



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03517

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

11/22/2017

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial consideration security concerns. Clearance is denied.

**Statement of the Case**

On December 10, 2016 the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On January 30, 2017, Applicant answered the SOR, admitting all of the allegations, and requested a decision based on the written record instead of a hearing. On March 2,

2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on May 9, 2017, and did not respond. The case was assigned to me on October 19, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.<sup>1</sup>

### **Evidentiary Ruling**

Item 6 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on March 18, 2015. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

### **Findings of Fact**

Applicant is a 55-year-old married man with two adult children. Since 2001, he has worked for a defense contractor as a technical account manager.

As of December 2016, Applicant has approximately \$375,000 of delinquent debt, including a delinquent mortgage (subparagraph 1.a), a delinquent car loan (subparagraph 1.b), and delinquent state income taxes (subparagraph 1.d). Applicant's financial problems appear to be longstanding, as the record reflects multiple filings for Chapter 13 bankruptcy protection between 2001 and 2008. (subparagraphs 1.e-1.k). Applicant admitted all of the allegations, but provided no information about the status of these debts, his current financial situation, or his plans to resolve or dispute them.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. 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 access to classified information will be resolved in favor of 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>2</sup>

### **Analysis**

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

The security concerns about financial considerations are set forth 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. . . .

Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f) ". . . failure to pay annual federal, state, or local income tax as required."

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<sup>2</sup> The factors under AG ¶ 2(d) are as follows:

(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.

The following mitigating conditions are potentially applicable:

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 victimization 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 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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Applicant's failure to provide any explanation for why he incurred the delinquent debt, and his failure to provide any documentary evidence about the current status of the debt, renders all of the mitigating conditions inapplicable. Applicant failed to mitigate the financial considerations security concerns.

### **Whole-Person Concept**

Applicant provided insufficient information to make a whole-person concept evaluation beyond what I considered in my evaluations of the mitigating and disqualifying conditions.

### **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.k:	Against Applicant

## **Conclusion**

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

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Marc E. Curry  
Administrative Judge