



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03778

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel

For Applicant: *Pro se*

12/04/2017

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

On January 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines 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 AGs were implemented and are effective for decisions issued 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 February 24, 2017, and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 20, 2017. I convened the hearing as scheduled on November 16, 2017. The Government offered exhibits (GE) 1 through 7, and they were admitted into evidence without objection. Applicant testified and did not offer any exhibits.<sup>2</sup> DOHA received the hearing transcript on November 27, 2017.

### **Findings of Fact**

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

Applicant is 29 years old. He attended college, but did not graduate. He earned technical and professional certificates. He is not married and has no children. He has been employed by his current employer, a federal contractor, since April 2015. Before then he held various jobs for short periods of time.<sup>3</sup>

Applicant admitted he owed the debts alleged in the SOR. He testified that he could have made better decisions about his finances and has not used good judgment regarding them. In 2012, he obtained a student loan (SOR ¶ 1.a-\$3,871). It has been delinquent since approximately 2013. The Internal Revenue Service (IRS) involuntarily withheld his income tax refund and applied it to this debt. He testified that last month he agreed to participate in a rehabilitation program with the creditor. He has made two payments of \$15 on this debt. No documents were provided.<sup>4</sup>

Applicant has not addressed any of the remaining delinquent debts in the SOR. The debts are supported by Applicant's admissions, his statements to investigators and credit reports from May 2015, December 2015, and October 2016.

Applicant testified he was confused about the debt in SOR ¶ 1.d (\$630), a medical debt delinquent since about July 2013, because he believe it should have been covered by his insurance. He did not present evidence of action he has taken to contact the creditor to address his confusion. The debts in SOR ¶¶ 1.b (\$1,405), 1.c (\$874), and 1.i (\$740) are cell phone debts he incurred when he canceled his contracts with the providers and failed to pay the balances owed. SOR ¶¶ 1.e (\$500) and 1.g (\$412) are loans he obtained and did not pay. The debts in SOR ¶¶ 1.f (\$487) and 1.h (\$2,774) are unpaid credit cards debts.<sup>5</sup>

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<sup>2</sup> Hearing Exhibit I is the Government's discovery letter.

<sup>3</sup> Tr. 14-18.

<sup>4</sup> Tr. 18-22.

<sup>5</sup> Tr. 22-31; GE 1, 2, 3, 4, 5, 6.

Applicant testified that he has not acquired any new debts. He admitted that he has had enough time to resolve his debts, but has not done so. He worked overseas from October 2015 to December 2015, and from January 2016 to December 2016. He has no money in savings. During his June 2015 background interview with a government investigator, many of the SOR debts were brought to his attention. He told the investigator he intended to pay and resolve the delinquent debts.

In August 2016, he was interviewed again by a government investigator and was confronted with many of the same debts from his 2015 interview that are listed on the SOR. He indicated to the investigator that as of January 2016, he was financially secure and intended to resolve his financial problems. He also stated he was planning his wedding and had spent \$15,000 to purchase a ring, secure a venue, and made a prepayment on a honeymoon trip. He told the investigator he had \$4,000 in savings and was saving \$4,000 a month from his income. He intended to resolve his delinquent debts when he returned from overseas at the end of 2016. Applicant subsequently canceled his wedding and lost the deposits. He testified that he is paid well, and he needs to get his debts under control. He admitted he has not exercised good judgment in managing his finances.<sup>6</sup>

## **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 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.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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<sup>6</sup> Tr. 28-34; GE 3, 4.

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 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 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.

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 handing and safeguarding classified information.<sup>7</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and 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 has numerous unresolved delinquent debts that began accumulating several years ago, and which he has been unwilling to satisfy. The above disqualifying conditions apply.

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 counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling 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 has not paid or resolved any of the alleged delinquent debts, despite being confronted with them during background interviews and making promises to address them. Applicant's debts are recent, numerous, and ongoing for several years. I cannot find that his behavior is unlikely to recur because of his failure to conscientiously

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<sup>7</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

address his debts. His behavior casts doubt on his current reliability, trustworthiness, and good judgment AG ¶ 20(a) does not apply.

Many of Applicant's debts were incurred before he spent money for his wedding. He told the investigator that he was saving \$4,000 a month. He has not provided evidence that his financial problems were the result of conditions beyond his control. He has not provided evidence that he has acted responsibly in addressing his delinquent debt. Shortly before his hearing, he made two payments of \$15 towards his student loans. The IRS applied his tax refund to his student loan debt. I cannot find Applicant has acted responsibly in addressing his delinquent debts. AG ¶ 20(b) does not apply.

There is no evidence Applicant received financial counseling and that there are clear indications his finances are under control. AG ¶ 20(c) does not apply. Applicant made minimal payments as part of a rehabilitation program to begin resolving his delinquent student loan. He did not provide supporting documents to show his efforts. His actions, which occurred shortly before his hearing, do not rise to the level of establishing a good-faith effort to resolve his delinquent debts. He has not made any other effort to pay his delinquent debts. I find AG ¶ 20(d) does not apply.

### **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(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 29 years old. He has been employed since April 2015. He has numerous delinquent debts. The debts were brought to his attention during his first

background interview in June 2015. Despite making promises to address them and being confronted with them again during his August 2016 background interview, he has not made any efforts to resolve them. Applicant admitted he has used poor judgment in managing his finances and that he has had the time to resolve them. He has not established a reliable track record of financial stability.

Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he 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
Subparagraphs 1.a-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 national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge