



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 16-00141

**Appearances**

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

11/17/2017

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant's financial irresponsibility spanned at least the last nine years, including multiple failed bankruptcies, and continues to date. He offered insufficient evidence of responsible efforts to resolve his debts, or to establish rehabilitation. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On January 6, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 2.) On June 10, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on July 8, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On August 17, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on August 18, 2016, and received by him on August 25, 2016. 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 submitted a timely written response to the FORM, with additional information, which is marked Applicant's Exhibit (AE) A. He did not file any objection to the contents of the FORM, and did not request additional time to respond beyond the 30-day period he was afforded. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on May 22, 2017.

On October 12, 2017, I informed Applicant of the implementation of the new adjudicative guidelines, discussed below, and offered him an opportunity to provide updated or other additional information for consideration. From then until November 10, 2017, Applicant was granted a series of extensions of time to submit material, and sent additional exhibits which are marked AE B through AE E. Administrative Judge's Exhibit (AJ Ex.) I contains the email correspondence concerning these extensions of time. Department Counsel had no objection to the extensions or to any of Applicant's exhibits. Items 1 through 7 and AE A through E are admitted in evidence.

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 set forth in Appendix A of SEAD 4. I considered the 2006 adjudicative guidelines, as well as the SEAD 4 AG, in determining Applicant's national security eligibility. My decision would be the same under either set of guidelines, but this decision is issued pursuant to the SEAD 4 AG.

### **Findings of Fact**

Applicant is 54 years old and married for the second time. He has two adult children and twin 16-year-old daughters who live in the home he and his wife purchased in 2015. He graduated from high school in 1981. He enlisted in the Army in December 1984, and served in the Military Police (MP) Corps until March 2007, when he retired with an Honorable discharge at pay grade E-6. He has been employed as a civilian security patrolman overseas by a defense contractor since February 2011, and is

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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."

seeking to renew the security clearance he has held since 1992 in connection with his military service and post-service employment. (Item 2; Item 3.)

Applicant admitted all of the allegations in the SOR, with explanations. He said that he took full responsibility for all of his mistakes that led to his security clearance being in question, and asked for a second chance to continue his job and become financially responsible. (Item 1.) Applicant's admissions, and comments in AE A through AE E, are incorporated in the following findings.

Applicant and his wife had incurred a number of delinquent debts and fallen behind on their mortgage loan when they decided to file for Chapter 13 bankruptcy relief in August 2008.<sup>2</sup> They told the bankruptcy attorney that they "were unable to make the payments he had come up with, but [they] were advised that this was [their] only option if [they] wanted to save [their] home." He said that they struggled for 17 months making payments. That proceeding was dismissed in January 2010 for failure to make required payments. Applicant and his wife filed Chapter 13 petitions again in January 2010 and June 2010 in continuing attempts to avoid foreclosure on their home and hold off their other creditors. Failure to make payments under both of those plans led to their dismissal in June 2010 and August 2010, respectively. SOR ¶¶ 1.d, 1.e, and 1.f alleged these bankruptcy filings and dismissals. (Item 1; Item 2; Item 3; AE A.)

As alleged in SOR ¶ 1.g, the Federal government entered a tax lien against him on September 30, 2010, in the amount of \$13, 811.82. This lien covered unpaid Federal income tax obligations for tax years 2004, 2005, 2006, 2008, and 2009. Applicant entered into an installment repayment agreement with the IRS, under which he made monthly payments of \$559 toward this tax debt. This tax lien was released on August 9, 2017, after Applicant satisfactorily repaid all of these tax delinquencies. (Item 1; AE A; AE B.)

The \$393 delinquent debt alleged in SOR ¶ 1.h involved the unpaid balance on a consumer loan Applicant entered into in July 2006 and defaulted on in August 2008. The high credit balance on the loan was \$3,978, and the lender charged off the unpaid \$393 in November 2008. (Item 5.) In his September 2016 FORM response, Applicant said that he had agreed with the lender to pay this debt at the end of that month. He failed to do so, and did not pay this debt until October 31, 2017, after receiving a third extension of time to supplement the reopened record. (AE D.)

SOR ¶¶ 1.i and 1.j alleged two charged-off automobile loans for voluntarily repossessed vehicles. He defaulted on the first loan in June 2010, and the lender charged off the outstanding \$32,515 balance in April 2013. The second loan was opened in July 2011 and defaulted in March 2013. The lender charged off the remaining \$8,173 balance after repossession in August 2013. Neither of these lenders is claiming

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<sup>2</sup> Item 4 is Applicant's Full Data Credit Report dated April 6, 2007. It documents many earlier delinquent debts dating from 2003 through 2007. These debts were not separately alleged in the SOR, but they further inform the nature of Applicant's financial situation when he filed his 2008 bankruptcy petition.

a current balance due from Applicant. (Item 1; Item 5; AE A; AE C.) Although not alleged in the SOR, Applicant's most recent record credit report states that during August 2016 another lender charged off Applicant's \$13,827 delinquent balance due on an automobile loan that he entered into in August 2015 and defaulted on in November 2015. That report also lists a new \$2,000 judgment debt to an automobile dealer that was entered against him in June 2016. (Item 7.)

SOR ¶ 1.c alleged a charged-off \$859 credit card account that Applicant opened in September 2015 and defaulted on in October 2015. In his answer to the SOR, Applicant said that he did not purposely ignore this debt, but simply confused it with another credit card he had earlier obtained from the same company. In his FORM response, he included a September 2, 2016 offer from the collection agency holding the debt to accept \$688 in full settlement. Applicant offered no proof that this debt has been paid. Instead, he provided copies of letters stating that two other formerly delinquent smaller credit card debts owed to the same lender, but with different account numbers, have been resolved.<sup>3</sup>

Applicant entered into a \$589,000 first mortgage loan with monthly payments of \$3,697, in connection with his purchase of a new home in August 2015. Based on his January 2016 credit report (Item 6), SOR ¶ 1.a alleged that this loan was past due in the amount of \$14,789, with an outstanding balance of \$588,224. His August 2016 credit report (Item 7) showed that this delinquent balance had grown to \$37,862. These delinquency amounts indicate that he made no regular monthly payments toward this loan after the first one in September 2015. In May 2016, Applicant entered into a loan modification trial period plan agreement with this lender to make monthly payments of \$2,618 in July, August, and September 2016, after which the bank would modify the loan terms and waive his late charges. (AE A.) On May 31, 2017, Applicant and the bank entered into a loan modification agreement that called for him to make monthly payments of \$3,197 starting July 1, 2017. (AE E.) Applicant provided no evidence that he made any of the payments required under this modified mortgage loan, but said in both AE C and AE E that these new payments were too high for him to afford and that he would be requesting another loan modification from the lender.

Before purchasing their new home in August 2015, Applicant's family lived in an apartment with a lease that he and his wife both signed. When they moved out, the landlord claimed a remaining balance due on the lease of \$1,215 as alleged in SOR ¶ 1.b. In his FORM response, Applicant said that he had made arrangements to make three \$405 payments to the landlord in September, October, and December 2016 to repay this debt. In October 2017, however, he said that this plan to pay the debt was canceled because of his wife's filing for Chapter 7 bankruptcy relief on July 26, 2017. Applicant did not explain how the summer 2017 bankruptcy filing could have influenced

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<sup>3</sup> The last page of AE A relates to an account, listed on page 8 of Item 5, which was delinquent in the amount of \$138. The last page of AE D involves an account, reported at page 10 of Item 5 and page 3 of Item 7, which was delinquent in the amount of \$90. Both of these account numbers differ from that shown on page 2 of Item 6 and page 3 of Item 7 for the \$859 charged-off account alleged in SOR ¶ 1.c.

his agreement to pay the creditor during September through November 2016. In addition, Applicant said that his wife's recent Chapter 7 bankruptcy filing did not include him, so that proceeding would not affect his responsibility or liability for the debt on the lease he personally signed, or any of his other outstanding debts. (Item 1; Item 7; AE A; AE C.)

Applicant offered no evidence to suggest that he has obtained financial counseling. He provided no budget information from which to predict his future solvency, or his ability to make payments toward his delinquent debts. He offered no evidence to support findings concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (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 regularly incurred significant debts that he either could not or chose not to repay, at times almost immediately after entering into the loan agreements. His history of financial irresponsibility dates back at least a decade, as evidenced by his serial filings for Chapter 13 bankruptcy starting in 2008. His \$13,811 Federal tax lien was imposed for failing to pay income taxes due for 2004 through 2009. The two charged-off automobile loans alleged in the SOR involved more than \$40,000 in debt he never repaid. He obtained a modification on his home mortgage, but admits that he still cannot afford the lower monthly payments. He failed to follow through on his stated intention to resolve the smaller debts alleged in SOR ¶¶ 1.b and 1.c, and did not repay the \$393 debt alleged in SOR ¶ 1.h until October 31, 2017, more than a year after he said he would pay it in September 2016. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

(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, 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 in compliance with those arrangements.

Applicant's multiple delinquent debts are substantial and ongoing. His failure to address his financial irresponsibility in a meaningful way over the past decade creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

Applicant neither documented that any of his delinquent debts arose from circumstances beyond his control, nor showed that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b). He offered no evidence of financial counseling or budget information establishing solvency going forward or the ability to repay his delinquencies. He failed to demonstrate that most of these problems are being resolved, are under control, or that a good-faith effort toward resolution has actually been initiated. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Applicant's tax lien has been released after he finished payments under an installment agreement he reached with the IRS after it was filed. This offers some mitigation of AG ¶ 19(f) security concerns arising from these tax debts, but not of the concerns raised in connection with his AG ¶ 19(c) history of not meeting financial obligations.

### **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 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.

According to 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 applicable 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 a mature adult, who is accountable for his choices. He continues to owe a substantial number and amount of delinquent debt, and demonstrated no progress in establishing solvency going forward. Both continuation and recurrence of financial problems are likely, and he provided insufficient evidence of rehabilitation or permanent behavioral changes. The potential for pressure, exploitation, or duress remains undiminished, particularly in light of his expressed inability to pay his large home mortgage loan and the additional new delinquencies listed on his post-SOR credit report.

Overall, the evidence creates significant doubt as to Applicant's judgment, reliability, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate security concerns under the guideline for financial considerations.

### **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

Subparagraphs 1.a through 1.j:

Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility is denied.

DAVID M. WHITE  
Administrative Judge