



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



In the matter of: )  
)  
) ISCR Case No. 16-03229  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2017  
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**Decision**  
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BENSON, Pamela, C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 10, 2015. On February 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued him a Statement of Reasons (SOR) 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 DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued on or after that date.<sup>1</sup>

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

Applicant answered the SOR on April 13, 2017, and elected to have his case decided on the written record in lieu of a hearing. On May 22, 2017, Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on June 14, 2017. The Government's evidence is identified as Items 1 through 6. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on September 26, 2017.

### **Procedural Matters**

Department Counsel's FORM includes Exhibit 4, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the 2014 background investigation. The ROI is not authenticated by a witness, which is required under ¶ E3.1.20 of the Directive.<sup>2</sup> Likewise, Section 5(a) of Executive Order 10865 prohibits receipt and consideration of "investigative reports" without authenticating witnesses. The Directive provides no exception to the authentication requirement. Indeed, the authentication requirement is the exception to the general rule that prohibits consideration of an ROI.

Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Nevertheless, the written record does not demonstrate that Applicant, who has not replied to the FORM, understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that he understood the implications of waiving an objection. Accordingly, given the lack of an authenticating witness, I have not considered the ROI in reaching my decision.

### **Findings of Fact**

Applicant admitted all the allegations in his Answer to the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He married in 1994 and has two daughters, ages 16 and 11. He earned a high school diploma in June 1982. He is a self-employed truck driver and has been employed by his present employer, a federal contractor, since April 2003. In his SCA, Applicant disclosed that he had received a secret security clearance in September 2003. He did not disclose any delinquent accounts on the SCA.<sup>3</sup>

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<sup>2</sup> See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.).

<sup>3</sup> Item 4.

The delinquent debts alleged in the SOR are supported by credit reports from March 2015 and September 2016. Applicant admitted he owed the delinquent debts cited in SOR ¶¶ 1.a through 1.d (ranging from \$17,563 to \$989; totaling \$35,061). The largest debt, SOR ¶¶ 1.a (\$17,563), is a delinquent mortgage account that was in foreclosure status according to the most recent credit report. Applicant admitted in his Answer that he was trying to arrange payment plans with creditors as well as working to obtain a loan modification. He also explained that he had not passed his Department of Transportation (DOT) physical due to stress and other health issues, which resulted in him being unable to drive his truck for about one year. He listed that at the time he was taking care of his elderly mother, in addition to taking care of his wife who also had health issues. He was assisting in the care of his mother-in-law, who also suffered from health issues. All of these factors added stress to his life. Applicant did not provide any documentation with his Answer to support his claims that he was arranging payment plans with creditors, or to show that he was in the process of obtaining a loan modification.<sup>4</sup>

I have inferred from Applicant's SCA and his Answer to the SOR that his financial problems stem from periods of personal and family health issues, loss of income, and added expenses for the care of his mother and mother-in-law. There is no evidence that he participated in any type of financial counseling. There is also no evidence to indicate that Applicant sought debt consolidation or had begun to address his delinquent debts.<sup>5</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 ¶ 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.

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<sup>4</sup> Item 1, 2, 5, 6, 8.

<sup>5</sup> Items 2, 4.

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. 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. 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.” 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 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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant experienced financial difficulty beginning in 2015 even though he was working full time with his current employer in April 2003. He was unable to pass his DOT physical which prevented Applicant from driving his truck for approximately one year. The delinquent debts alleged are unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

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;
- (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;
- (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
- (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.

Applicant began experiencing financial problems in 2015 after he was unable to pass his DOT physical which resulted in him being unable to drive his truck. He has four debts that remain unresolved, including his home mortgage which is in foreclosure status based on the most recent credit report. He has not provided proof that he has paid or resolved even the smallest debt in the SOR. His financial issues are ongoing. AG ¶ 20(a) does not apply.

Applicant's increased stress after caring for three family members experiencing health-related issues, and not passing his DOT physical, were issues beyond his control. For the full application of AG ¶ 20(b), Applicant must show that he has acted responsibly under the circumstances. Applicant acknowledged in his Answer that all of the debts cited in the SOR were his responsibility. Insufficient evidence was provided to show he has paid or resolved any of the alleged debts, even the smallest, or that he has successfully disputed any of them. AG ¶ 20(b) partially applies.

There is no evidence that Applicant is enrolled in a credit service or undertaken financial counseling. There is insufficient evidence to show that he has made a good-faith effort to repay overdue creditors or otherwise resolve his delinquent debts. He did not provide sufficient evidence to show he disputed the legitimacy of any of the delinquent debts alleged or provided documented proof to substantiate the basis of a dispute or evidence of actions to resolve the issues. Insufficient evidence was provided to apply AG ¶¶ 20(c), 20(d), and 20(e).

### **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(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 ¶ 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old and had family as well as personal health setbacks beginning in 2015, which caused him to fail a DOT physical. Applicant was unable to drive his truck for approximately one year, which resulted in loss of income. He started working for his current employer in April 2003, but there were no listed periods of unemployment reported on his SCA. When comparing his March 2015 credit report to his September 2016 credit report, Applicant's financial indebtedness had increased instead of showing improvement.<sup>6</sup> Insufficient evidence was provided by Applicant to conclude his debts are paid or being resolved. Applicant failed to show he is responsibly managing his finances. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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
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Subparagraphs 1.a-1.d:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge

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<sup>6</sup> Item 5, 6.