



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 16-02058
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mary Margaret Foreman, Esquire, Department Counsel  
For Applicant: *Pro se*

11/09/2017

---

**Decision**

---

HOGAN, Erin C., Administrative Judge:

On December 9, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 Department of Defense after September 1, 2006. On June 8, 2017, the AGs were superseded by revised AG. The case will be decided using the new AG. The outcome of the case would have been the same under the former AG.

On January 4, 2017, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on January 27, 2017. On February 13, 2017, Applicant received the FORM. He was given 30 days to respond to the FORM. He did not submit a response to the FORM. On April 3, 2017, the FORM was forwarded to the Hearing Office and assigned to me on October 1, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Findings of Fact**

In his response to the SOR, Applicant admits all the allegations. (Item 2)

Applicant is an employee of a DOD contractor seeking a security clearance. He has worked for his current employer since March 2015. He is a high school graduate and attended a technical school. He is married and has no children. (Item 3)

On May 14, 2015, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed delinquent income taxes for tax years 2008, 2010, and 2012. He also listed a delinquent student loan, a delinquent phone bill, a delinquent credit card account, a delinquent medical account, a debt for overpaid unemployment, a balance from a voluntary truck repossession, a balance from an involuntary car repossession, and a furniture store debt. (Item 3, section 26)

A subsequent background investigation resulted in the SOR, which alleged seven delinquent accounts, an approximate total balance of \$47,941. The accounts include a \$12,525 car loan account that was charged off in February 2015 (SOR ¶ 1.a: Item 5 at 3; Item 6 at 3); a \$4,358 car loan account that was charged off in November 2013 (SOR ¶ 1.b: Item 5 at 3); a \$4,743 account that was charged off in September 2015 (SOR ¶ 1.c: Item 6 at 3); three delinquent medical accounts placed for collection in the amounts of \$175, \$66, and \$221 (SOR ¶¶ 1.d, 1.e, 1.f: Item 6 at 1-2); and a \$25,853 student loan account that was past due in the amount of \$831. (SOR ¶ 1.g: Item 6 at 3). It was also alleged that Applicant owes federal income taxes for tax years 2008, 2010, 2012, and 2013. (SOR ¶ 1.h: Item 3 at section 26).

Applicant incurred delinquent debts because of his wife's debts and due to several periods of unemployment and underemployment. He claims that he is making payments in accordance with payment plans towards the student loan account (SOR ¶ 1.g), the \$4,743 charged-off account (SOR ¶ 1.c) and the tax debts (SOR ¶ 1.h). He did not provide evidence of the payment plans or that he is consistently making payments towards these debts in his Response to the SOR. He did not submit a Response to the FORM. The status of the debts is unknown. He intends to pay the remaining delinquent accounts alleged in the SOR when he is able to afford paying them. (Item 3, section 26; Item 4)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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 ¶ 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . ." The applicant 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 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 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." 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (inability to satisfy debts); AG ¶19(c) (a history of not meeting financial obligations); and AG ¶ 19(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) apply to Applicant's case. Applicant encountered financial problems for several years now. The SOR alleges \$47,941 in delinquent medical and consumer debts as well as unpaid federal income taxes for tax years 2008, 2010, 2012, and 2013. Many of these debts became delinquent several years ago and remain unresolved.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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 victimizations by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances);

AG ¶ 20(c) (the person has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit 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);

AG ¶ 20(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

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.)

Only AG ¶ 20(b) partially applies. Several periods of unemployment, underemployment, and his wife's health issues were circumstances beyond Applicant's control. This mitigating condition only partially applies because I cannot conclude Applicant acted responsibly under the circumstances. The amount of delinquent debt is significant and Applicant demonstrated financial irresponsibility during a period of over five years, to include incurring delinquent federal tax debts over four tax years.

AG ¶ 20(c) does not apply because Applicant provided no evidence of financial counseling as well as evidence that his financial problems were being resolved and under control. AG ¶ 20(d) does not apply. While Applicant claimed that he was making payments towards several of his delinquent accounts, he failed to prove that he was making regular routine payments towards these accounts. He provided no receipts, cancelled checks, bank statements, or receipts from the creditors indicating his payment history. All of the debts remain unresolved.

AG ¶ 20(e) does not apply because Applicant did not provide evidence that he had a legitimate reason to dispute any of the debts. AG ¶ 20(g) does not apply because Applicant did not provide a copy of his IRS tax repayment plan nor proof of routine regular payments towards his delinquent federal tax debts.

### **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 ¶ 2(a):

(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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate financial considerations security concerns.

The determination of an individual's eligibility for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating to the evidence presented. Under Applicant's current circumstances, the granting of a security clearance is not warranted. In the future, if Applicant establishes a track record of resolving his delinquent debts and financial responsibility, he may demonstrate persuasive evidence of his security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's employment record. I considered his wife's health issues. In the future, he may be able to demonstrate a track record of resolving his financial obligations. It is too soon to make this conclusion at this point. The security concerns raised under financial considerations are not mitigated.

### **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.h:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

---

ERIN C. HOGAN  
Administrative Judge