



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



In the matter of: )  
)  
) ISCR Case No. 15-02747  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

10/02/2018  
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**Decision**  
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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

On December 12, 2015, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.<sup>1</sup>

Applicant responded to the SOR on February 16, 2016, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case

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<sup>1</sup> I decided this case using the AG implemented by the DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

was submitted on May 6, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 18, 2016. He did not respond to the Government's FORM. I admitted the Government's documents identified as Items 1 through 6 in evidence without objection. The case was initially assigned to me on March 10, 2017, but was closed on March 24, 2017 due to a lack of jurisdiction as Applicant was separated from employment requiring a security clearance on January 20, 2017. The case was reopened and reassigned to me on May 15, 2018, when Applicant was sponsored for a clearance by a new employer.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b through 1.e and denied SOR ¶ 1.a. He is 44 years old. He married in 2000, divorced in 2008, and remarried in 2010. He has one stepchild, a minor.<sup>2</sup>

Applicant obtained his high school diploma in 1992. He served in the U.S. military from 1992 until he was honorably discharged in 2002. He was first granted a security clearance in 1993. He then worked for the federal government from 2002 to 2005. As of his 2013 security clearance application (SCA), he had been working as a project engineer for a defense contractor since 2005. He deployed to Afghanistan for four months in 2008. As of his SCA, he had been renting since July 2010.<sup>3</sup>

The SOR alleges four delinquent consumer accounts totaling \$18,962 (SOR ¶¶ 1.a - 1.d) and a 2012 home foreclosure due to Applicant's failure to pay his mortgage (SOR ¶ 1.e). The allegations are established by Applicant's admissions and credit reports from June 2013, March 2015, and May 2016. Applicant listed his delinquent debts in his 2013 SCA. He also discussed them in his adopted June 2013 background interview and November 2014 response to interrogatories.<sup>4</sup>

Applicant attributes his delinquent debts to a July 2009 custody judgment that prevented his wife, who was his then-fiancée, from moving with her child from county A to county B, where he resided, in property he had just purchased in June 2009. As a result, they unexpectedly had to move to county A where they rented. He then had to rent his property in county B at a rental value that did not cover his mortgage, so he had to pay the difference. In addition, his wife was unable to accept a job in county B that they were relying on for supplemental income. He incurred commuting costs. And, he incurred approximately \$20,000 in lawyer fees for his fiancée's custody case. His

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<sup>2</sup> Items 1-3.

<sup>3</sup> Items 1-3.

<sup>4</sup> Items 1-6.

property in county B was consequently foreclosed in September 2012 (SOR ¶ 1.e), as further discussed below.<sup>5</sup>

SOR ¶ 1.a is for a \$12,017 charged-off debt. As of Applicant's 2016 credit report, the creditor obtained a judgment against Applicant in August 2011 for the balance of \$11,506. Applicant indicated in his SCA and background interview that this account was assigned to a collection agency in late 2011, and he was in negotiations for a settlement and payment plan. He provided copies of two bank statements from late 2014 to corroborate his claim that he was resolving this debt through an \$807 biweekly garnishment of his pay. As of November 7, 2014, his paycheck reflected a total year-to-date garnishment by this creditor of \$12,991.<sup>6</sup>

SOR ¶ 1.b is for a credit card charged off for \$6,632. It is reported in Applicant's 2015 credit report. The 2016 credit report reflects that the account was paid and carries a zero balance.<sup>7</sup>

SOR ¶ 1.c is for a charge account. It is reported as \$208 past due in Applicant's 2015 credit report. As of his May 2016 credit report, it was charged off for \$1,717.<sup>8</sup>

SOR ¶ 1.d is for a phone account in collection for \$105. It is only reported on Applicant's June 2013 credit report. Applicant indicated during his background interview that he was unaware of the debt, but he intended to obtain a copy of his credit report and resolve it. As of his response to interrogatories, he was unable to contact the collection agency but intended to continue to investigate the debt.<sup>9</sup>

SOR ¶ 1.e is for the 2012 foreclosure of his property in county B, as previously discussed. Applicant purchased it in June 2009 for \$378,000, for which he financed \$370,000. His monthly mortgage was \$2,650. When his renter moved out of the property in June 2011, Applicant contacted the bank to discuss a short sale or a loan modification. He was told that neither option was available to him since he was current on his mortgage. He then stopped paying his mortgage and began voluntary foreclosure proceedings with the bank. The house was vacant from June 2011 until it was foreclosed in 2012, at which time he was 15 months delinquent on his mortgage for \$39,750. He considered the matter resolved. His credit reports do not reflect any remaining outstanding balance related to any mortgage account.<sup>10</sup>

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<sup>5</sup> Items 2-3.

<sup>6</sup> Items 2-6.

<sup>7</sup> Items 3-6.

<sup>8</sup> Items 5-6.

<sup>9</sup> Items 3-4.

<sup>10</sup> Items 2-6.

Applicant indicated during his background interview that he does not have any other delinquent accounts. He stated in his response to interrogatories that he made it a priority to get his financial matters in order. The credit reports corroborate his claims. As of November 2014, his monthly net income was \$4,094. His total monthly expenses, including rent, was \$3,330. He had two consumer debts for which he was current, to include a car loan. After paying his monthly expenses and debts, he carried a monthly net remainder of \$236.<sup>11</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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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<sup>11</sup> Items 3-6.

Section 7 of EO 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems resulted from conditions beyond his control. He acted responsibly under his circumstances by attempting to short sell his home or modify his home loan. When the creditor indicated to him that neither option was available to him because his mortgage was current, he then chose to allow the mortgage to become delinquent so that he could undergo voluntary foreclosure proceedings. His home was foreclosed in 2012 and he considered the matter resolved. His credit reports do not reflect any remaining outstanding balance related to any mortgage account. SOR ¶ 1.e is resolved.

In addition, the record evidence demonstrates that Applicant is resolving SOR ¶ 1.a and he resolved SOR ¶ 1.b, which are the largest of his delinquent debts. Though he did not provide evidence that he resolved SOR ¶¶ 1.c and 1.d, he indicated that he intended to pull a copy of his credit report, continue to investigate SOR ¶ 1.d, and prioritize getting his financial matters in order. He does not have any other delinquent debts. I find that Applicant's financial problems are unlikely to recur, and they do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), and 20(d) 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 relevant 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 this whole-person analysis.

The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant 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: | FOR APPLICANT |
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| Subparagraphs 1.a - 1.e: | For Applicant |
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### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge