



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-01589  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro Se*

02/27/2018

**Decision**

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KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations, and Guideline J, criminal conduct. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 8, 2015. On September 30, 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. The DOD CAF acted 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.<sup>1</sup>

Applicant answered the SOR on October 24, 2016, denying all of the SOR allegations. He provided explanations including that he was in a federal loan rehabilitation program for his student loans, and he was out of work for several months due to back surgery. Applicant also requested a hearing before an administrative judge. The case was assigned to me on July 20, 2017. On January 19, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 1, 2018. I convened the hearing as scheduled. Applicant waived the 15 days advance notice required by the DOD Directive.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. At Applicant's request, I left the record open until February 15, 2018 for him to submit additional documents. (Tr. 38, 65) Applicant's post-hearing submissions were collectively marked as AE D and included an e-mail dated February 14, 2018 plus a printout of a payment history for 24 months and a plan to consolidate his student loans with Navient. He also affirmed that he is starting the process of sale of his house to reduce expenses. AE D was admitted without objections. DOHA received the transcript (Tr.) on February 9, 2018. Department Counsel moved to withdraw the allegation at SOR ¶ 1.h at the outset of the hearing. That motion was granted.

### **Findings of Fact<sup>2</sup>**

Applicant is 34 years old. He obtained a bachelor's degree in 2006. Applicant has been unemployed since he was laid off by a federal contractor in October 2015. He has been married for two years and has one child, age two, and two stepchildren. (Tr. 16) Applicant had a second son born on January 27, 2017, who died after 13 days in the intensive care unit. (Tr. 17) He purchased a home at the end of March 2017. A week later, his 36-year-old wife had a devastating stroke and nearly passed away. (Tr. 19) She required multiple surgeries and she is still going through rehabilitation. She requires a cane or wheelchair and she has been unable to work. She had been earning approximately \$150,000 a year, as an attorney. (Tr. 46) Applicant is now the sole breadwinner, earning \$110,000 per year. (Tr. 46) Applicant reports no previous security clearance.

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<sup>1</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

<sup>2</sup> Unless stated otherwise, the source of the information in this section is Applicant's November 8, 2015, security clearance application (SCA) and the summary of his security clearance interview on December 28, 2015.

The SOR alleged eight delinquent debts totaling approximately \$62,000, including allegations of delinquent student loans in the approximate amount of \$55,000 (SOR ¶¶ 1.a - 1.e, and 1.g). Applicant testified credibly that these student loans are now consolidated with Navient and the balance owed is approximately \$55,096. (Tr. 27) Applicant provided AE A, which showed payments on the student loan debt of \$5.00 per month from February 2016 to July 2016, to get the loans out of default. (Tr. 28, 30)

SOR ¶ 1.f alleges a charged-off debt to a jeweler in the amount of \$3,545. Applicant testified credibly that he paid this debt off. It was for an engagement ring for his wife, and it was stolen when she was admitted for treatment for her stroke. (Tr. 30)

Applicant was involved in a motor vehicle accident in 2015 and received injuries. (Tr. 41, 54) He required neck and back surgeries and was out of work for several months. (Tr. 54, 55) He filed a civil lawsuit and recovered a \$300,000 (gross) settlement. He took home only \$125,000 of that amount, after lawyer's fees and costs. (Tr. 41, 42) Applicant testified that he was able to pay off another private \$30,000 student loan that was not included in the SOR. (AE C, Tr. 35) He also was able to purchase a house in March 2017. However, after the tragedy struck his wife, Applicant had sole responsibility for \$3,127 per month mortgage payments. (Tr. 47) So, he was unable to make student loan payments. (Tr. 45) The student loans went into default.

Applicant produced post hearing documents showing that his most recent payment to Navient on the student loan debt, was in the amount of \$50.00 was made on February 1, 2018. (AE D) The print-out from Navient also shows a present balance of \$57,559 owed, and a 24-month history of payments of \$176 per month, which Applicant made from late 2015, until late 2016. His next payment is due on April 25, 2018 (AE D) Applicant's uncle and aunt helped him out with financial counseling about one year ago. (Tr. 51) They helped him formulate a budget. Applicant incurred over \$600,000 in medical expenses from his wife's stroke. (Tr. 55) Additionally, he was paying \$250 a week for a nursing assistant until February 2018. He now pays that amount for child-care each week. (Tr. 59)

SOR ¶ 2.a alleges that Applicant was arrested on July 19, 2015 and charged with misdemeanor soliciting prostitution. Applicant was preparing to get married around that time. He was chatting with a young lady on the street and started to walk away, when he was arrested. (Tr. 61) She turned out to be part of a sting operation in which the police cast a wide net and did a sweep for prostitution related crimes, resulting in dozens of arrests that evening. (Tr. 62) No money exchanged hands and Applicant received a citation to appear in court. He pled guilty for expedience sake and served community service as part of a deferred prosecution by which the charge was dismissed in January 2016. (GE 1, p. 47, Tr. 63) Applicant served as a police cadet briefly and a volunteer firefighter in his community for 15 years. His wife is aware of this baseless charge, and he had no arrests before or after this one. (Tr. 64)

## **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, the adjudicative guidelines 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG, Appendix A, ¶ 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. Under 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 risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to 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 abuse, 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 an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, summary of interview, and documents submitted at the hearing. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>3</sup> Applicant has met that burden. Most of the delinquent debts have been resolved, or he has an established track record of consistent payments to settle them.

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;

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<sup>3</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . , 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 non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant endured a series of personal tragedies including an automobile accident in which he sustained serious injuries, loss of a child, and his wife's catastrophic stroke in March 2017. He has done everything possible to aid her recovery and care for his child. These conditions were beyond his control. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant has met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He has either paid off, or made consistent payments pursuant to a plan, on his delinquent debts. He produced documentation to confirm that most of the delinquencies alleged in his SOR have been resolved. He intends to settle any remaining delinquent debts and pay off his student loans. The mitigating conditions enumerated above in AG ¶ 20 apply.

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30 as follows:

Criminal activity creates doubt about an Appellant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes conditions that could raise security concerns under AG ¶ 31. The disqualifying conditions potentially applicable in this case include:

(b) evidence (including, but not limited to, a credible allegation, and admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant fully disclosed his July 2015 arrest for soliciting prostitution in section 23 of his SCA. He testified credibly that he did not solicit the prostitute. His case was dismissed as part of a deferred-prosecution plea agreement after he completed community service. Based on the doctrine of collateral estoppel, I cannot conclude the offense did not occur.

AG ¶ 32 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant was arrested in a sweep conducted by law enforcement for prostitution-related crimes almost three years ago. He pled guilty to this misdemeanor to get the benefit of a deferred prosecution agreement, by which the case was dismissed after he completed community service. He has an otherwise clear criminal history and this arrest happened under unusual circumstances and is unlikely to recur.

### **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, Appendix A, ¶ 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, Appendix A, ¶ 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 Guidelines F and J in my whole-person analysis. Some of the factors in AG, Appendix A, ¶ 2(d) were addressed under those guidelines. Applicant is caring for his recovering wife, and raising a child essentially alone. He has a clean record and he has been gainfully employed for most of his adult life. He has struggled to overcome his financial travails and pay off his student loans. He is selling his house to reduce expenses, and his wife has outstanding earning potential once she is well. Applicant testified credibly and persuasively that his finances are now under control. His arrest was an aberration. Most importantly, Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has met his burden of production.

Applicant's minor criminal conduct and finances no longer remain a security concern. There is sufficient evidence to conclude that Applicant's financial problems are under control. He is gainfully employed and managing his financial affairs. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline F, financial considerations, and Guideline J, criminal conduct.

### **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:	FOR APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant
Subparagraph 1.h:	Withdrawn
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Robert J. Kilmartin  
Administrative Judge