



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 16-03905

**Appearances**

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

02/23/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant resolved some delinquent debts, but not a large student loan. He failed to mitigate the resulting financial considerations' security concerns. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of Case**

On January 7, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1) The action was taken under Executive Order 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 after September 1, 2006.<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 under either set of guidelines.

Applicant answered the SOR on February 8, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). (Item 2) On March 17, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant that day and received by him on March 21, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted a 16-page response to the FORM (Response) in April 2017, which I marked as Applicant Exhibit (AE) A. Applicant did not object to the Government's Items and the Government did not object to AE A. Items 1 through 5 are admitted into evidence; AE A is admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 1, 2017.

On January 24, 2018, I emailed Applicant and inquired if he had additional documentation of payments made toward his delinquent student loan. (Hearing Exhibit (HE) 1) He timely responded to that email and stated that he did not have additional evidence and set forth an explanation. I marked his letter as AE B. Department Counsel did not have any objections to that exhibit and I am admitting it into evidence.

### **Findings of Fact**

Applicant is 39 years old and a high school graduate. He earned an associate's degree in 2007. He was married to his first wife from 2002 to 2012. They have three children. He remarried in 2016. He started working for a defense contractor in November 2010. He had been unemployed for almost two years prior to obtaining that position. (GE 3; Answer)

On April 20, 2016, Applicant submitted a security clearance application (SCA). In it, he disclosed delinquent debts and stated he was seeking financial counseling to assist in resolving his financial problems. (Item 3) He attributed the delinquent debts to his 2012 divorce, the loss of a second income subsequent to it, his former wife's addiction, and her failure to pay her debts in accordance with their marital settlement agreement. (Item 5)

Based on a credit bureau report (CBR) from June 2016, the SOR alleged five debts that became delinquent between 2011 and 2012, and totaled almost \$100,000. (GE 4) The status of each debt is as follows:

SOR ¶ 1.a: The \$60,060 student loan debt was charged-off in May 2012. In his February 2017 Answer, Applicant stated that he was working with an account representative on a plan to begin resolving the debt and intended to use his 2016 tax refund to pay it. In his April 2017 Response to the FORM, he submitted copies of three checks: one for \$400, dated April 17; and two for \$200, dated May 1 and May 16. These represented payments he made over the phone. He was told that he was eligible to settle the debt for 33% of the total amount, but he was unable to do so because he did not have enough money available. He intended to continue making payments. (Answer; AE A)

In reply to my inquiry about additional payments on this debt, Applicant stated that the creditor would allow him to make payments on the closed and charged-off debt, but would not give him any further information about it. Applicant said he then contacted a student loan data system and could not locate the debt. He said he does not know what else to do about the debt. (HE 1; AE B) However, without further documentation, such as an IRS Form 1099-C, confirming that the debt was cancelled and subject to taxes, the debt remains unresolved. Applicant has been aware of this debt for at least five years.

SOR ¶ 1.b: The \$20,224 delinquent credit card debt was paid in March 2017. (AE A)

SOR ¶ 1.c: The \$17,652 delinquent debt owed for an automobile repossession was settled for less money and paid in March 2017. (AE A).

SOR ¶ 1.d: The \$1,947 delinquent credit card debt was paid in February 2017. (AE A)

SOR ¶ 1.e: Applicant stated he paid the \$115 utility bill when he learned of it during this investigation. He said it was his ex-wife's debt. (AE A) It is resolved.

Applicant submitted evidence that he and his wife enrolled in financial and credit counseling, beginning in May 2017. He provided an April 2017 budget. He and his wife's net monthly family income is \$5,100, and their expenses total \$4,240. He also listed a monthly payment of \$400 toward his student loan, which is no longer pertinent. He submitted three letters of recommendation. All authors recommended that Applicant for a security clearance based on his performance. (AE A)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/s/o* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.<sup>2</sup>

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (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 a history of being unable or unwilling to meet financial obligations, which began in 2011 and continues to date. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. 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, or 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.

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant offered some evidence from which to conclude that similar problems may not recur because he is no longer married to his first wife, who contributed to his delinquencies, and he is now married to a woman who helps manage their finances. Limited mitigation was established under AG ¶ 20(a). His divorce and subsequently related financial difficulties were circumstances beyond his control; however, he did not provide evidence that he acted responsibly under those circumstances. AG ¶ 20(b) partially applies. Although he resolved four of the five SOR-alleged debts, he presented no evidence of financial counseling and there are not clear indications that the largest debt, a \$60,060 student loan, is under control. AG ¶ 20(c) does not apply. Applicant presented evidence that he paid four debts. He established some mitigation of good-faith, but not full mitigation, under AG ¶ 20(d), as to those debts, because he did not begin to address them until after he received the SOR.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has successfully worked for a defense contractor since November 2010. In April 2016, he candidly disclosed delinquent debts in his SCA, and stated that he intended to seek financial help to resolve them, including his student loan. In January 2017, he received the SOR. In his February 2017 Answer, Applicant indicated that he recently began resolving some debts and again stated that he intended to resolve the student loan. In his April 2017 Reply, he mentioned steps he had taken to address his delinquent student loan. In his February 2018 response to my inquiry, he stated that he is unable to resolve the \$60,060 student loan that is his responsibility. Overall, the evidence creates sufficient doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet

his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.e:	For Applicant

### **Conclusion**

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

SHARI DAM  
Administrative Judge