012. He held a security clearance previously while serving on active duty in the United States Navy from June 2001 to June 17, 2011. He has some college credit. He is divorced and has two children, ages 11 and 12, who live with his ex-wife. (Tr. 16-18, 20-24; Gov 1)

### **Financial Considerations**

Applicant's background investigation revealed that he has a history of financial problems. His financial problems include: a \$7,054 charged-off home equity loan (SOR ¶ 1.a: Gov 5 at 13; Gov 6 at 1); a \$36,834 charged-off mortgage account (SOR ¶ 1.b: Gov 5 at 10; Gov 6 at 2); a charged-off \$12,586 debt-consolidation loan (SOR ¶ 1.c: Gov 5 at 8); a \$1,144 cell phone account that was placed for collection (SOR ¶ 1.d: Gov 5 at 11; Gov 6 at 2); a \$122 charged-off account owed to a credit union (SOR ¶ 1.e: Gov 5 at 11, 13; Gov 6 at 2); a \$124 collection account (SOR ¶ 1.f: Gov 5 at 8); a \$201 medical account placed for collection (SOR ¶ 1.g: Gov 5 at 13); and a \$1,851 judgment filed against Applicant in 2011 on behalf of an apartment. (SOR ¶ 1.h: Gov 5 at 3). The total amount of the delinquent debt is \$59,916.

Applicant testified that he was discharged from the military after receiving nonjudicial punishment for violating Article 92 of the UCMJ, for Failing to Obey a Lawful General Order; Article 93, Cruelty and Maltreatment; Article 117, Provoking Speeches and Gestures; and Article 134, Indecent Language. Applicant was an instructor. Several of his students alleged he maltreated them, made inappropriate comments, and fraternized with several students. Applicant was found guilty and punished. He was subsequently discharged from the United States Navy with a general under honorable conditions discharge in 2011. (Tr. 18-19, AE C). The SOR did not allege this information. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Applicant's misconduct that was not alleged in the SOR will not be considered for disqualification purposes, and consideration will be limited to the five circumstances outlined by the appeal board.

Applicant experienced financial difficulties after his discharge from active duty. He encountered periods of unemployment and underemployment and was unable to pay his bills. He got behind on his child support payments, but has caught up on his child support deficiency. He and his wife separated in 2009 and divorced in 2012. They owned a home together. In the property settlement agreement, Applicant initially took responsibility for the mortgage. The agreement was later amended to have his wife be responsible for the mortgage and to have possession of the premises. Upon sale of the property Applicant was to get half the proceeds. Applicant's ex-wife did not pay the mortgage payments and the mortgage went to foreclosure in December 2011. (Tr. 30 - 31; AE A)

As of the hearing, Applicant testified that he was making \$50 monthly payments towards the debts alleged in SOR ¶ 1.a. He provided proof that he has been making monthly payments since September 2015. (Tr. 36; AE B at 1 - 4) After the hearing, he provided proof that he paid the \$122 debt alleged in SOR ¶ 1.e. (AE B at 5) He did not recognize the debts alleged in SOR ¶¶ 1.d, 1.f, and 1.g. He did not make any effort to identify the debts. He has not attempted to make payments towards the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.h since 2011. At one time, he had an agreement with a credit repair firm to assist him with contesting debts on his credit report. He discontinued the agreement because he thought it was a waste of money. (Tr. 34 - 41)

Applicant's monthly take home pay is about \$2,500. His monthly expenses consist of rent: \$900, car payment \$200, insurance \$205, cell phone \$220, internet/cable \$135, electricity \$52, gas for automobile \$220, and child support \$896. The monthly expenses as provided by Applicant during the hearing total \$2,828, which leave him with a negative balance of \$328. Applicant testified that he has between \$150 to \$200 left over each paycheck. Applicant mentioned he has another delinquent credit card account with a military exchange that was not alleged in the SOR. They take his tax refunds each year. (Tr. 41 - 46)

## **Criminal Conduct**

It was also alleged that Applicant was arrested and charged with Driving While Intoxicated on January 1, 2014. In March 2014, he was convicted. Applicant was fined, referred to an impaired driver care management program and his license was suspended for nine months. (Gov 3; Gov 4) Applicant testified that he went out drinking with friends. He decided to sleep in his car rather than drive home. The keys were in the ignition because he kept the car running so he could run the heater. A policeman approached his car around 2 am. Applicant subsequently failed a field sobriety test and was arrested. His blood alcohol content was .11. Applicant testified that he resolved all

of the requirements of his sentence. He has not had an alcohol-related incident since his arrest. (Tr. 47 - 50; Gov 3; Gov 4)

## **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 must be considered when determining 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.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 the applicant may deliberately or inadvertently fail to protect or 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following disqualifying conditions apply:

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

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

Applicant has several unresolved delinquent accounts that have been delinquent since 2011. The total approximate balance of the unresolved delinquent debt is \$59,916. He has a history of not meeting financial obligations either because of inability or unwillingness to satisfy his debts.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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.

I find AG ¶ 20(a) does not apply because Applicant's financial issues remain ongoing and therefore are current. AG ¶ 20(b) partially applies because certain circumstances beyond Applicant's control contributed to his financial problems. Applicant's marital separation, divorce and discharge from active duty were factors beyond his control. For years, he struggled with low-paying jobs. However this mitigating condition is given less weight because Applicant did not begin to resolve his delinquent accounts once he found suitable employment in 2012. I cannot conclude he acted responsibly under the circumstances.

Applicant provided no proof that he attended financial counseling. Most of his delinquent accounts remain unresolved. AG ¶ 20(c) does not apply. Applicant resolved the debt alleged in SOR ¶ 1.e after the hearing. He provided proof that he was paying \$50 a month towards the debt alleged in 1.a. He is given credit under AG ¶ 20(d) for making a good-faith effort to resolve these two debts. Although he did not recognize the debts alleged in SOR ¶¶ 1.d, 1.f, 1.g, and 1.h, he made no attempt to formally dispute them. As such, AG ¶ 20(e) does not apply.

Applicant has not mitigated the security concerns raised under Financial Considerations.

## **Guideline J, Criminal Conduct**

The security concern for Guideline J, Criminal Conduct, is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists disqualifying conditions that could raise a security concern. The following apply to Applicant's case:

AG ¶ 31(a) a single serious crime or multiple lesser offenses; and

AG ¶ 31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

The above disqualifying conditions apply because Applicant was arrested on January 1, 2014 and convicted of Driving While Intoxicated.

AG ¶ 32 lists the conditions that could mitigate security concerns under criminal conduct. The following mitigating conditions apply to Applicant's case:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): There is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has no additional arrests since January 2014. He completed the terms of his sentence. More than three years have passed without incident. Applicant has demonstrated evidence of successful rehabilitation. AG ¶¶ 32(a) and 32(d) apply. Security concerns under Criminal Conduct are mitigated.

## **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 considered that Applicant's divorce, mortgage issues, and his difficulty finding employment after leaving active duty had an adverse impact on his finances. I considered his honesty when revealing the reason for his discharge from active duty. He appears to have learned from the experience. Criminal conduct concerns are mitigated because Applicant has maintained a clean record since January 2014. Financial considerations concerns are not mitigated. While Applicant resolved some of his debt, too much of his debt remains unresolved and Applicant does not have a plan to resolve his delinquent accounts. Security concerns under financial considerations are not mitigated.

### **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 and 1.e:	For Applicant
Subparagraphs 1.b – 1.d and 1.f - !.h:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge