



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



In the matter of: )  
)  
) ISCR Case No. 12-10977  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro Se*

09/20/2018  
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**Decision**  
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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations). He filed for Chapter 7 bankruptcy after obtaining his full-time DOD contractor employment, with approximately \$78,000 of unsecured debt discharged that same year. Despite being fully employed, he has since accumulated additional delinquent debt and his wages have been garnished to satisfy several creditors. He failed to file state income tax returns for four consecutive years. The resulting financial security concerns were not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 13, 2016, Applicant submitted a security clearance application (SCA). On November 14, 2017, 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 action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel*

*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DOD on June 8, 2017, and thereafter.

Applicant answered the SOR on December 5, 2017, and he admitted all 21 SOR allegations. (SOR ¶¶ 1.a - 1.u.) Applicant did not attach any supporting documentation with his response. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing. On April 11, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant on April 12, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant provided a response to the FORM on May 7, 2018, which I labeled as Applicant Exhibit (AE) A. He also provided documentation, which I labeled as Applicant Exhibit (AE) B-G. Applicant did not object to Items 1 through 9; the Government did not object to AE A-G; and all exhibits were admitted into evidence. DOHA assigned the case to me on July 30, 2018.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 36 years old and employed by a DOD contractor as a pipe fitter since April 2010. He received certification from a technical school in 2008. He was married in August 2009, and has a child, age 9, and a stepchild, age 13. He listed on his SCA that he was granted a DOD security clearance in 2014. (Item 3)

The SOR alleges that Applicant has 19 delinquent accounts, and he failed to file his state income tax returns from 2013 through 2016. The combined total amount of his delinquent accounts alleged in the SOR is approximately \$37,135. On his June 2016 SCA, Applicant disclosed one adverse financial account under the financial section. He listed that he voluntarily surrendered his 2010 vehicle, as he could not afford the monthly payments. He estimated owing a total of \$6,000 on this account. The SOR debts alleged are supported by the credit bureau reports in evidence. (Items 1, 3, 4, 5, 6, 7)

The SOR also alleges that Applicant and his spouse filed for Chapter 7 bankruptcy protection in July 2010. Their secured creditor liabilities totaled about \$10,588, and their unsecured creditor liabilities totaled \$78,404, for a combined total of \$88,992. The unsecured debt was mainly credit card debt, a few unpaid utility accounts, and included two repossessed vehicles; a 2002 BMW and a 2007 Chevy Silverado. The dischargeable debts were discharged by the bankruptcy court in October 2010. (Items 1, 8)

Department Counsel submitted an Incident History report showing that Applicant had a wage garnishment issued by a creditor in late 2015 for \$6,855. In May 2016, another creditor issued a wage garnishment in the amount of \$9,897. A state tax lien

garnishment order in the amount of \$329 was received by Applicant's employer in about November 2016. It appears that based on the adverse financial reports submitted by his employer, a new investigation was initiated for Applicant in 2016. Applicant's single adverse financial account listed on his 2016 SCA was not accurate. He also did not report that he had failed to file his state income tax returns for tax years 2013, 2014, and 2015, and he did not report that he had three judgments filed against him from 2013-2015. During the course of his security clearance investigation, it became apparent that Applicant's financial problems were much worse than what he previously disclosed on his 2016 SCA. (Item 3, 5, 6, 9)

In Applicant's December 2017 SOR response, he indicated that he was working to get his delinquent accounts paid. He asked the government to be patient, as it would take time for him to resolve his outstanding debts. (Item 2) Applicant's May 2018 FORM response disclosed that he began to experience medical issues in 2013. He eventually had surgery to have a portion of his intestine removed. He missed some work due to the surgery. His spouse was not working at this time, and he paid some of his medical bills, while other medical bills were sent to collections. Also during this time, he was paying for two voluntarily surrendered vehicles through wage garnishment. He reported that as of April 2018, both debts resulting from his repossessed vehicles have been fully paid. See SOR ¶¶ 1.d, and 1.e. (AE A, B, C)

Applicant listed in his FORM response that he now has a full paycheck again, and it was his intention to use the extra money to pay off his delinquent debts. Applicant provided documentation to show that he made a \$176 payment on a collection account alleged as SOR ¶ 1.t, that had a balance of \$212. (AE D) He provided a record showing that he settled a cellular account alleged as SOR ¶ 1.u. (AE E) Applicant provided a receipt documenting payment of \$596 which he sent to a collection agency, but I was unable to match the account number listed in the receipt with any account number alleged in the SOR. (AE F) Finally, Applicant submitted a receipt showing that he settled an unpaid apartment account alleged as SOR ¶ 1.q. (AE G) The remaining debts, SOR ¶¶ 1.c, 1.f-1.p, 1.r, and 1.s, have not been resolved.<sup>1</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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<sup>1</sup> It is difficult to determine what specific accounts were resolved through Applicant's wage garnishment. Applicant listed creditor phone numbers in his SOR response to call and verify that the account has been paid. DOHA Administrative Judges do not have authority to call creditors on an applicant's behalf. The applicant has the burden to submit mitigating documentation that substantiates that an account is fully resolved.

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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. 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 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 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.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant experienced financial difficulties initially in 2010, which resulted in a joint filing for Chapter 7 bankruptcy, and Applicant's nonpriority unsecured debts were discharged in 2010. He failed to file his state income tax returns from 2013-2016. He accumulated additional debt thereafter, and his wages were garnished by creditors, to include repayment of a state tax lien. The SOR alleged 19 delinquent accounts totaling \$37,135. The above disqualifying conditions apply.

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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 a 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, and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant suffered a medical ailment in 2013 that was a situation beyond his control. He did not demonstrate the extent of the reduction of his income from missing work for his 2013 medical ailment. Applicant did not show that he acted responsibly under the circumstances because he accumulated delinquent debt while being fully employed since 2010. Two of his vehicles were repossessed and default judgments were entered against him. He made a few payments on his SOR debts, but it is important to note that these payments occurred after the receipt of the Government's FORM brief. He has not submitted documentary evidence of payment agreements with his other creditors, or of a viable monthly budget.

There is no evidence that Applicant is receiving, or has received, financial counseling from a credible source and there are not clear indications that his financial problem is being resolved or his finances are under control. AG ¶ 20(c) does not apply.

Applicant claimed that he voluntarily had his wages garnished to pay for his two surrendered cars, which I find in his favor on those two debts. (SOR ¶¶ 1.d and 1.e.) However, he also had his wages garnished to pay for a state tax lien that had been filed against him. Payment by involuntary garnishment, "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). AG ¶ 20(d) does not apply.

In Applicant's answer to the SOR, he stated that his state income tax returns were in the process of being filed. There is no evidence that Applicant has filed his state income tax returns for tax years 2013, 2014, 2015, or 2016, as claimed. He has not provided any explanation for his failure to timely file four years of state income tax returns. He did not provide his current tax status, to include whether he owes any outstanding state taxes. AG ¶ 20(g) does not apply.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified

information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

### **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, but some warrant additional comment.

Applicant has been unable or unwilling to satisfy his financial obligations. He has been fully employed since April 2010, yet he filed Chapter 7 bankruptcy in July 2010, with about \$78,000 of unsecured debt. He received a discharge that same year. Applicant had a medical ailment that required surgery in 2013. He did not show that he suffered financially for taking time off from work to recuperate. In any event, five years have passed since his ailment, and his financial problems are not fully resolved. The record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

### **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**

|                          |                   |
|--------------------------|-------------------|
| Subparagraph 1.a:        | For Applicant     |
| Subparagraphs 1.b, 1.c:  | Against Applicant |
| Subparagraphs 1.d, 1.e:  | For Applicant     |
| Subparagraphs 1.f – 1.p: | Against Applicant |
| Subparagraph 1.q:        | For Applicant     |
| Subparagraphs 1.r, 1.s:  | Against Applicant |
| Subparagraphs 1.t, 1.u:  | 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 security to continue Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge