



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



In the matter of: )  
)  
) ISCR Case No. 17-00295  
)  
Applicant for Security Clearance )

**Appearances**

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

02/20/2018  
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**Decision**  
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MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 2, 2015. On March 25, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.<sup>1</sup>

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<sup>1</sup> The action was taken under Executive Order (Exec. Or.) 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 effective within the DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). The new AGs became effective on June 8, 2017, for all adjudicative decisions on or after that date.<sup>2</sup>

Applicant's initial Answer to the SOR, submitted on April 20, 2017, was incomplete. He submitted another Answer on June 6, 2017, in which he waived his right to a hearing. He changed his mind and requested a hearing on August 24, 2017. The case was assigned to me on October 16, 2017. On October 26, 2017, a notice of hearing was issued scheduling the hearing for November 15, 2017. The hearing convened as scheduled.

At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. I held the record open until December 1, 2017, to allow Applicant the opportunity to submit additional documentation. He timely submitted AE C through AE F, which were admitted without objection. Based on information in his submissions, I held the record open again until December 22, 2017, but Applicant submitted no new documents, and the record closed. DOHA received the transcript (Tr.) on August 9, 2017.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, 1.k, and 1.l. He denied SOR ¶¶ 1.c, 1.h, 1.i, and 1.j. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 47 years old. He served on active duty in the United States Navy for 21 years, from October 1991 to September 2012. He retired as a chief petty officer (E-7).<sup>3</sup> (GE 1; AE E, AE F) After retiring, he attended college full-time. He earned an associate's degree in 2014, and his bachelor's degree in 2015. He was largely unemployed during this period. (Tr. 61) Since October 2015, he has been employed full-time in the defense industry. He has worked for his current employer, a large defense contractor, since March 2017. He works in information technology. (Tr. 60-67; GE 1) Applicant held a clearance in the Navy, most recently renewed in 2012. (GE 1)

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<sup>2</sup> Applicant received a copy of the new AGs with the Government's discovery package, and I provided Applicant a copy of the new AGs at the start of the hearing. (Tr. 10-11; Hearing Exhibit I)

<sup>3</sup> During his Navy career, Applicant was awarded the Navy & Marine Corps Commendation Medal, the Navy & Marine Corps Achievement Medal, several Good Conduct Medals, numerous unit commendations and ribbons, and he received various service medals and deployment ribbons. (AE E, AE F, AE G)

Applicant married his wife in 1998.<sup>4</sup> They separated in September 2005. (Tr. 35; AE A) Applicant has two grown sons (ages 24 and 22). They are the product of a prior relationship, though they regard Applicant's wife as their stepmother. Applicant has one daughter (age 18) with his wife. His youngest daughter, (age 12), is the product of a subsequent relationship. (Tr. 35, 83-86; GE 1)

Although they have lived apart for many years, Applicant and his wife did not sign a separation agreement until November 2016. He filed for divorce in February 2017. (AE A) Divorce was to be finalized at a December 2017 hearing. (Tr. 41-42; AE H) I held the record open so Applicant could provide corroborating documentation but he did not do so.

Applicant attributed his overall financial status, and many of his SOR debts, to his marital situation, and to his wife. He testified that his financial troubles began many years ago, when he was in the Navy. He was often deployed away from home. On the one hand, this helped his financial situation, because he received sea duty pay and at times hazardous duty pay, of up to an extra \$525 a month. (Tr. 34, 73-74) However, he testified that his wife would often run up bills and expenses during his deployments. When he was not deployed, he did not receive extra pay, so it was more difficult to pay expenses. (Tr. 34)

In September 2007, Applicant was issued an SOR by the Department of the Navy Central Adjudication Facility (DON CAF), alleging a security concern about his finances. In considering his response, adjudicators found that:

[Applicant] knows his finances are his responsibility but he allowed his wife to pay the bills. It was difficult to pay the bills while on sea duty. From March 2004 to the present, [Applicant] and his wife have been separated and his wife did not care about paying the bills. [Applicant] was trying to maintain the house and children. He is currently trying to clean up his credit. He has refinanced his house and paid several bills off.<sup>5</sup>

The DON CAF granted Applicant's clearance, but he was "strongly cautioned that receipt of any derogatory information, especially of a [similar nature], will be cause for immediate reconsideration." (GE 4)

Applicant disclosed several delinquent debts on his SCA. He largely attributed them to his wife, who he said "opened up several credit cards and took out a student loan in my name" without his approval after they were separated. (GE 1 at 39-44)

SOR ¶ 1.a is a past-due mortgage. The account concerns the home that he and his wife bought together, and lived in until they separated. Applicant's credit reports all

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<sup>4</sup> Applicant testified, and reported on his SCA, that he married his wife in August 1998. (Tr. 33; GE 1 at 20) His divorce complaint reflects his wedding date as being in August 1997. (AE A)

<sup>5</sup> GE 4

indicate that the mortgage account was opened in November 2006. (GE 2, GE 3, GE 5; AE B) By that time, Applicant and his wife were living separately, according to his testimony. (Tr. 45-47)<sup>6</sup> Applicant admitted SOR ¶ 1.a, and acknowledged ownership of the home. However, he said his wife was living there, and had assumed responsibility for paying the mortgage, as shown in the separation agreement.<sup>7</sup> A recent credit report showed that the account was no longer past due. (Tr. 70-71, 92-93; AE B)

SOR ¶ 1.b (\$1,590) is a charged-off credit card account. Applicant admitted the allegation, and it is on his credit reports. However, the separation agreement establishes that his wife is responsible for the account, as the Government conceded. (Tr. 38-39, 91-92; AE B; GE 3, GE 5)

Applicant denied SOR ¶ 1.c, a \$1,124 electric bill in collection. (GE 5) He asserted that the bill was not his since it was in his roommate's name. He also said that the electric bill for his current home is paid by his landlord. He provided no documentation either to support his testimony or to establish that he has made efforts to resolve this debt. It is unresolved.

Applicant admitted SOR ¶ 1.d, a \$690 charged-off credit card. (GE 2, GE 3, GE 5; AE B) He said he had an agreement to pay \$100 towards the debt each month. He provided no corroborating documentation of any payments. It is unresolved. (Tr. 48-50)

Applicant admitted SOR ¶¶ 1.e (\$690) and 1.f (\$395) but also said he thought they were credit cards that his wife opened in his name. He said he contacted the creditor for ¶ 1.e, but was unable to verify the account. (Tr. 50-51) Both are listed on Applicant's credit reports (GE 2, GE 3, GE 5). He provided no documentation to rebut this evidence or to establish his efforts to pay the debts. They are unresolved.

Applicant admitted SOR ¶ 1.g (a \$210 cable bill) (GE 2, GE 5) He said he had made recent payments of \$79 and \$46 on the account, and was unaware that the account was delinquent, since he still has an account with the creditor. (Tr. 52-54). He provided no corroborating documentation of any payments. It is unresolved.

Applicant denied SOR ¶¶ 1.h and 1.i, both alleged as delinquent accounts. (GE 2) However, the Government conceded that no ongoing delinquency was shown, so these accounts are resolved. (Tr. 54-56) Applicant denied SOR ¶ 1.j (a \$69 credit card bill). Applicant said it was no longer on his credit report, but he also said he had paid it. He provided no supporting documentation. It is unresolved. (Tr. 56-57)

SOR ¶ 1.k is for \$210 in overdue bridge tolls. (GE 2) Applicant asserted that he had paid the account. He said that he had recently renewed license plate tags on his

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<sup>6</sup> This discrepancy was not clarified at hearing, though it is possible that Applicant's wife re-financed the mortgage with another lender, as he suggested. (Tr. 45-47)

<sup>7</sup> AE A at page 5 of Separation Agreement.

car, which he said he would not have been allowed to do if he had outstanding tolls. (Tr. 57-58) He provided no corroborating documentation.

Applicant retained a debt consolidation law firm to help him clean up his credit. He pays them \$120 a month. He says they monitor his credit and work to have accounts removed from his credit report that have been closed or are not his responsibility. (Tr. 74-75; GE 1 at 38; AE C)

Applicant testified that his finances are improving now that he has found steady, full-time work. Applicant makes \$25 an hour. He earns a \$52,000 annual salary. He estimated that he makes about \$2,800 a month. He puts \$200 a month into a company 401(k) plan. He pays \$928 in child support for his two daughters, as well as medical insurance. Those expenses are taken out of Applicant's Navy pension. (Tr. 67-68)

Applicant's former supervisor attested to Applicant's trustworthiness, integrity, "can do" attitude, and professional performance in his field. Applicant also provided the witness useful guidance that advanced his own naval career. Another co-worker stated that Applicant is efficient, detail-oriented, trustworthy, and works well to deadline. He handles classified information appropriately. Applicant also brings his professional skills to his church through volunteer work. (AE D) When he was in the Navy, Applicant consistently achieved high ratings, was regarded as an outstanding manager and effective leader, and was recommended for promotion. (AE F)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."<sup>8</sup>

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(a), 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.

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<sup>8</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

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.

## **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. . . .

The financial considerations guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

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

Applicant's credit reports reflect that he has incurred numerous unresolved delinquent debts over the last several years. “It is well-settled that adverse information

from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14 [of the Directive] for pertinent allegations."<sup>9</sup>

SOR ¶¶ 1.h and 1.i are found for Applicant, since no ongoing delinquency is alleged. The other SOR allegations are established. Notwithstanding Applicant's denials, the Government has met its burden, and AG ¶¶19 (a) and 19(c) apply.

Conditions that could mitigate 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem, and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

SOR ¶ 1.a and 1.b are his wife's responsibility, as established by their separation agreement. AG ¶ 20(e) applies to them. It does not apply to any other debt in the SOR, since the remaining debts are established by Applicant's credit report.

Applicant did not establish that any of his current debts occurred due to a circumstance beyond his control. He also did not establish that he acted reasonably under the circumstances. It is not enough for Applicant to assert that his debts are largely his wife's responsibility, or that certain accounts may have dropped off his credit report. AG ¶ 20(b) does not apply.

Applicant's outstanding financial delinquencies are a "continuing course of conduct."<sup>10</sup> They are ongoing and unresolved. Applicant did not provide sufficient evidence to establish that the behavior which led to his financial problems happened so

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<sup>9</sup> ISCR Case No. 11-00046 at 2 (App. Bd. Feb. 10, 2012).

<sup>10</sup> ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not continue to cast doubt on his current judgment, trustworthiness and reliability. On the contrary. Under quite similar circumstances, Applicant was previously cautioned by the DONCAF that future financial problems of a similar nature would lead to reconsideration of his clearance. AG ¶ 20(a) does not apply.

Applicant's financial situation, and his attitude towards his debts, are both markedly similar to what they were in 2008, when the Government took issue with his eligibility for a security clearance. He asserted then, as he does now, that his wife was responsible for many of the SOR debts, due to her overspending and poor financial management. That may have been true at one point, when he was in the Navy and often deployed. But he and his wife have been living separately for many years, though they remain married. Applicant repeatedly asserted, then as now, that his wife opened up credit cards and other accounts in his name. None of this is documented, or proven.

The debts remaining in the SOR do not amount to all that much money. But Applicant has taken very few concrete steps to accept responsibility for them, or to take appropriate action to resolve them. He asserted that several of his debts are being paid, yet he provided no documentation of any payments. Applicants are expected to document their efforts to pay or otherwise resolve their debts. 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. Notwithstanding the limited amount of unresolved delinquent debt in this case, the overall picture is of an Applicant who has



not accepted full responsibility for his debts, and who, despite ample warnings, has not taken sufficient steps to resolve them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

### **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.b:	For Applicant
Subparagraphs 1.c-1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against Applicant

### **Conclusion**

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

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Braden M. Murphy  
Administrative Judge