



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



In the matter of: )  
)  
) ISCR Case No. 16-03390  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert B. Blazewick, Esq., Department Counsel  
For Applicant: *Pro se*

03/05/2018  
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**Decision**  
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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

On January 23, 2017, 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) implemented by the DOD on September 1, 2006.<sup>1</sup>

Applicant responded to the SOR on February 17, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

was submitted on May 19, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 31, 2017. He responded to the FORM with documentation I marked collectively as Applicant's Exhibit (AE) A, and admitted in evidence without objection. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection. The case was assigned to me on December 18, 2017.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. He is 41 years old. He married in 1996, divorced in 2000, and remarried in 2002. He has three minor children. He has been employed by a defense contractor as a lead field supervisor since June 2015. He worked for a prior defense contractor from 2010 to 2014. He obtained his high school diploma in 1995. He served in the U.S. military from June 1996 to July 2000, when he was honorably discharged. He was first granted a security clearance when he served in the U.S. military.<sup>2</sup>

The SOR alleges an \$8,166 state tax lien from July 2015, five delinquent consumer accounts totaling \$1,893, and a \$125 delinquent medical account. In addition to his admissions, a county record and a December 2016 credit report verify the lien and delinquent debts. Applicant also listed and discussed them in his security clearance application and during his subject interview.<sup>3</sup>

Applicant attributes his state tax lien to filing his 2011 state income tax return on the incorrect form. He attributes his remaining delinquent debts to a layoff in January 2005 due to a lack of work, after which he was consequently unemployed from February to August 2005. He also unintentionally failed to update a creditor, for the purpose of automatic payment deductions, with his employer's information in October 2014. Finally, he was in a car accident and took unpaid medical leave from February to April 2016.<sup>4</sup>

Applicant incurred the state tax lien in SOR ¶ 1.a because he filed his 2011 state income tax return on the incorrect form, as previously discussed. He took his return to a tax professional to have them correctly filed. He provided documentation to show that the lien was released in June 2017.<sup>5</sup>

Applicant stated that he contacted the creditors for SOR ¶¶ 1.b through 1.e and 1.g to set up payment plans. He also intended to make a payment in full for SOR ¶ 1.f. He provided documentation to show that he paid SOR ¶ 1.b in April 2017.<sup>6</sup>

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<sup>2</sup> Items 2-3, 6.

<sup>3</sup> Items 1, 3-6.

<sup>4</sup> Items 2, 3, 6.

<sup>5</sup> Item 2; AE A.

<sup>6</sup> Item 2; AE A.

## 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 list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

Applicant's use of the incorrect form to file his 2011 state income tax return, his January 2005 layoff and consequent unemployment from February to August 2005, his unintentional failure to update a creditor in October 2014 with his employer's information for the purpose of automatic payment deductions, and his car accident after which he took unpaid medical leave from February to April 2016, constitute conditions beyond his control that contributed to his delinquent debts. He has shown that he acted responsibly under his circumstances. He provide documentation to show that the tax lien in SOR ¶ 1.a was released in June 2017, and he paid SOR ¶ 1.b in April 2017.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). While Applicant has outstanding debts, I find that he intends to resolve them, as he did with SOR ¶¶ 1.a and 1.b. AG ¶¶ 20(a) to 20(d) are applicable.

### **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 relevant 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.

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 this whole-person analysis. I considered Applicant's honorable military service.

The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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:	FOR APPLICANT
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Subparagraphs 1.a-1.g:	For Applicant
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### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge