



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



In the matter of: )  
)  
) ISCR Case No. 16-00081  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

March 2, 2018  
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**Decision**  
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GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. His ongoing history of indebtedness and failure to timely pay Federal income tax obligations remain a concern. National security eligibility for access to classified information is denied.

**Statement of the Case**

On June 18, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on July 17, 2016, and requested a decision based on the written record. On August 16, 2017, he changed his request and

elected a hearing before an administrative judge. The case was assigned to me on August 24, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 28, 2017. I convened the hearing as scheduled on September 18, 2017. The Government offered Government Exhibits 1 through 4, which were admitted without objection. The Government offered, then withdrew GE 5. (Tr. 29.) Applicant testified on his own behalf, and presented Applicant Exhibits (AE) A through C, which were admitted. DOHA received the transcript of the hearing (Tr.) on October 16, 2017. The record was left open for the receipt of additional evidence until January 2, 2018. On that date, AE D through AE U, were submitted and received without objection. The record closed as scheduled on January 2, 2018.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a through 1.o, with explanations. After a thorough and careful review of the testimony, pleadings, and exhibits, I make the following findings of fact:

Applicant is 63 years old. He is married to his second wife. He has seven adult children. He is currently enrolled in a doctoral program. Applicant worked for the Federal government as a civilian employee from 1972 until he retired in November 2005. He is currently employed by a Government contractor, for whom he has worked since July 2014. (Tr. 12-16, 29-32.)

Applicant attributes his financial delinquencies to a series of familial illnesses and periods of unemployment. His wife, daughter, and son all have costly medical conditions that have financially stressed Applicant's budget. (AE D.) He documented that his wife applied for disability income in 2017 due to "growths in the cavity of [her] brain that cannot be operated on" and lumbar disk degeneration. (AE C; AE J; Tr. 39-40.) He was unemployed from March 2008 to March 2010, after he was terminated from his position for sleeping on the job. (GE 1.) Additionally, he was unemployed from July 2010 to

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

September 2010; February 2011 to August 2011; November 2011 to July 2012; and August 2013 to June 2014. (GE 1; AE E; Tr. 36, 42-43.)

Applicant was alleged to be delinquent on his Federal income tax obligations for tax year 2013 in the amount of \$8,697, as stated in SOR ¶ 1.a. He was also alleged to be delinquent on his Federal income tax due for tax year 2012 in the amount of \$7,076, as stated in SOR ¶ 1.b. Applicant attributed his tax debts to his employer's failure to deduct sufficient amounts from his pay while he was deployed overseas. (Tr. 45-47.) In 2014 Applicant hired a tax and financial service company to help him submit an Offer in Compromise with the Internal Revenue Service (IRS) for the 2012 and 2013 delinquent income taxes. He produced an invoice from that company as proof he began working to resolve these debt in September 2014. A January 28, 2015 letter from the IRS shows that his offer in compromise to resolve these tax debts for \$1,105 was accepted for amounts owed for tax years 2010 through 2013. However, that agreement ceased in December 2015 after the "terms [were] not met for offer in compromise." (AE E.) Applicant has made some payments to the IRS on his 2010 tax debt (which was not alleged in the SOR), but he failed to document regular payments toward the delinquencies for the 2012 and 2013 tax years. His account transcript from his 2010 taxes indicated he again negotiated an installment agreement effective January 12, 2017, but no documents were provided to show the terms of that agreement or the balance due. He testified that he currently pays the IRS \$472 each month, but did not provide documentation to substantiate that claim. It is unclear if the agreement included the delinquent amounts for 2012 and 2013. (AE E; Tr. 27, 45-50.) These debts are unresolved.

Applicant was alleged to be delinquent on student loan debt in the amount of \$20,711, as stated in SOR ¶ 1.c. This was a student loan for his daughter, which Applicant co-signed. The school Applicant's daughter was attending filed for bankruptcy and closed prior to the completion of her educational program, and did not refund her tuition. His daughter applied for a "closed school discharge" of this student loan debt. She has not received any response to her application. Applicant claimed he contacted a debt management company to assist him in resolving this debt, but did not provide documentation to support this claim. Applicant testified that the debt resolution company sent this creditor letters to obtain the status of the debt, but at this time, this debt is not resolved. (AE F; Tr. 50-57.)

Applicant was alleged to be delinquent on a collection account for a cell phone service provider in the amount of \$2,004, as stated in SOR ¶ 1.d. Applicant settled this debt for \$500.96 on October 6, 2017. It is resolved. (GE 2; AE G; AE H; Tr. 59-60.)

Applicant was alleged to be delinquent on a charged-off account in the amount of \$1,624, as stated in SOR ¶ 1.e. This was a vehicle loan incurred by Applicant for his wife. They purchased the vehicle while she was able to work. When her health started failing and she stopped working, he was unable to afford these payments. Applicant negotiated a settlement with this creditor. He paid it in full in October 2017. He also provided a statement from the creditor that showed he had been making small regular payments on

this debt since 2014, when the debt was charged off by the creditor. This debt is resolved. (GE 4; AE I; Tr. 60-62.)

Applicant was alleged to be delinquent on an automobile loan in the amount of \$1,279, as stated in SOR ¶ 1.f. Applicant provided a statement from a creditor, dated September 20, 2017, indicating a vehicle loan account is paid in full. However, the account numbers and the details provided in Applicant's letter do not match the information in the credit reports. The August 2015 credit report reflects this vehicle loan was opened in September 2007 and became delinquent in 2010. Applicant stated the alleged loan was acquired in 2004. The evidence provided does not establish that this debt is resolved. (GE 2; GE 6; AE K; Tr. 57-59.)

Applicant was alleged to have had a home foreclosed upon by his mortgage holder in 2009, as stated in SOR ¶ 1.g. Applicant's mortgage was for \$335,250 and was acquired in 2005. This debt was resolved through foreclosure. (GE 2; AE L; Tr. 36-38.)

Applicant was alleged to be delinquent on a collection account for a cell phone service provider in the amount of \$1,472, as stated in SOR ¶ 1.h. This debt was settled in full on October 6, 2017. It is resolved. (GE 2; AE H; AE M; Tr. 62-64.)

Applicant was alleged to be delinquent on a medical account in the amount of \$295, as stated in SOR ¶ 1.i. He provided a letter from this creditor showing a zero balance on this account. It is resolved. (AE N; AE T; Tr. 64-65.)

Applicant was alleged to be delinquent on collection account for a television service provider in the amount of \$275, as stated in SOR ¶ 1.j. Applicant asserted that he paid this debt and requested a receipt, but that the company failed to send him documentation to show it was paid. It is unresolved. (AE O; Tr. 69-73.)

Applicant was alleged to be delinquent on a medical account in the amount of \$249, as stated in SOR ¶ 1.k. Applicant disputed responsibility for this debt. His debt management company researched this debt and found it belonged to his son, who bears that same name as Applicant. Applicant failed to present documentation to substantiate this dispute. (AE P; Tr. 65-67.)

Applicant was alleged to be delinquent on a medical account in the amount of \$220, as stated in SOR ¶ 1.l. Applicant contacted this creditor to resolve this debt. The creditor told him it was a duplicate of the debt alleged in 1.i, and would not accept payment. It is resolved. (AE Q.)

Applicant was alleged to be delinquent on a medical account in the amount of \$88, as stated in SOR ¶ 1.m. Applicant presented receipts from this creditor showing that he has made multiple payments to this creditor. Additionally, he believes this debt to be a duplicate of the medical account in the amount of \$88, as stated in SOR ¶ 1.n. He presented documentation that this debt is resolved. (AE R; AE S.)

Applicant was alleged to be delinquent on a medical account in the amount of \$53, as stated in SOR ¶ 1.o. Applicant resolved this debt in November 2017, as documented in a letter from this creditor. (AE T; Tr. 65-67.)

## **Policies**

When evaluating an applicant's national security eligibility, 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.

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 AG ¶ 2 describing 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 states an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

Finally, 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 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 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 has a history of not meeting his financial obligations. He failed to timely pay his Federal income taxes, as required by law, for years 2012 and 2013. He also had 14 unresolved delinquent debts totaling \$44,133 that accumulated between 2009 and present. 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 Applicant's 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;

(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; 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's history of financial delinquencies is demonstrated by his foreclosure in 2009 through his unresolved debts in the present. He has failed to timely pay Federal income tax obligations in 2012 and 2013. He has six SOR-alleged unresolved delinquent accounts. His debt is ongoing and casts doubt on his reliability and judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a series of events including: the physical ailments of his family members and his unemployment between March 2008 to March 2010; July 2010 to September 2010; February 2011 to August 2011; November 2011 to July 2012; and August 2013 to June 2014. These were conditions beyond his control. However, the record lacks documentation to show he reasonably and responsibly addressed his delinquencies while they were accumulating. Full mitigation under AG ¶ 20(b) is not established.

Applicant provided documentation that he resolved SOR ¶¶ 1.d, 1.e, 1.h, 1.i, 1.j, 1.l, 1.m, 1.n, and 1.o. AG ¶ 20(d) applies to those allegations. However, the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.f, 1.g, and 1.k, remain unresolved. Applicant failed to provide documentation of financial counseling or show that these unresolved debts are under control. There is insufficient evidence to conclude that he is making a good-faith effort to

repay his remaining creditors. The evidence does not establish mitigation under AG ¶¶ 20(c) or 20(d) concerning his overall financial situation.

Applicant did not provide documentary evidence of a reasonable basis to dispute his debt in SOR ¶ 1.k. AG ¶ 20(e) does not apply.

Applicant provided evidence relating to delinquent Federal taxes from the 2010 tax year, showing that he has an offer in compromise with the IRS for that tax year. However, the documentation provided does not prove that the 2012 and 2013 Federal taxes are being paid or otherwise resolved. He did not fully mitigate the Government's concern under AG ¶ 20(g).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is 63 years old. He served as a civilian employee of the Federal government from 1972 to 2005. However, Applicant has not provided sufficient evidence about his overall financial stability from which to determine that further tax problems or financial delinquencies are unlikely. 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.



## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	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 access to classified information. National security eligibility is denied.

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Jennifer I. Goldstein  
Administrative Judge