



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03785

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2018

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concern generated by his delinquent student loan. Clearance is granted.

**Statement of the Case**

On January 6, 2017, 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, explaining why it was unable to find it clearly consistent with the national security 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 February 9, 2017, Applicant answered the SOR, admitting subparagraph 1.a and denying the remainder. He requested a decision based on the written record instead of a hearing. On March 22, 2017, Department Counsel prepared a file of relevant material

(FORM). Applicant received a copy of the FORM on March 29, 2017, and he filed a response on April 24, 2017. The case was assigned to me on May 1, 2017.

On November 8, 2017, I re-opened the record, extending it through close of business December 8, 2017, to allow the parties to submit additional evidence. Within the time allotted, Department Counsel submitted a credit report, dated November 8, 2017, which I have incorporated into the record as Item 6. Applicant did not submit any additional evidence.

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. My decision would not have been different if I had applied the previous iteration of the adjudicative guidelines.

### **Findings of Fact**

Applicant is a 61-year-old man with three adult children. He is a high school graduate who has been working for a federal contractor since 1986. He has held a security clearance since 1993. (Item 2 at 1)

The SOR alleges four delinquent debts. Two of the debts (subparagraphs 1.c and 1.d), allegedly medical bills, are collectively less than \$130. Applicant does not recognize either creditor. He wrote the collection agent for both debts requesting copies of the original bills, but never received a reply. (Item 2 at 1) Consequently, he denies these allegations.

The debt alleged in subparagraph 1.b is a medical bill totaling \$257. Applicant paid this bill. (Item 1 at 2)

Subparagraph 1.a, totaling \$21,144 is a student loan that Applicant cosigned for his daughter approximately 12 years ago, when she began college. She defaulted on the loan payment shortly after finishing college. Applicant will not pay this debt because his daughter incurred it. As of April 2017, Applicant's daughter was working with the creditor to develop a payment arrangement. (Response at 3)

Applicant has \$12,000 of nondelinquent debt, including his remaining mortgage, car payments, and credit cards. (Item 2 at 1) His assets exceed his debt. (Item 6)

### **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 process. The administrative judge's overall 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. 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.

## **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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant satisfied subparagraph 1.b. Although he did not provide evidence substantiating his dispute of subparagraphs 1.c and 1.d, I accept his explanation, given the minimal amount of the contested debts. I resolve subparagraphs 1.b through 1.d in his favor.

Applicant's refusal to pay subparagraph 1.a, his daughter's student loan that he cosigned, triggers the application of AG ¶ 19(b), "unwillingness to satisfy debt regardless of the ability to do so." Although Applicant did not incur the debt, he had a responsibility, as the loan cosigner, to pay it if his daughter, the loan's principal debtor, defaulted. Conversely, the loan has been outstanding for more than 12 years. His daughter has

finished college and is negotiating with the creditor to develop a payment plan. Applicant has minimal debt and the record evidence reflects no financial instability. Under these circumstances, I conclude 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,” applies.

### **Whole-Person Concept**

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(a).<sup>1</sup> Any negative security significance of Applicant’s failure to pay his daughter’s student loan after she defaulted is outweighed by the age of the debt and his daughter’s recent efforts at taking responsibility for the debt. Under these circumstances, I conclude Applicant has mitigated the security concern. In reaching this decision, I considered the length of time that Applicant has held a security concern without incident.

### **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
Subparagraphs 1.a – 1.d	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge

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<sup>1</sup> The factors under AG ¶ 2(a) 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.