



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-00614  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

06/12/2018

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Applicant mitigated the financial security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 29, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.<sup>1</sup> The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 20,

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

2018, scheduling the hearing for May 3, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted. Applicant testified on his own behalf, and presented Exhibits (AE) A through I. I held the record open until May 17, 2018, for additional documentation. Applicant presented two packets of documents, which I marked Applicant's Exhibits (AE) J and K, and admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on May 11, 2018.

### **Findings of Fact**

Applicant, age 55, is divorced and remarried in 1996. He has a daughter and a stepson. He graduated from high school in 1980, and he obtained an associate's degree in 2008. He has been employed with his current employer for about five years. Applicant is a retired policeman from a large metropolitan county since 2008. He retired after 20 years of service after a shooting event. (Tr.15) Applicant completed his security clearance application on May 26, 2015. He has never held a security clearance. (GE 1) However, he is currently sponsored by a defense contractor. (Tr. 39)

The SOR alleges that Applicant has delinquent debt in the amount of \$50,000, which include student loans, delinquent taxes in the approximate amount of \$21,923 and credit card debt. Applicant admitted all the allegations, but explained some accounts were paid and he has a payment plan with the IRS. He provided explanations for each allegation.

Applicant acknowledged his financial hardship. He takes responsibility, but attributes it to having difficulty finding employment after retiring in 2008. He applied for many federal jobs but with no success. He found employment as a sales agent with a car company. The pay was low and also based on commission. (Tr. 15) Applicant continued with his education to improve job opportunities. He obtained student loans. He began using his credit cards to receive cash. He paid his mortgage and the household bills. Originally, Applicant had 12 credit cards with delinquent balances. He has settled or paid nine accounts and now has three. Applicant was paying on all his bills until he decided to obtain the services of Freedom Debt Relief in 2015. They told him to stop paying the bills that remain delinquent. (GX 2). He pays them directly from his checking account each month in the amount of \$462. He believes he has about \$3,000 in credit-card debt at this time. (AX A) He has also received counseling from them. (Tr. 73)

As to SOR 1.a, delinquent federal taxes in the amount of \$21,923 for tax years 2010 to 2014, Applicant and his wife have an agreed upon payment plan with the IRS. This is taken care of by his wife, who earns about \$125,000 a year and hold a security clearance. She has advised her employer of the plan, and that she and Applicant are current in the plan. The payment plan began in 2010. Applicant was paying \$300 a month, but the amount now is \$500 a month. He has never missed a payment. The reason for the extra taxes that were not paid was due to a secondary security job that the Applicant had. And no taxes were withheld. (Tr. 47) He now realizes this mistake and takes full responsibility. Applicant presented tax transcripts from the IRS to confirm the payments that have been made. (AX J;K) He has always filed his taxes timely.

SOR 1.b, 1.c, and 1.j, are for student loan accounts, Applicant presented documentation that the loans are in forbearance. (AX B) The approximate amount of the loans is \$16,753. He has consolidated the loans. Applicant was paying about \$250 a month for three years, before he applied for a one year forbearance. Payments will begin again in late August in the amount of approximately \$205. (Tr. 21)

As to SOR 1.d, a collection account in the amount of \$5,177, Applicant is making payments of \$150 a month through a wage garnishment. (Tr. 58) This began in 2016.

Applicant explained that SOR 1.e, 1.f, 1g, and 1.i are “open accounts.” These are in negotiation status with Freedom Debt Relief. (Tr. 60) Applicant has about \$1,400 in his account with Freedom Debt Relief. They will use that money to negotiate with the other accounts. SOR 1.h, a charged-off credit card was settled in April 2017. Applicant made two payments of \$366.75

SOR 1.k, in the amount of \$451 has been paid through Freedom Relief. (AX A).

Applicant earns about \$46,000 a year. His wife earns about \$125,000. He has a savings account and no other delinquent bills. He is current on everyday household expenses. He has never been late on his mortgage loan. His wife pays for her own credit cards. Their daughter attends private school, which is about \$1,400 a month. Applicant’s car note is paid. He states that he has no credit card debt, but his wife does. He uses a handwritten spreadsheet for a budget and has received financial counseling. (Tr. 50)

Applicant submitted a character letter from a former police colleague who has known him for 20 years. He is described as an honest and faithful officer. He is aware of the financial issues in the SOR. (AX H) The colleague strongly believes that the downturn in the economy after Applicant’s retirement was the beginning of his financial issues. He knows Applicant to be a responsible person and has taken substantial measures to overcome his difficulties.

Another letter from a person with an extensive law enforcement background who has known Applicant for several years, describes him as professional. He has never had a reason to call Applicant’s integrity into question. (AX I)

### **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 (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, “Any 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, “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, 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 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 EO 10865, “Any 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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 . . . .

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).

Applicant's admissions, corroborated by his credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations") and 19(f) (....."failure to pay annual Federal ..income tax as required",)

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20 (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 debts are the result of unemployment and underemployment after retirement and not having sufficient income. He did not have sufficient withholding for his tax purposes. He had an approved plan with the IRS. He has student loans now in forbearance. AG ¶ 20(a) is not fully established. Applicant's delinquent debts remain unresolved. The other mitigating conditions apply.

AG ¶ 20(b) is established. While Applicant's unemployment was a condition beyond his control, he acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are established. Applicant received financial counseling and as a result of his continuing efforts with Freedom Debt Relief, there are clear indications that his financial situation is under control. He has a track record of payments and he has an approved IRS payment plan. He provided sufficient documentation to support the claim. He had student loans in forbearance and will begin to pay them. His good-faith efforts are clear. I believe he will continue. He has a track record of responsibility. Not all debts need to be resolved.

Applicant met his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.k. for Applicant.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his years of service as a police officer, I conclude that Applicant has mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.k: For Applicant

**Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch  
Administrative Judge