



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



In the matter of:	)	
	)	
	)	ISCR Case No. 16-01697
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq.

01/11/2018

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 4, 2014. On June 3, 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 June 23, 2016, admitting most of the SOR allegations except for SOR ¶¶ 1.b and 1.d, under Guideline F. He stated that most of the debts were in litigation, and a determination would be made at an August 2016 hearing about whether he or his ex-wife was responsible for them. Applicant attached several documents to his Answer showing that he completed financial counseling, satisfied the tax lien at SOR ¶1.b, and paid SOR 1.d in full. He also requested a hearing before an administrative judge. The case was assigned to me on July 25, 2017. On November 7, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 7, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. GE 5 was not admitted in evidence as Appellant's counsel's objection was sustained. At the hearing, Applicant testified and his attorney submitted Applicant's Exhibits (AE) A through P, which were admitted without objection. DOHA received the transcript (Tr.) on December 14, 2017.

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

Applicant is 48 years old. He obtained a bachelor's degree in engineering technology and has been employed with a defense contractor since April 2010 maintaining alarm systems and electronic security systems aboard a military installation. His brief military service was cut short when he injured his knee in initial training, and he was administratively discharged from the U.S. Air Force. (Tr. 24) He was married in 1993 and divorced in 2013, and has one daughter, age 22. (Tr. 23)

Applicant reported delinquent debts including \$113,000 in student loans in section 26 of his December 2014 SCA. He claimed he was disputing this with his ex-wife to determine what amount of the student loan she should pay. He also stated "I am working with the student loan office and hiring an attorney to force my ex-wife to pay the portion of her student loan." Applicant disclosed that he filed a successful innocent spouse claim for some unpaid federal taxes with the IRS, since his ex-wife handled all of their finances and tax returns.<sup>3</sup> She misled him into believing the bills were being paid timely.

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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 December 4, 2014 Security Clearance Application (SCA).

<sup>3</sup> Tr. at 28, 36.

The SOR alleged nine delinquent debts totaling approximately \$187,000. (Tr. 9) The largest delinquency concerns student loans. The SOR alleged in ¶1.c that Applicant is indebted in the approximate amount of \$153,190 [with accrued interest] for student loans placed for collection. Also, SOR ¶ 1.h alleges that Applicant has another student loan that is 120 days or more past due in the amount of \$3,239. Applicant admitted to these two delinquent student loans, but stated that SOR ¶ 1.c is in his ex-wife's name and he cannot access it online since it is under her social security number, and he does not have the password. In fact, it was a consolidated student loan in both spouses' names. Further, he suggested that this would be resolved at an upcoming divorce court appearance scheduled for August 2016.<sup>4</sup> It was not.

The SOR alleges in ¶ 1.b that Applicant is indebted for a state tax lien entered against him in the amount of \$1,066. Applicant denied this allegation SOR and he produced evidence with his Answer documenting that this lien was paid and satisfied on December 4, 2014. He also attached documentary evidence that SOR ¶ 1.d was paid in full. Applicant testified credibly that he had always relied on his ex-wife to handle their finances, including filing state and federal income tax returns. She had neglected to pay some state income taxes, which resulted in the tax lien. (Tr. 26, 43) Applicant first learned of his delinquencies when he pulled his own credit report when they separated in January 2013 after 20 years together. (Tr. 58)

Through counsel, Applicant submitted numerous documents at the hearing, AE A-P. The divorce decree entered in May 2013 allocated the debts that the parties were responsible for paying. (AE N) The divorce court determined he was responsible for 65% of the consolidated student loan principal, and she was responsible for 35%. (Tr. 29, and AE N) Although it is ambiguous, paragraph 4 of the contract of settlement, attached to the final divorce decree, seems to require that "the husband pay his student loans, which are currently in both parties' names, and agrees to hold his wife harmless for same."<sup>5</sup> Applicant testified that the drafter of this document was representing his ex-wife and he was not a divorce attorney. Applicant did not have a divorce attorney. (Tr. 58) Not surprisingly, a contentious dispute ensued between Applicant and his ex-wife over who was responsible for what portion of their consolidated student loans. (Tr. 28 and AE M, N, O, and P) Applicant filed unsuccessful motions to hold his ex-wife in contempt for her failure to cooperate. (AE M and AE O)

The divorce court held a hearing on March 21, 2017, and in its August 31, 2017, Final Order entered the following findings of fact: The parties divorced on May 10, 2013. In 2003, they consolidated their respective student loans. The application for the consolidation indicates that Applicant had student loans for \$41,237. [Ex-wife] had student loans for \$15,300. They had a joint loan for \$11,527. The current total amount of the consolidated student loans is approximately \$122,000. "Neither party has been

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<sup>4</sup> Answer to SOR dated June 23, 2016.

<sup>5</sup> AE N.

making any payments on the student loans.”<sup>6</sup> The court ordered that the parties divide the principal amount of \$68,065 so that Applicant shall be responsible for 65%, and she shall be responsible for 35% of the principal amount. The court declined to make any ruling with regard to who should pay interest. Thus, the issue has been litigated and Applicant lost. He is responsible for 65% of the student loans. Applicant testified that he made payments on the consolidated student loans for seven or eight months following the May 2013 divorce. Then, he just stopped. SOR ¶ 1.c has not been resolved.

SOR ¶ 1.a was a judgment in the amount of \$1,390 entered against Applicant by a bank. Applicant’s counsel produced evidence that this judgment has been satisfied. (AE D). SOR ¶ 1.e alleged a charged-off debt of \$3,433 by another bank. Applicant testified that this is a joint credit-card debt and he disputes it because he did not agree to pay joint debts. (Tr. 30-32) Similarly, SOR ¶ 1.f is another disputed joint debt. SOR ¶ 1.g alleges a joint credit-card debt for \$2,180. Applicant also disputes this joint debt. SOR ¶ 1.i is a debt for \$15,007 resulting from the repossession of a recreational vehicle (RV) in 2007. (Tr. 35) Applicant testified that he moved across the country in summer 2007 to try to save his marriage. The economy crashed and he could not keep up with payments on his RV. (Tr. 53) It was repossessed shortly thereafter. Applicant testified that his ex-wife would know about any deficiency debt since she handled all the finances. This RV-related debt has fallen off his latest credit report. Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in the applicant’s favor. See, e.g., ISCR Case No. 99-9020 at 5 (App. Bd. Jun. 4, 2001).

Applicant presently earns approximately \$54,000 per year. He has a budget, and usually has \$500 - \$600 left over each month after paying his expenses. (Tr. 37) He presently uses no credit cards and described his purchasing habits as cash and carry. He also submitted six positive character reference letters, including one from a squadron commander. (AE A) Applicant had credit counseling, including bankruptcy information in April 2016. (AE B and AE C) A senior engineer testified by telephone that Applicant is a man of integrity and is trustworthy and reliable. (Tr. 17)

## **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

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<sup>6</sup> Paragraph 10, AE O.

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, past and present, 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, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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."

## **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;
- (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's delinquent debts alleged in the SOR are confirmed by his credit reports, and Answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>7</sup> Applicant has not met that burden. Although, he recently hired an attorney who successfully mitigated many of the delinquencies, the lion's share of the financial concern is obviously the student loans. The divorce court made it clear that he was responsible for 65% in 2013, and reaffirmed Applicant's responsibility in 2017. Applicant has done little or nothing to pay his portion of the student loans in the last four years. As a co-signor on the loans, he had a responsibility to reach out to the loan holder and ask for forbearance or establish a payment plan. No evidence of any such efforts was provided. Instead, Applicant conflates his dispute with his ex-wife into a dispute with the loan holder. There can be no reasonable dispute that Applicant owes 65% of the loan principal.

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

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<sup>7</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).

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 . . . , 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;

(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

To his credit, Applicant has now hired an attorney and obtained financial counseling. He has mitigated SOR ¶¶ 1.a, 1.b, 1.d, and 1.f. Thus, AG ¶¶20 (b), (c) and (d) are only partially applicable. Applicant's bitter divorce may have been a condition beyond his control, but he has no reasonable dispute with the student loan holder and he has not acted responsibly under the circumstances. His student loans remain outstanding and unresolved.

### **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 Guideline F in my whole-person analysis.

Applicant's finances remain a security concern. He has large outstanding balances for student loans. There is insufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a, 1.b, 1.d and 1.f:      For Applicant

Subparagraphs 1.c, 1.e, 1.h and 1.i:      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. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge